

# CONTEXTUALISING NATIONAL RURAL EMPLOYMENT GUARANTEE ACT IN INDIA

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## ABSTRACT

*In the recent times, the government initiated various programmes to change the trajectory of development model and make it more inclusive and pro-poor oriented. The programmes like, mid-day meal, National Rural Health Mission, Bharat Nirman and Mahatama Gandhi National Rural Employment Guarantee Act (NREGA) were initiated in order to ensure that growth is evenly distributed and tried to revive the rural economy which was neglected by liberalisation policies. In this context the present paper is an attempt to locate and contextualise NREGA, within a rights discourse to have an analytical understanding.*

In 1990s, India initiated economic reforms and Indian economy transformed from a very slow growing, dependent country into a fastest growing economy. Notably, this change took place in a very short span of time i.e. 1980-2005. India's economic growth has generally been slow to a modest, averaging 3-4 per cent between 1950s and 1980s and between 5-7 per cent over the last two decades. Not only has it achieved self-reliance but also has become a competitive industrial economy. Now, its economic prowess is well appreciated all over the world. This indicates that economic growth has accelerated from the traditional *Hindu Rate of Growth*.

The internal conditions in several parts of the country and the standard of living of the masses do not reflect or match with the growing national opulence. About 300 million people in India are finding it difficult to sustain themselves and live in conditions of extreme poverty and receive income which is less than US \$1.25 a day. Such lopsided economic development had several implications like asymmetrical development, jobless growth, low agrarian returns etc. Therefore critics have been argued that the period of economic reforms from

1991-2004 can be seen as the most retrogressive phase because the policies designed have given weightage to the market and that have excluded the poor segments of the population.

On the basis of empirical analysis Nayar (2009) argued that economic liberalisation has empowered welfare role of the state. In the recent times one can witness that the government initiated various schemes and programmes to change the trajectory of growth oriented development model to make it more inclusive and more pro-poor oriented. The programmes like, Mid-day meal for school children, National Rural Health Mission, Bharat Nirman and National Rural Employment Guarantee Act (NREGA) were initiated to make fruits of growth more evenly distributed and tried to revive the rural economy which was neglected by liberalisation policies. This testifies that the welfare role of the state has not shrunk with the perception of globalisation and liberalisation policies in India.

Given the above mentioned situation, the present paper attempts to locate and contextualise National Rural Employment Guarantee, a flagship

programme of the UPA government within a broad socio-economic and political domain to have an analytical understanding. In doing so, section one discusses the two most important conceptual frameworks which gave a normative and conceptual direction to the Act- the Right Based Approach to Development and United Nations Millennium Development Goals. The act has its grounding in both international and national framework of development but its context and genesis has Indian moorings. It is within this framework, second section locates the larger factors (socio-economic and political) which influenced the making of this Act.

### **Rights Based Approach to Development**

As a conceptual framework, Rights Based Approach to Development believes not only in political democracy but also in socio-economic democracy to achieve equitable and poverty free society. In recent years, development discourse is dominated by 'rights based approach'. Influenced by people's movements which emphasise on 'rights rather than needs, such approach shifts the discourse from beneficiaries to citizens. This shift from needs to rights in turn implies three things- an emphasis on agency on the part of the poor importance to issues of power and political struggles through which rights are acquired and the emphasis on the role of donor agencies and Non-Governmental organisations in the politics of development (Cornwal and Nyamu- Musembu-2004).

An important aspect of Rights based approaches to development is that they emphasise on socio- economic rights in addition to civil and political rights. In this context, their central argument is that rights are not hierarchical but they are inter-related and interdependent, i.e. social and economic rights are not secondary to civil and political rights. They argue that the absence of socio-economic rights is not merely by resource constraints but due to the absence of power and voice. According to Anuradha Joshi, the dominant

features of movements using such approaches have been attempts to gain voice, shift the language of development from 'needs' to 'rights', get socio-economic claims recognized, and ultimately institutionalised in the form of laws"(Joshi 2010, p.620) .

It may be mentioned here that at the core of the rights based approach is the need for a legal change or recognition. At least at the normative level, rights based approach aspires toward justiciable legal frameworks. The assumption is that provision of legal, social and economic rights would result in greater mobilisation and articulation of the voice of the poor and marginalised and this will be important as it would raise questions about the basis on which national priorities are set. In this context gaining legislatively defined rights is looked upon as an important step in this direction.

### **United Nations Millennium Development Goals**

As has been mentioned earlier, along with Rights Based Approach to Development, another important initiative that gave shape to the defining principles of the Act is United Nations (UN) Millennium Development Goals. Millennium Development Goals (MDGs), which are the concomitant of the Rights Based Approach, acknowledges the right to dignified life of poor people across the world. These goals eventually became the goal posts of all nations of the world and also gave the basic grounding to the act.

UN Millennium Summit held in September 2000, by acknowledging the RBA, set up International Development Goals popularly known as Millennium Development Goals. The rationale behind this was that development alone could not tackle the widespread socio-economic problems in the world. In order to address such issues, MDGs will set time-bound, quantifiable targets across eight areas, ranging from poverty to health, gender, education, environment and development. These

goals will offer the world a chance to do better vis-à-vis the poor countries after the failure of Structural Adjustment Programmes (SAP). The fact that 191 countries have signed the UN Millennium Declaration bears ample testimony to the convergence of development thinking among the world leaders and development communities, both about the need to tackle human poverty on a mission mode and about the methodology to attain the intended goals.

The MDGs are meshed in the norms and principles of Human Rights as well as the Rights Based Approach. It provides a general framework to guide the national governments to accomplish the goals that have been set out. The very first goal of MDGs i.e. eradication of extreme poverty and hunger, targets of halving the proportion of people living on less than \$1.25 a day by 2015. This goal is once again been taken up by developing countries especially by India, China, and Brazil, in recently held Rio Conference 2012 under the theme *The Future We Want* and eradication of poverty continues to remain central goal of all governments in the final Rio declaration.

Keeping with the spirit and concerns of MDGs, India is making an attempt to improve the quality of life of the poor by devising various measures to achieve these targets. Various provisions of NREGA are not only complementary to the goals set under MDGs, but they also play a catalytic role in achieving them. For instance, the very first goal of MDGs is to eradicate extreme poverty and hunger and to achieve this goal, the Act in its legal framework guarantees unskilled manual work to every rural household who volunteers to do such work in rural areas by assuring them appropriate wages in return. The Act therefore can be seen as a step towards legal enforcement of the right to work so that the challenges of unemployment and poverty can be addressed in a substantive manner.

Yet another significant goal of MDGs is to ensure gender equality and economic empowerment of women. Such concerns are based on the premise that women are largely relegated to more vulnerable forms of employment due to lack of equal economic benefits, security and disparity in wage payments. Under such prevalent conditions, the Act strongly adheres to eliminate gender disparity and aims to achieve empowerment of the women particularly in terms of achieving parity in payment of wages between men and women. For instance, the Act also has laid down provision within which at least one-third of the beneficiaries of the programme shall be women. Additionally, in order to enhance and encourage participation among women, facilities like crèche, drinking water, shade and first aid are provided at every worksite. One can therefore witness a reflection of an affirmative action taken up for the promotion of gender equality and the empowerment of women that constitute the cornerstone of the programme to help achieve these goals.

Degraded environment and poverty are closely inter-related issues especially for people who are primarily dependent on natural resources for their immediate environment. In this regard, environment protection becomes a prerequisite to tackle poverty. To address such concerns and to ensure environmental sustainability, the Act has made, water and soil conservation, afforestation and land development permissible works and in the process it aims to achieve seventh goal of MDGs i.e. environmental sustainability.( MNREGA SAMIKSHA,2012)

However it is realised that it is not possible to achieve restoration of natural systems and eliminate poverty unless power is diffused and filters down to the grass roots level. In this context, MDGs acknowledge that development rests upon democratic governance and in consonance with this philosophy; NREGA provides a required comprehensive legal framework for the democratic

participation of people in the implementation process of the Act. For example, *Gram Sabha* (institution at grassroots level) has been empowered to prepare plan, monitor, and audit the projects implemented under the Act. Thus, this Act makes grassroots democracy a viable project which in turn, it is believed, would help eradicate poverty and unemployment as envisaged in the MDGs. One can thus infer as how Right Based Approach to development and MDGs provides the context of National Rural Employment Guarantee Act, 2005 (NREGA) in India.

## II

### CONTEXTUALISING NREGA

India's active participation in United Nations and its subsidiary bodies and its assent to various development programs whether concerning human rights or the millennium development goals, in fact reveal India's quest to eradicate poverty in a meaningful way. It also reflects its commitment to sustainable development addressed in various global forums and also to right's based approach to development which eventually culminated in the enactment of NREGA. At the same time, the act has its grounding in both international and national framework of development but its context and genesis has Indian moorings. It is within this framework, this section locates the larger context (socio-economic and political) which influenced the making of this Act.

#### Asymmetrical Development

Economic liberalisation, no doubt has brought in economic prosperity for the country but in an asymmetrical way. Its success tale, for example, was restrained to service sector and software industry i.e. Information technology (IT). The repeated success story of software industry is now synonymous with India's rise in the global economy. ( Saluja, 2010) Subsequently, it brought the feeling that '*India is shining*'. On the other hand

Bharat is not shining as compared to India. India's countryside, that is 73 per cent of total population, continues to depend on sluggish agrarian economy, which is marred by malnourished children and anaemic women and also suicide by farmers in distress( Sai Nath 2009)

#### Jobless growth( Zaidi, 2012)

As far performance of the Indian economy with regard to growth rate is concerned, Bhaduri (2008) in his study argued that India is experiencing a growth rate of 7 per cent to 8 per cent in recent years, but the growth in regular employment has barely touched 1 per cent. It is further argued that that most of growth in GDP is the result of higher output per worker and not due to employment expansion. Indian industries have failed to create sufficient low-skilled, labor-intensive jobs, in a country where one-third of the population is illiterate. Hence with no- viable alternatives, what one finds is that more than half of the country's working-age adults toil in the fields and they produce only one-fifth of India's GDP and hunger often stalks rural homes(Zaidi,2012)

#### Diminishing Agrarian Returns

One of the biggest drawbacks of liberalisation policies, according to its critic, is the neglect of the agrarian sector. Agriculture continues to play a very crucial part in the Indian economy and to achieve inclusive growth, the performance of agrarian sector is vital. More importantly it provides food security to majority of the population in the country. In recent times, the contribution of agriculture to national income has been fallen dramatically. However more than 600 million people depend on farming for their income and livelihood and given the slow rate of agriculture , has resulted in further distress for those dependent on this sector.(Dev 2008) It has been observed that some section of the agrarian labor heavily depend on wages that they earn through unskilled, casual and manual labor. They are vulnerable to the possibility of sinking from transient to chronic poverty in the event of inadequate labor demand. This is because

agricultural workforce in rural areas is not sustainable with dwindling cultivable land and use of modern methods of cultivation or in the face of unpredictable crises that may be general in nature, like natural disasters or personal, like ill-health, all of which adversely impact their employment opportunities.

This situation demands provision of a safety net to rural communities in the form of guaranteed employment through programmes like NREGA. Along with ensuring rural employment, productivity enhancement in rural communities is also seen necessary to generate secondary benefits and improve the rural economy's ability to absorb labor. While it is evident that in the post-reform period, India did a commendable job in achieving high GDP growth, this is also true that the benefits of development were unevenly distributed. Indian policy makers, while emphasizing too much on economic growth, totally neglected economic development. This neglect led to lopsided development, rising unemployment and sluggish rural growth. Even though India did implement employment generation programmes, these did not bear the desired benefits. It was in this economic environment that NREGA was launched in order to achieve the desired objective of inclusive growth.

### **The Political Context**

The mandate of the 2004 general elections made it apparent to the political leaders that common man cannot be swayed merely by false promises and statistical data and that their world views are shaped by their everyday experiences and it is precisely for this reason that they decisively rejected policies that went against their interests. It may be recalled that during this period, the purpose behind high growth was widely questioned as far as Indian democratic spirit of the country was concerned.( Ghosh 2006) It was argued that even though poor may have a weak voice in the market due to their low bargaining power but they do have

a stronger political voice because of their sheer numerical strength and this became quite evident, particularly during the General Elections (Lok Sabha) 2004. The verdicts of the election, in fact dampened the zeal of economic reformers, and resulted in slow down of reform process. It depicted that people were dissatisfied with the governments' economic policies that reduced employment opportunities particularly rural employment and reduced access to public goods and services. It is also important here to acknowledge the noteworthy role of various civil society groups and NGO's who not only kept the issues of poor alive by petitioning the government and various courts but also gave poor people a voice in the political space which was hitherto denied or marginalised for them. All these forces together changed the political rhetoric of the time from '*shining*' India to '*inclusive growth*'.

It is important to note that one of the core reasons for NDA's defeat in the 2004 elections was due to its liberalisation policies which had neglected issues and concerns of the lower and deprived sections and classes of society, particularly those pertaining to unemployment and poverty. On the other hand, the UPA along with the outside support of the Left parties had made the issue of employment a significant concern in their manifestoes and campaigns. It also proclaimed a new vision of '*inclusiveness*' for its economic and social policies which aimed to benefit the '*aam admi*' (the common man). Moreover, the poor and the minorities were made the centrepiece of UPA's Common Minimum Programme (CMP). For instance, The CMP made the following promise and stated

*The UPA government will immediately enact a National Employment Guarantee Act. This will provide a legal guarantee for at least 100 days of employment on asset-creating public works programmes every year at*

*minimum wage for every rural household.*

The above mentioned decision of the UPA government, in spirit at least reflected a strong pro-poor orientation. Politically speaking such initiatives provided the UPA government an edge over others in the electoral game (General Elections, 2004 and 2009) as it argued that even if the country may be doing well in terms of per capita income, in substantive sense it still does not ensure that the poor are doing well too in terms of livelihood. Consequently, it felt that there was no better way other than providing assured employment towards meeting the basic needs of the poor and the marginalised.

#### **Constitutional Context**

Given the above mentioned underlying principles, Rights Based Approach to Development that provides the theoretical framework and conceptual meaning to the overall objective of the Act – i.e. ensuring a dignified existence to the poor and the marginalised by invoking the ‘Right to work’- the fundamental right under Article 21 of the Indian Constitution; the concomitant rights mentioned in Articles 41, 42 and 43 of the Constitution also helps in understanding and interpreting the fundamental right guaranteed in Article 21 to work, humane working condition and wages. In other words the approach has been influential in legalising the right to work through the institution of law

The constitutional provisions, especially mentioned under the Directive Principles of the State Policy (DPSP) enshrined in Part IV of the Constitution (Arts. 36-51) specifically aims at establishing economic and social democracy and ensure adequate livelihood and employment, health and nutrition, education and security to the citizens. For example, Article 38 states that,

*“The state shall strive for minimizing the inequalities*

*present in the income of the people”, Article 39 “the state shall try to formulate its policy in a manner so as to secure adequate means of livelihood for all its citizens”.*

Further Article 41 states that

*“The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want”.*

This Article remained dormant for fifty-five years until the legislation of the NREGA in 2005. Similarly, in Articles 42 and 43 there is attention given to the conditions of work and the level of wages, which states that

*The State shall make provisions for just and humane conditions of work and for maternity relief...”*

All these Articles are guiding principle which informs policy making and hence should be incorporated in making laws or in the matter of administration. In this regard, even though NREGA is a partial fulfilment of the right to work, as it only assures employment at the household and not at the individual level, and guarantees a maximum of 100 days of wage employment, nonetheless, it signifies a landmark development in the sense that it highlights the confidence of the state in its economic capacity to convert non-justiciable rights provided in Part IV of the Indian Constitution into justiciable ones. For instance, in 1993 the Supreme Court delivered a landmark judgment in

*Unnikrishnan vs. Government of Andhra Pradesh* in which the court argued that the government cannot postpone forever the implementation of directive principles. It further stated that the directive principles were not made justifiable only because the government did not have the resources when the constitution was adopted in 1949, but the same excuse however cannot be used indefinitely. More recently in yet another case Justice AP Shah and S Muralidhar argued that “*If there is one constitutional tenet underlying the Indian Constitution, it is that of inclusiveness*” and this value “*deeply ingrained in Indian society and nurtured over several generations*”.

Though the DPSP were non justifiable, the governments right from the beginning tried to achieve the socio-economic democracy by implementing these rights through various legislations like land reforms or the historic 73<sup>rd</sup> amendment. Not only government but civil rights groups also acknowledged the fact that not being justifiable made these socio-economic rights merely pious declarations. So they sustained the pressure on the government to implement these rights through various Public Interest Litigation (PIL).

### **The Social Context**

When people are continuously deprived from their basic needs or rights and state gives a deaf ear to their voices then people vent their anger in the forms of protests, peoples' movements or agitations (national liberation movement, peasants movements, women movements, movements for the rights of indigenous people) so that state pays attention to their legitimate rights. Later that comes as formalisation, legalisation and institutionalisation of those rights by state agencies. Social activists or members of Civil Society in India have historically been playing the role of a watchdog in order to protect the basic rights of people especially the marginalised section of the society. And this generally brought them into conflict with state agencies

Indian society replete with many such examples in which the discontentment of the poor's found expression through the efforts of civil society groups or NGO's. The manifestation of this was evident since the early 1960s, particularly among the social activist and leftist political leaders in Maharashtra which led to the enactment of the historic the Maharashtra Employment Guarantee Scheme (MEGS). This act caught the imagination of various social groups, activists and academician which eventually strengthened the movement for Employment Guarantee Act (EGA) at both the national and state levels.

The movement for Employment Guarantee Act (EGA) at the national and state levels was especially strong in the late 1980s and early 1990s. 1980s was the time frame in which activist groups flourished. At national level such activism was began with a national seminar in Kolkata in 1989, a cycle rally with over 1000 cyclists from various parts of India to Delhi in 1989, a national convention at Delhi that was attended by the then Finance Minister Madhu Dandavate, and various campaigns in the states of Tamil Nadu, Andhra Pradesh, Orissa, West Bengal, Karnataka and Maharashtra. During same period, all Left and socialist unions also held a huge rally at Delhi demanding the Right to Work. They also organised many other movements on the Right to Work.

The sustained movement for EGA also began to have an impact on the Government. At the state level, both Tamil Nadu and Andhra Pradesh adopted pilot schemes in a few districts. At the Central level, a meeting of the National Development Council (NDC) in October 1990 endorsed the principle of making employment generation the central focus of development planning in order to achieve the goal of Right to Work for all. It was also suggested that legislation be adopted to provide an immediate work guarantee to the poorest people. This legislation and the

schemes suggested were in line with the Maharashtra EGA.

On 31 July 1991, the National Commission on Rural Labor (NCRL) had submitted its report and recommended that for the betterment of agricultural laborers', the Right to Work should be accepted as a Fundamental Right with certain qualifications and an Employment Guarantee Act should be enacted to implement this. A Parliamentary sub-committee on rural labor led by Gurudas Dasgupta also endorsed that employment guarantee was the need of the hour. A few years later, the Central Government adopted the Employment Assurance Scheme (EAS) in a limited way for providing guaranteed employment for 100 days, though it did not receive any statutory backing.

These movements had a significant impact on the society at large. It stirred the politician from their inertia and they also voiced their support in favour of right to work. This debate which has its genesis in the socio economic milieu of the nation got its culmination with the Supreme Court's hearing on the right to food (PUCL vs Government of India and others, 2001). It may be mentioned here that in the year 2001, in spite of excess food-grains in the state granaries there were widespread deaths from starvation. In order to address such a situation, number of influential activists launched the *Right to Food Campaign*. This activist network emphasised on the government's failure to prevent starvation despite its food distribution and its employment programmes. Their narrative was closely bound up with criticism of 'neoliberal' economic reforms that were initiated in the 1990s. As part of this advocacy, the People's Union for Civil Liberties (PUCL) submitted PIL on the 'Right to Food' to the Supreme Court in 2001. In a positive response to the litigation, the Supreme Court issued various directives ordering the government to improve the performance of its programmes. Although these directives did not directly influence the progress of the NREGA, the Supreme Court's

favorable opinion encouraged activists to increase the intensity and scope of their demands for improved government programmes.

A draft Bill was formulated in Rajasthan and circulated widely before the Assembly elections there in 2003. It also formed the basis for a state wide campaign on the issue. In 2003, the organisations and individuals who informally form the Right to Food Campaign undertook a week-long campaign demanding an EGA in various states. This culminated in a National Day of Action on the Right to Work on 1<sup>st</sup> May 2003. Campaigns on the issue picked up in various states before the Lok Sabha elections in 2004. All parties were also asked to include the promise to pass a National Rural Employment Guarantee Act in their manifestoes. These campaigns met with some success. The Common Minimum Programme has as its first point the assurance that the UPA shall "enact a National Employment Guarantee Act. This will provide a legal guarantee for at least 100 days of employment to begin with on asset-creating public works programmes every year at minimum wages for at least one able-bodied person in every rural, urban poor and lower-middle class household." However, knowing that there is a lot of difference between promises made and promises kept, a National Convention on the Right to Food and Work in Bhopal in June 2004 was held, attended by over 500 delegates from 120 organisations, declared the need for the immediate adoption of a National Rural Employment Guarantee Act. The Campaign has since then drafted a Bill that received endorsement from a wide cross section of people and organizations. October 16, 2004 has been declared as a National Day of Action for a National Rural Employment Guarantee Act.

NREGA thus represents the culmination of the process of development discourse that crystallised into the concept of sustainable development. This act represents the ideals and aspirations of the Indian constitution which aims at equitable growth. The beneficiaries according to the proposed act are



stakeholders and considered to be entitled to right to work. So in this way it came in the context of policy radicalisation.

### How is NREGA Distinct

The NREGA is different from erstwhile employment generation programmes not only in terms of its origins and objectives, but also in its design. Unlike the previous employment assurance schemes, the NREGA has been created by an Act of Parliament and, hence, can be altered or terminated only by the same body. Moreover, reading with various provisions of social audits, transparency and accountability and institutional mechanisms, NREGA demands a synergy of the role of the state and civil society. Further, it is not merely an employment generation or social security programme, but combines various objectives of rural development, which imparts a unique distinction to it.

As a theoretical framework, the NREGA is a rights based approach where work is provided on demand. This aspect relies on the principle of self-selection – people who want to do hard manual labor at minimum wages will demand and be given work by the state. This route of the NREGA is fundamentally different from the top-down approaches to rural development which has been there in the past. This opens up a distinct possibility of democratisation or decentralisation at the grassroots especially among the rural poor who can now demand the right to do unskilled manual labour at legally stipulated minimum wages. Further they can now have a say in the decision making process of selection of works – a break from the past where the developmental administration or the vote seeking politicians decided what kind of asset was to be built. It may be recalled here that the central slogan of the campaign for a full fledged employment guarantee act was —*Har Haath Ko Kaam Do, Kaam Ka Pura Daam Do*” (We Demand work for every individual at proper wages, meaning the wage in accordance with the Minimum Wages

Act 1948) and reflected the spirit of the individual-entitlement approach which was to define the NREGA. This is aimed at achieving a model of sustainable community development keeping in mind local needs for planning and at the same time providing some succor to unemployed rural workers in lean seasons. It can be argued that in principle, the right to work under NREGA could be a transformative right to bring about deep changes in the power structure of the rural society.

### Summing up

This paper traces the working of recent approach of development based on the rights discourse in India through the enactment of NREGA on one hand and on contrary attempts to locate and contextualise it in within a broad socio-economic and political milieu in India. According to Kaustav Banerjee (2010) set in the context of a historical process, a “double movement” ( Kautsav, 2010)led ultimately to the enactment of the NREGA. The years of drought in Maharashtra in the mid 70 led to the Employment Guarantee Scheme in 1979. However the Maharashtra model was a scheme not a legal right and did not have any limit to the number of days that employment could be provided. It was much later in 2004-05 that the right to work, as it now is, came to be formulated and was the basis for a campaign which demanded its immediate enactment once the UPA came to power in 2004. Thus NREGA in its present form came about mostly as a result of electoral populism outlined in the Common Minimum Program of the UPA-I government. Despite all its pronouncements, the Act however invited debates on the financial viability of the scheme, durability of assets created and other issues.

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