

Movements and the Law

Peoples struggles in India have grown to recognise the need to span the huge expanse between specific local demands and to use democratic institutions, to formulate national policy. It is this shift in political perception of ordinary people that has facilitated movements for the Right to Work and the Right to Information to use political spaces within and outside electoral politics to push their agenda. The NREGA and the RTI were acts that have come out of large scale democratic demands, where the discourse cut across regions and states, activist and other organizations, and some political parties. It brought together people concerned about the condition of secular democracy of the poor, in India.

The national Rural Employment Guarantee Act (NREGA) was passed in August 2005 and came into effect on 2nd February 2006, in 200 districts in India. It is an important (landmark) legislation which gives the economic rights of the poor, the protection of the law. What is remarkable is, that this legislation defies the global trend to reduce state (government) responsibility for the provision of essential employment, livelihood and other essential services for the marginalized and the poor.

(Political commitment for enactment of a law)

In an unexpected turn of political events reflecting the political expression of poor people during the last parliamentary elections, it became possible to lever the mainstream political parties to acknowledge peoples issues in their manifestos. The transformation of the electoral promise into a firm commitment in the National Common Minimum Programme* (can quote from the NCMP), was due to a coming together of the efforts of the party and non-party political processes and formations. "The UPA government will immediately 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. In the interim, a massive food-for-work programme will be started."

This process continued in a dialectic ensuring entitlements and using democratic spaces for formulating laws, like the NREGA and the RTI, both passed in 2005. It is significant that the content of these two laws, are the result of continual debate and discussion with the peoples movements, who had been campaigning for these legislations for many years.

The fact that that this phase of struggle for the laws, began and culminated with organizations who are the users of the legislation, did many things. First it made sure, that within the constraints of the current ruling system, the laws could be the best that the campaigns could get out of the system as it is. This was in effect the strategised, dialectical dialogue between the campaigns and the State, where struggle and advocacy both played important roles and stemmed from a common understanding and strategy.

Secondly, it strengthened peoples understanding of political parties, the functioning of democratic institutions and using their potential spaces for the people and their concerns. Third, it brought the issue of public ethics and accountability of the state in a democracy to its people, stage centre in all debates about the need, efficacy and the process of framing the law. The dialogue across political parties, made the Parliamentary deliberations about the NREGA, probably one of the more informed debates the Lok Sabha has seen.

(The burden of implementation of the law on the Indian State)

Both these enactments place an enormous responsibility on the Indian State. The Indian bureaucratic structure notorious for ignoring the legal obligations for enforcement, is now having to face additional pressures from peoples campaigns for an accountable and open government. For the first time, the NREGA establishes economic rights of the poor as a legal entitlement, and the RTI provides a legal framework for people to be involved directly in issues of governance. The impact of this process on the cutting edge of governance is beginning to be seen.

(Dungarpur as a peoples exercise in using RTI to implement the EGA)
The Mass Social Audit of NREGA in Dungarpur District, Rajasthan in April this year, demonstrated the extraordinary potential in the use of these two entitlements. Linking legal entitlements with people's vigilance forced the administration to be at its most responsible and responsive. Nevertheless, important issues of infringement on entitlements and benefits, were also identified for action. While the law provides space to protest, demand and procure rights, it is the continued and committed role of peoples movements, which will ensure that these infringements are questioned not only locally, but brought into the discourse at the national level to impact the legal framework. The presentation will look at some of these issues.

Using the law and the guidelines to procure entitlements under the NREGA

However, the gap between progressive laws and their implementation continues to be a matter of concern. A few months before, on the 13th of October 2005, the Right to Information Act came into effect. In the struggle for implementation of these twin legislations lie some of the possibilities of containing the fears, genuine or otherwise, of the NREGA becoming a victim of systemic corruption and therefore, defeating the purpose for which it was enacted.

Guidelines...

Transparency, Accountability – Using the Peoples Right to Information for Proper Implementation of the NREGA
(Mazdoor Kisan Shakti Sangathan Collective)

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"Commitment to transparency and accountability runs through the National Rural Employment Guarantee Act (NREGA). This commitment also flows from the right to information Act 2005. The Right to Information Act should be followed in both letter and spirit in all matters relating to NREGA. No request (for information) should be refused under any circumstances. All NREGA-related information is in the public domain." From Chapter 10 of the NREGA operational guidelines

Immediate Challenges Before the NREGA

There are two arguments that were repeatedly used by critics to oppose enactment of an Employment Guarantee Act. The first was the capacity of the Indian state to meet the huge financial obligations due to the law. The other was that even if this law was passed and money made available, corruption would ensure that much of the money would go into the pockets of middlemen. Now that the National Rural Employment Guarantee Act (NREGA) has been enacted and a political choice has been made, it is the obligation of the state that the financial requirements be complied with.

It is the second area of criticism that needs to be seriously addressed ^{by movements} ~~by all of us~~. Corruption is a serious problem that could undermine all the objectives of this significant, radical, and hard won entitlement for India's rural poor. The question of leakages need to be addressed not just to answer the critics, but also to ensure that the benefits of this legislation reach those it was supposed to. The NREGA can never meet its objectives without the active participation of people in its implementation. And it is here that ^{people} ~~another~~ legislation - the Right to Information Act 2005 is an indispensable tool in the hands of the poor to fight leakages, claim entitlements, and make the NREGA meaningful for themselves.

Basic Entitlements Under NREGA

The NREGA guarantees every rural household 100 days a year of manual work at minimum wages within a five kilometer radius. A failure to provide work gives the applicant a right to draw an unemployment allowance.

How will people be able to ensure implementation of this important entitlement? How will they stop leakages and fight corruption? Transparency provisions and the right to information are important means for workers and their organizations to exercise control over the delivery systems. Social Audit measures and processes are important means and platforms through which citizens control can be exercised.

Broadly speaking there are at least seven stages where workers need to monitor their entitlements

- Registration as a worker and receiving a 'job card'
- Applying for and receiving work
- Ensuring people's participation and control over the planning process
- Organisation of the work site and measurement of work
- Payment of wages or payment of unemployment allowance
- Social audit after the work is completed, and
- Monitoring of the complaint and redressal machinery

Legally speaking the RTI Act provides access to the citizen over any records held by the government or its agencies. The NREGA also makes references to transparency and accountability, citizens access to copies of records, and social audit. The guidelines detail proactive disclosure, getting copies of documents on demand, and social audit. It is necessary to use the guidelines of the NREGA available on the net at www.nrega.nic.in. However, it is worth highlighting some of the provisions that have been made.

Proactive Disclosure

The first stage of the Right to Information is the Proactive disclosure of information, where the government has a duty to inform people. The guidelines of the NREGA lay great emphasis on proactive disclosure, underscoring and strengthening certain provisions contained in the Right to Information Act. "Key documents related to the NREGA should be proactively disclosed to the public without waiting for anyone to 'apply' for them. A list of such key documents should be prepared by the State Employment Guarantee Council, and updated from time to time. Section 4 of the (Right to Information) Act, which concerns the proactive disclosure of information, should be strictly complied with at all levels."

Some of the areas of proactive disclosure that workers and their organizations should pay attention to include

- The display of information – by painting on boards, mandatory display of lists on notice boards, putting information up on websites etc.
- the requirement that information be read out aloud to people at crucial points,
- detailed working out of the 17 aspects of the proactive disclosure obligations of government agencies under section 4 of the right to information act, as its implementation at every level would convert both the NREGA and its delivery agencies into an open information network.

Access to records, and obtaining copies of documents

Proactive disclosure policies generally work better in an atmosphere where there is a vigilant citizenry, using the right to information to seek more detailed information, including regular monitoring of the level and quality of information being disclosed.

Open access to all records for inspection, and the right to receive certified copies of any documents on demand, are two essential right to information entitlements.

The NREGA guidelines state that *"People should know who to apply to for information and for gaining access to records....Fees charged for copies of NREGA-related documents should not exceed photocopying costs....Requests for copies of REGS-related documents submitted under NREGA should be complied with within seven days."* It is noteworthy and encouraging that some of these provisions are stronger than the entitlements under the Right to Information Act.

Social Audit

The third pillar of the peoples Right to Information is the use of the platform for peoples participation facilitated by social audit. In this context it must be remembered that social audit or public audit is a continuous ongoing process, through which a worker, or groups of workers can participate in the monitoring and implementation of the NREGA. It gives any citizen the legitimacy, not just to seek information, but also record complaints, suggestions, and demand answers in the public domain. It allows for collective evaluation, and use of the non written mode, and it mandates demystification of documents and procedures.

The NREGA guidelines dedicate an entire chapter (11) to compulsory social audit. The guidelines state: *"An innovative feature of the National Rural Employment Guarantee Act is that it gives a central role to 'social audits' as a means of continuous public vigilance (NREGA, Section 17). One simple form of social audit is a public assembly where all the details of a project are scrutinized. However, 'social audit' can also be understood in a broader sense, as a continuous process of public vigilance."*

The chapter lists eleven stages of the programme where an individual or group can intervene to ensure public vigilance. The last stage is the mandatory six monthly social audit forum, where the gram sabha is to come together to look at a mandatory set of questions related to all the work carried out in the preceding period. These include, but are not restricted to a set of sixty questions that citizens can ask about implementation of the programme at its various stages.

The Need to Build Awareness and Mobilise People

Since the NREGA guidelines have been prepared on the basis of experience with public monitoring of employment programmes, and after several rounds of public consultation it is important to widely disseminate knowledge of these provisions so that workers and their organizations can use them to fight for their rights. However guidelines can quite easily remain only on paper. As we all know, a law is only as good as its implementation. Both the NREGA and RTI Acts have opened up important spaces for citizens action. These spaces need to be strengthened through specific efforts. The entitlements need to be translated into a worker and village level familiarity. For instance, one of the important lessons of the RTI movement has been the understanding that transparency operates at

many levels . Each level has its particular usefulness, and skill requirements. Not everyone can understand a measurement book. But most workers understand costs and measurements very well if it is converted into their language. Even in using open access to documents, work on demystification, dissemination, and follow up is crucial. The kinds of documents that should be proactively displayed have to be listed. Citizens groups need to be encouraged to procure copies of key documents at different levels. Finally the information has to be put to use in a diligent manner to ensure social audit is a *live process*. All this can only be done through active efforts of peoples organizations.

It will take a lot of effort from poor peoples organizations to get worker friendly provisions effectively implemented. There is already an assault on various provisions of the Act from a set of policy makers who want to dilute its already limited provisions. It is only if we can establish the credibility of this Act that we can ensure that its huge number of potential supporters will fight for its organic growth. The best possible way of fighting the bogey of corruption as a means to attack the programme is by fighting corruption ourselves. We need to prevent that space from being occupied by those who only want to undermine the programme. We also need to use means of public vigilance as a mobilisational tool to procure entitlements. Fighting corruption through such struggles for peoples control can be part of a 'political' rather than a 'managerial' process so that the NREGA truly grows to become a means to fight poverty, feudalism, and exploitation in rural India.

*Article based on the collective experiences of the
Mazdoor Kisan Shakti Sangathan (MKSS), and other organizations.
MKSS is contactable at mkssrajasthan@gmail.com*