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MGNREGA as a 'Rights-based' Law in Enhancing Resilience

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Infrastructure for Climate Resilient Growth in India (ICRG) Programme

Submitted By:



IPE GLOBAL LIMITED

IPE Global House,
B - 84, Defence Colony,
New Delhi - 110 024, India
www.ipeglobal.com

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Executive Summary

Climate change, environmental issues and sustainable development define the contemporary framework of the development discourse. Adverse climate impacts on vulnerable communities, underscores the fact that that climate change poses threats to many rights such as to health, food, lives and livelihoods. Yet the approach to issues of human rights and environment tends to be competitive, rather than cooperative. Integrating human rights with environment / climate challenges and sustainable development, focusing specially on vulnerable groups, requires a new theorisation. A theorisation that communities have rights and, there must be focus on mechanisms to ensure that they are aware and are able to demand for the rights, offering a rights-based lens to climate change adaptation.

A rights-based lens to climate change policies and actions highlights the need for governance mechanisms that empower the poor as agents, with ownership in the design and implementation of policies and enforces accountability of decision makers.

In this context of international theorisation on the human rights dimension of climate change, the Mahatma Gandhi National Rural Guarantee Act (MGNREGA)¹, a law enacted by the Indian Parliament in 2005 is significant because of its dual lens on human and ecological issues. MGNREGA aims to enhance livelihood security of its workers through wages for work as well as regeneration of natural resources. MGNREGA is unique because it adopts a rights framework for a wage employment programme. Studies undertaken since the implementation of the scheme, underline the co-creation of benefits in terms of wages to workers and regeneration of natural resources. Evidence suggests that MGNREGA has the potential to build the resilience of poor communities. However, this potential could be fully realized on a sustainable basis if governance issues around the implementation of the ACT are resolved.

MGNREGA is enacted as a rights-based law, hence, there is need to examine whether its governance is situated in this rights-based design. Rights have been invested in workers so that they can access resources to strengthen their capacity to cope with the vicissitudes of their circumstances, a new and a significant factor being climate change. This brings a paradigm shift in the discourse of climate change adaptation. MGNREGA does not perpetuate the notion of the poor as “passive victims of socio economic and natural shocks” to be held in a ‘safety net’. The ACT is based on the firm belief and assertion that that the poor have the capacity to deal with shocks and crises, and therefore, ACT’s like MGNREGA have a role to play in bolstering that strength of the communities.

This paper attempts to examine the efficacy of use of a rights-based approach in mainstreaming climate change resilience and in doing so, also identifies the governance gaps and challenges. The methodology involved a deep study of the impact of ICRG² (Infrastructure for Climate Resilient Growth) Programme, which has deployed mainstreaming of Climate Change Adaptation Strategies

¹ Mahatma Gandhi National Rural Employment Guarantee Act, 2005, Ministry of Rural Development, www.nrega.nic.in

² Infrastructure for Climate Resilient Growth (2016-2020) is a 4-year bi-lateral aid programme between the Government of UK’s Department for International Development (DFID) and the Ministry of Rural Development, Government of India. ICRG is under implementation in 103 Blocks across the states of Bihar, Chhattisgarh and Odisha.

using MGNREGS to build long term resilience of identified vulnerable communities. The result of the study is then analyzed against the backdrop of an understanding of the governance mechanism and founding principles of MGNREGA, for effectiveness of the rights-based mechanism for mainstreaming resilience.

The paper finds that while, the Climate Resilient Works³ (CRWs) - assets developed under MGNREGS while converging benefits from other policies and schemes - have started accruing benefits to the community in the short term and would help address resilience in the long term. However, there are several challenges and gaps that need focused attention. While ICRG, identified and addressed a range of issues across knowledge and understanding of Climate Change impacts and adaptation strategies; knowledge and assertion of rights; awareness of and access to opportunities, institutional systems, public accountability and fiscal resources, there exists some key challenges to the rights-based framework of the ACT. The dilution of the 'rights' basis that occurs due to myriad reasons ranging from lack of awareness to existing social hierarchy, leads to sub-optimal benefits.

This paper also highlights a larger social issue; that rights are not just procedural but substantive. As such, right to jobs cannot mean only unskilled manual labour, right at the bottom of the employment scale, which happens as is now and it does not level deep systemic and historically entrenched inequalities. It can, in fact, perpetuate them as a large measure of resources are spent on keeping the poor where they are. Unskilled manual labour rather than graduating the poor towards higher capabilities that nudge them towards better choices and greater self-reliance keeps them poor. It leads to a bigger question of whether the word 'unskilled' should be waived off and a larger range of jobs including skilling initiatives that make a person employable be considered as the right to employment?

³ Climate Resilient Works (CRWs) are a cluster of MGNREGS works located and designed in a manner to deliver maximum resilience. This is a concept that has been developed under the ICRG programme.

Introduction

Climate change issues are complex, systemic and manifested in many forms. But in nearly all forms, climate impacts exacerbate existing vulnerabilities of poor communities. The poor contribute least to carbon emissions, face discrimination, lack empowerment and do not have the necessary capacity to mitigate and adapt to climate adversities. Despite the human rights and climate nexus, policies relating to climate change and to social policy remain in isolation of each other⁴. As a result of such conceptual and policy disconnects there are structural limitations and gaps in governance structures making the discourse on environmental issues, and human rights competitive, rather than cooperative. If a human rights lens is adopted, it shifts focus on vulnerable groups, seeks to empower them as agents, with ownership in the designing and implementing programs and able to hold decision-makers accountable.

In this context of international theorisation on the human rights dimension of climate change, Mahatma Gandhi National Rural Guarantee Act (MGNREGA) is positioned uniquely offering a viable entry point in mainstreaming resilience strategies and influencing the discourse on adapting to climate change. It offers opportunity (e.g. integrating social concerns with environmental goals, norms, and responsibilities); not just because it promotes co-creation of environmental benefits through 'green' jobs, but because it situates the idea of strengthening the resilience of vulnerable communities as a 'Right' that the State guarantees.

Poor communities' dependent on subsistence livelihood based on natural resources, are vulnerable to the vagaries of nature such as droughts, and floods. They need assured safeguards to prevent them from sinking into chronic deprivation. MGNREGA aims to enhance livelihood security of its workers through wages for work as well as regeneration of natural resources. Historically, wage employment programmes in India, like MGNREGA, have combined wages and work to help the poor smooth out income and consumption flows, and strengthen their asset base. MGNREGA belongs to this long tradition of wage employment programmes⁵. A comparison of MGNREGA with previous wage employment programmes shows the similarities of design; the difference being that MGNREGA is cast in the framework of a rights-based law, the assumption being that while a programme is subject to the vagaries of political and administrative will, a law is not.

Rights imply non-negotiable ethical obligations compelling resource commitment; whereas development policies are discretionary, governed by political economy considerations. Rights move people from welfare dependencies to empowerment. A law is expected to fix implementation anomalies. The Statement of Objects and Reasons of MGNREGA⁶ clearly delineate its rights-based approach contrasted with earlier wage employment programmes. It concedes that there was 'no guarantee' that employment will be available to the rural households on demand as SGRY⁷ which is an allocation based program. MGNREGA is described as a 'pioneering

⁴ Humphreys, Stephen. (2010) Human Rights and Climate Change. Cambridge: Cambridge University Press

⁵ Sharma, Amita, 2010, Development as Rights –Based Law: A study of Mahatma Gandhi NREGA, UNDP India

⁶ Mahatma Gandhi National Rozgar Act, 2005, Ministry of Rural Development, www.nrega.nic.in

⁷ Sampoorna Grameen Rozgar Yojana, a wage employment program implemented as a centrally sponsored scheme across the country, since 2001 precedent to MGNREGA

endeavour’ providing ‘guaranteed employment on scale’. It is also viewed as an effort to ‘empower the poor to demand work on the strength of this legal entitlement’.

The paper seeks to examine the effectiveness and efficacy of the rights-based design of MGNREGA as an instrument of state policy to enhance the capacity of poor communities to negotiate livelihood security for themselves in the wake of climate change. The paper is a conceptual analysis of the design of MGNREGA in the backdrop of integration of climate resilience work done by ICRG programme, based on the reading of the law and the data on the official web-site of MGNREGA (www.nrega.nic.in) and available literature on MGNREGA.

The Rights-based design of MGNREGA

The constituent components of MGNREGA that empower the poor to seek guaranteed employment as an instrument to build resilience to face shocks and risks associated with vagaries and subsistence livelihoods, are stated as a set of rights in MGNREGA and provide the framework for the Annual Master Circulars (AMC). The AMCs are issued each year to provide the guidelines of implementation of schemes under the Act. In the AMC, each chapter delineates detailed norm-based activities with specific results.

Chapter 2 of the AMC, 2019⁸, prefaces the actionable mandates within the “Entitlements under the Mahatma Gandhi NREGA”. The AMC declares, most emphatically, ‘it is the strong legal framework of rights and entitlements’ that come together to make the hundred days of work per year possible. It is therefore essential that the Mahatma Gandhi NREGA is read, understood and implemented while keeping the entitlements in mind. Manifestly, the Ministry of Rural Development (MoRD), Government of India’s policies consciously and explicitly box the operation of the schemes within the Rights invested by the Act. The AMC as a routine every year declares that “non-compliance” of the provisions of the MGNREGA will be considered as an offence under the Mahatma Gandhi NREGA, thereby attracting the provisions of Section 25 of the Act.

Key rights and entitlements of the worker are enumerated here.

1. The right to register as a job seeker under MGNREGA.
2. The right to receive a job card that enlists entitlements.
3. Following the ownership of the job card, the right to demand work by volunteering to do unskilled manual labour.
4. The right to receive a written acknowledgment through a dated receipt, of the demand that under the act becomes a legal document that is justice able.
5. To get work within fifteen days of the demand.
6. To get an unemployment allowance if s/he has demanded employment, but not received it or employment allocation has been delayed being paid by the respective state government.
7. To get wages at the notified rate within fifteen days of doing the work.
8. To get compensation in case of delayed wage payments.
9. To have pay parity for the work done.
10. To participate in planning for works at the local level.

⁸ Annual Master Circular, Mahatma Gandhi NREGA, 2019

11. To avail of a set of working conditions such as work site facilities.
12. To receive compensations for injuries on worksite.
13. To participate in social audits.
14. To be able to complain and redress grievances.
15. To enforce penalties for violation of rights under the Act.

The adoption of a rights framework for a wage employment programme is driven by the belief that this will safeguard the interests of the poor against the inequalities and hierarchies that may be inherent in a system. Rights are also expected to safeguard the workers against arbitrary and discretionary decisions of the government. Above all, rights are to guarantee the worker, the work as and when s/he wants.

The rights -based framework of MGNREGA foregrounds implicitly a premise about sustainability and resilience-that is anchored in behavioural choices. It assigns centrality to human agency in taking responsibility for its situation. Reducing vulnerabilities is a choice that workers need to make and they need to demand. Using this as a key to the articulation on resilience brings about a paradigm shift in the discourse of climate change. It does not perpetuate the notion of the poor as passive victims of climate shocks, who need to be held in a 'safety net'. It asserts that the poor have the capacity to deal with their vicissitudes. The Act recognises that since economic and social inequalities deter the poor from fully accessing opportunities to augment their resources, enacting a legislation to invest the poor with rights to demand basic livelihood security from the State will empower them to shape the changes they desire.

Framework of Analysis of MGNREGA's Rights-based design

How far has the rights framework succeeded in enabling workers to access opportunities triggered by the Act so that they can enhance their resilience? The extent to which the rights framework has succeeded in enabling access opportunities triggered by the Act so that resilience is enhanced is examined through an analytical framework developed for this purpose.

A rights-based design of law that enables poor communities to demand State action to guarantee them minimum conditions that help build resilience takes into consideration the following:

- I. **Legibility** of the legal design. How communicable is the design to those for whom the law is intended, especially since this is a demand-based law? If MGNREGA is a law for people to demand their rights then the question that arises is 'how have people perceived their rights under MGNREGA?'
- II. **Accessibility**. How do local communities understand, articulate and exercise their rights under MGNREGA?
- III. **Clarity of Objectives**. Is there internal clarity and cohesion in the key constituents of the rights guaranteed or are these diversely interpreted and how does this impact workers?
- IV. **Institutional framework**. Does the implementation mechanism enable the realisation of workers' rights?
- V. **Authority of law**. Are the provisions of MGNREGA enforceable?

VI. **Resource Allocation.** To what extent is financial resource allocation governed by principles of law?

Analysis of the rights design: postulate and practice and the impact on workers' resilience.

Legibility of law

The design assumes that workers can access information easily and can use the instruments of law just as easily. The formal demand process of the original design of the law proved to be unrealistic. Considering that the workers were largely illiterate, there were no written applications. Conceding this, the schedule in the Act was amended to allow oral forms of demand or through mobile messages. In the rural areas, the word '*maang*' is an expression of the workers' need rather than a demand and there is no language such as '*haque*' or rights at all. Workers know that they can get hundred days of work, but do not perceive that or any of the other rights as a right.

This raises the question - how is a law understood by the poor?

This is a well-known challenge in laws intended for the poor. It is particularly problematic in case the law envisages that rights are to be asserted not against other citizens but against the government itself. This impasse has been sought to be addressed by mobilising workers to exercise their rights. This has been the endeavour of civil society organisations but their presence on the ground is unequal and dispersed. The government, too, has, sought to educate the workers of their rights. This has created a paradoxical situation where the government makes workers aware of their rights and creates instruments of their articulation and enforcement *vis a vis* the government itself. The factors that make the law legible to the workers are extraneous to its design. The very premise of autonomy of choice becomes dependency.

When the implementation of the schemes under the Act began in 2006, the registrations and job cards issued were the result of repeated instructions by the government and were commensurate with the energy and interest of district and state officials. From the very beginning, the process was driven by the government orders rather than demands by prospective workers. In 2006, several rapid appraisals of processes on the field were commissioned by the Ministry at the very onset of the Act. These studies noted that the highest percentage who had received job cards were then in Madhya Pradesh, mainly due to distributing job cards without application. This was also true for Andhra Pradesh that had waived the requirement of applying for job card. It was noted that though this violated the law, it was inevitable since a largely illiterate rural population was quite unable to fill up technical procedural details.

The situation is the same for demand for work. The worker has the right to demand, but then again this requires awareness of legal processes and the ability to read and write and to negotiate with the government. These conditions were and are still generally missing. Though the schedule of the Act now allows oral demand, it is questionable if its authenticity cannot be established. With such constraints, the demand based process from the very beginning gave way to 'opening of works' followed by completion of documentation of 'rights' such as applications or receipts. From the start till now, the demand - guarantee pivot of rights has remained inert. The Rangu Rao report of the Working Group on MGNREGA towards formulation of the 12th five year plan acknowledged -

“MGNREGA provides a legal entitlement to manual work. If work cannot be provided on demand there is provision for unemployment allowance. This demand driven legal entitlement is not functional”⁹

The preface annually repeated on the MoRD’s Annual Master Circular emphasizes rights. The government’s worry about people’s capacity to understand the rights-based nature of the law continues till date even after a whole decade. The government since the inception of the Act, assumed the role of teacher and mobiliser and has been involved with devising methods of ‘making people aware’ – aware of their rights and to ‘demand’ work through various initiatives such as the *Kaam Mango Abhiyan*, or the IPPE I and II and *Gram Rozgaar Diwas*. Demand from the Government to honour its guarantees are ironic as it makes the demand dependent on one from whom it is demanded. Not surprising Ravallion writes, even after so many years, ‘there needs to be greater public awareness of the rights and rules of the scheme’.¹⁰

If people could demand work, as and when they needed, and to the extent they were allowed under the Act, the numbers of households working and the days worked would be significantly higher.¹¹

Accessibility

The whole premise of the rights design of the Act is people’s capacity to access their rights under the law. *Can workers, even if they know their rights, exercise them?* Are we looking at a case where workers ‘educated’ by the government or the civil society organisations sufficiently reach a point of ‘empowerment’ that enables them to use the rights invested in them by the Act to demand and compel Government to act?

Experience over a decade shows that this happens in sporadic instances, that do not last. This is because, even if the design ordains rights, the unequal relationships between the government and the workers are not levelled by that. The workers lack resources and capabilities and are at the bottom of the social hierarchy. There is a clear inequality of relationship between them and the government systems that are the guarantors of their rights. They cannot negotiate their rights with the gram panchayats and local bureaucracy on just the strength of the law as they are dependent on them for a large measure of things in their lives.

Consequently, ironically the premise of workers choice and capacity to build resilience has become a hierarchical relationship between the government as provider and workers as passive recipients, taking what they get - work, wages, quantum of work.

Clarity of Objectives

Several critical terms on which the enjoyment of rights is anchored are conceptually vague. The objective of the Act is ‘enhancement of livelihood security’ through at least 100 days of guaranteed employment.’ Employment is based on a transaction between the employer and the employed. This means there are conditions that determine the nature of the transaction. In MGNREGA, conditions of

⁹Report of the Working Group on MGNREGA Towards Formulation of the 12th Five Year Plan, Oct,2011

¹⁰ Ravallion, Martin, 2016, MNREGA: Vision and reality, Ideas for India, IGC.

¹¹ Dutta, Puja, Rinku Murgai, Martin Ravallion, and Dominique van de Walle. 2014. Right to Work? Assessing India’s Employment Guarantee Scheme in Bihar. Washington, DC: World Bank.

employment are not stated beyond demanding and volunteering for unskilled manual labour. Schedule I was amended to enlarge the objectives far more ambitiously. It now states - "The core objectives of the Scheme shall be the following

- (a) Providing not less than one hundred days of unskilled manual work as a guaranteed employment in a financial year to every household in rural areas as per demand, resulting in creation of productive assets of prescribed quality and durability;
- (b) Strengthening the livelihood base of the poor;
- (c) Proactively ensuring social inclusion; and
- (d) Strengthening Panchayat Raj institutions."

These enlarged objectives obviously necessitate far more specific and elaborate conditions that have been issued as MoRD's guidelines, annual master circulars as well as amendments to the schedules of the Act. Strengthening livelihood base of the poor is possible only if 'not less than hundred days of work are available in a year' to poor households and the work they do invariably spin off as benefits that are sustained in future for their use. However, coupled with 'unskilled manual work' as a legal guarantee, this has led to a situation where instead of or despite Schedule of Rates (SOR) wages are paid on a flat wage rate per day. Measurements do not assess productivity outcomes and works are closed without regard to the 'prescribed quality and durability of assets.' This is not to diminish the value of local efforts that have tried to affect some synergies and converge divergent objectives towards a holistic process with optimal benefits. But such efforts are till date local and dependent on the local administration. They demonstrate the possibility of synergies but, clearly, these are not replicable as despite the guidelines, they are not institutionally established. Ensuring social inclusion proactively implies consciously reaching out to the vulnerable. Efforts have been made to map the job cards against the landless casual labour reported in the Socio- Economic and Caste Census (SECC). The results are available on the official web-site of MGNREGA www.nrega.nic.in, MIS data (MIS R 26 'Focus areas' R. 26.6)

MGNREGA data shows that 29 percent of total landless casual labour as per SECC, have been mapped of which only 2.33 percent of the landless casual labour are willing to get job cards. More than half the households surveyed (52 percent), 2.84 crore as compared to the 5.50 crore landless casual labour are not willing to get job cards. This is particularly true for states with a relatively larger measure of poverty such as Bihar, Chattisgarh, Odisha. Such data should prompt detailed research into the reasons why such a low number of those who are the prime target of MGNREGA are reluctant to register even for job-cards. *Does it suggest that the landless labour have progressed beyond conditions that compel unskilled manual labour, or there are alternative employments that are more remunerative or more accessible or that absence of timely allocation of work and adequate funds have turned people away from a job card that does not get enough jobs.* Only about half, (54 percent) received job-cards of those who were willing to get a job card. This underscores the fact that governance and institutional inefficiency are impediments to workers' access to their rights. Either way, the realisation of the social inclusion objective remains sub-optimal.

Additionally, there are several definitional ambiguities that impact the benefits that can emerge both in the form of physical assets as well as remuneration. For example, the unit for applying the work-

wage ratio is unclear. The Act says 'project' but, it does not specify the level of the project? This has been variously interpreted to mean a work at the gram panchayat level, or a project across gram panchayats. This means that the work may include areas/villages where there may be no wage component at all. Similarly, the word 'household' is ambiguous - it includes blood relation or shared kitchen or shared roof. This could mean a large joint family and then the number of hundred days shrinks as an entitlement. But if a joint household were to seemingly split its kitchen, even while sharing a roof – then would it be different families? If it does, its entitlements multiply. Do both conditions have to be met? Then, it again becomes very inequitable because, a household size can vary considerably - the hundred days becomes a very inequitable guarantee depending on the household size rather than the degree of vulnerability of poor communities.

Institutional framework

The effectiveness of a law derives from the capacity of the system to enforce its implementation as well as the capacity of the society which must be able to use it. The design of the law is an enabling design if it factors in this capacity. The institutional framework of the law, however, tends to aggravate asymmetrical relationships between government and society that dilutes the rights invested in workers. The reasons for this are the following

- The agencies with the maximum responsibilities under the Act, in terms of the legal guarantees, are the weakest institutionally.
- Decentralization processes prescribed by the Act are countered by centralization.
- There is an overlap and conflict of roles, powers and responsibilities. Several examples illustrate these institutional anomalies. For example, the Gram Sabha recommends works but the Gram Panchayat determines priorities. The State Employment Guarantee Council can also decide 'preferred works.' The Central Government has also assumed the power to decide and direct the works to be taken up on priority.

The Rights - based design mandates the government to open works on demand. The prerequisite for this is local autonomy. Instead, works are opened when funds are received, not necessarily when the workers need the work. Since the quantum of work is determined by the quantum of funding by the Centre, eventually, the Gram Panchayat can open works only to that extent and offer work only for that many days.

Further, the work provided is at the centre's cost, but the unemployment allowance at the states. *So, if the worker claims her rights and central funds for employment do not come, then the state, therefore, denies responsibility for unemployment allowance or compensation.* For example, in 2018 -19, delayed compensation was rejected – the reasons for this being natural calamities, (9 percent) insufficient funds (21.66 percent) and others (50.49 percent)¹². What exactly does 'others' mean under a law? This makes it very difficult for workers to navigate a vast bureaucracy and hold accountable multiple layers of administration.

¹² www.nrega.nic.in, Ministry of Rural Development official web-site for MGNREGA

Authority of law

A law belongs to the people and not to the government. The government is itself subordinate to law. Indicators of the authority of law are accountability, enforceability, grievance redressal and penalty. However, an analysis of the legal provisions of the Act show an anomalous situation where the implementing agency is its own adjudicator. The gram panchayat is the agency for registering, for issuing job cards, for issuing the dated receipts, for filling the muster roles. At the same time, it is also responsible for auditing its own work through the social audit. *What is the space that the informal workers have, to take control and negotiate with the structures of formal authority?* The only formal institutional collective space for workers to assert their rights, is the Gram Sabha.

To address this anomaly, the government has notified social audit rules. The social audit rules induct an autonomous body at arms-length from the government to audit MGNREGA. The MGNREGA website has a litany of social audits conducted. While the effort to put up the status of social audits in public domain is commendable, the status, is in effect, evidence of the institutional challenges intrinsic to the design of the social audit-the only mechanism under the Act for workers to hold the 'guarantors' of their rights accountable. According to the MIS report¹³ on social audits, R. 9.3.1, (2018-2019), only 10 out of 34 states closed issues 'satisfactorily'. Out of total due as wages to be paid to the workers, only 5.23 percent was paid to workers. Out of the total reported as misappropriated, the amount recovered was only equivalent to 0.38 percent. These reports only underscore the persistent inaccessibility of the rights guaranteed under the Act.

The Act's grievance redressal mechanism and penalty clauses are ineffective simply because the defaulting agency decides its own default. Under the Act, those responsible for its implementation are also responsible for deciding complaints that arise from its implementation. 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. This does not help contain the 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. Not only is the penalty not a deterrent, the process of enquiry and fixing of responsibility within the administrative rules is also protracted. *What happens if after the penalty is imposed the defaulter defaults again?* To address some of these issues an Ombudsman System has been formulated. The decision to set up a district Ombudsman aims to create an independent grievance enquiry authority empowered to direct the state government to redress and penalise as well as to file a First Information Report (FIR) against defaulters. *Can it over-ride the powers of grievance redressal vested within the Act in the District Programme Coordinator and the Programme Officer and compel them to act or even more to indict them?* It can at best, offer a forum for receiving grievances and exert a public moral pressure for their effective disposal. The MIS report R. 9.3¹⁴ shows the Ombudsman has been set up only in Chattisgarh. Clearly, grievance redressal against the violation of rights is not yet institutionally established.

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, and shaping human action by restraining or promoting certain forms of behaviour. This is done through an enforcement

¹³ www.nrega.nic.in

¹⁴ www.nrega.nic.in, MIS Report

mechanism. The enforcement mechanism punishes and restrains deviant action. But the MGNREGA design does not make the government accountable, because the government itself is the judge of its own actions. Further there are too many crisscrossing dependencies and diffused responsibilities among layers of administration that make it difficult to hold anyone accountable and to penalize.

The Act allows the central government to stop funds to a state government in case of fund misuse. But such a measure affects the worker. It means punishing the poor because the government is inefficient or irresponsible. Such anomalies in the governance design within the framework of law do not safeguard the workers' rights

Resource Allocation

The legal guarantee of employment can work only if funds are made available. The whole idea of making a wage employment programme a rights-based law was to ensure that the government provided funds when the workers needed employment. The budget was to be demand-based. There have been persistent difficulties in assessing and capturing demand for employment as well as in prompt provisioning of it. Various criteria for striking a feasible balance between past trends and future projections have been evolved over years through the instrumentality of Labour Budgets. The labour budget for a State is approved based on the previous year's performance. This means that funds are determined by the capacity of implementation (a pre-determined target allocation approach) rather than by the potential demand, which would be needed in a rights-based approach. The projected person days for 2018-2019 for all states were 256.56 crore. Against this, the actual person days generated were 267.99 person days¹⁵. Yet the person days approved in the Labour Budget of 2019 -2020 is 258.21¹⁶ crores, lower than the achievement in the previous year. Person days generated in 2016-2017 were 235 crore, but the Labour Budget estimate of person days for 2017-2018, was pegged at 231 crore person days, lower than the achievement of the previous year. This shows that a demand based approach is not used, not the least because formal instruments for demand led budgeting are not available but more so because the budgets are pegged within the available funds. This does restrain the programme from expanding and benefitting a larger number of poor persons in poor states. The potential need of the programme for the poor can be gleaned by juxtaposing the employment provided against the landless labour in a state. If the number of landless casual labour in a state is an indicator of the prevalent poverty and under employment in that state, then a significant gap between the number of households to whom employment has been provided and the number of landless casual labour is worrisome and suggests that MGNREGA benefits, even as wages is not commensurate with the size of poverty. Instances of this are Bihar, Maharashtra, Odisha, Madhya Pradesh, Uttar Pradesh and West Bengal. The broad constancy of labour budget in terms of person days restricts reaching many poor¹⁷.

Fund release is based on the budget available and the administrative and political will of the governments. Inevitably, fund release remains discretionary and inadequate, determined by the fiscal cycle and budgetary processes of the government. Outcomes remain erratic, depending on budget availability. The fact that outcomes in terms of person days and households benefitted have plateaued over a dozen years implies that the budget has not really grown to generate more employment than

¹⁵ www.nrega.nic.in, MIS Reports, R2.2.2, 2018-2019

¹⁶ www.nrega.nic.in, MIS Reports, R2.2.2, 2019-2020

¹⁷ www.nrega.nic.in

in the years 2009-2011. Gross outlays have increased because of increased costs of employment generation in terms of wage rates, materials and administrative costs. It takes more money to create the same or lower level of employment, raising questions of fiscal sustainability.

According to MGNREGA official web-site, the person days and families employed dip or rise according to the budget quantum. This suppresses the potential need of vulnerable communities for work and wages. One consequence of fiscal rationing is work and employment rationing. Often one work is taken up in a gram panchayat though the gram panchayat always has more than one village.

This raises the question whether the Act been able to overcome the financial uncertainties and shortages that afflicted earlier scarcity relief and wage employment programmes. Gram panchayats often do not know the amount of funds that they are to receive nor when, nor what works are to be decided, despite the labour budgets exercise. These uncertainties run counter to building a sense of collective confidence in a concerted sustained action for adaptation and resilience. If climate change is about uncertainty, fiscal uncertainties do not help cope with it.

Why Resilience and Whose Resilience?

Resilience or more aptly put, the capacity to acquire capabilities that enhance adaptive capacity must be intrinsic to communities. The belief that resilient infrastructure generates resilience must steer clear of simplistic assumptions. The value of an infrastructure would be in terms of the capacity it creates in its users to enhance their resilience. This would depend on its relationship to specified users, and their needs. Such relationships are not necessarily equal. Optimizing benefits from infrastructure requires the capacity to make appropriate behavioural choices, interrogate decisions, assert rights, negotiate collectively for common causes, take ownership and recognize individual inequities. Only then does the infrastructure contribute to resilience of poor communities. There is a cluster of issues here:

- Resilience as a result of physical and social assets.
- Resilience as a result of skills and capabilities.
- Resilience as a result of economic earnings.
- Resilience as a result of the ability to assert one's choices and actions, and to be able to negotiate more equitably with power systems that impact one's life and situation. This is what is empowering and leads to self-reliance.
- Resilience to long term climate risks – preemptive infrastructure for ensuring people's resilience and climate proofing the investment itself.

The issue of assertion is non-negotiable for sustainable behavioural change in poor communities to take charge of their lives and actively seek to transform it. One may argue that this is the consequence of the preceding issues (A, B, C) above. This is true only to some extent because while all three sets of issues may be necessary conditions for empowerment and self-reliance, they do not necessarily occur in a logically causal, consistent and predictable associations, in measures commensurate to needs. Besides, there are entrenched legacies of inequalities and contestations, which is further complicated by exacerbated climate change impacts. There are gaps and asymmetries that make the process of building resilience in vulnerable communities, oftentimes unending.

The ICRG Experience

The ICRG programme, began building climate resilience at a community level, using MGNREGA as the key tool as apparent in the merits of the ACT and Scheme discussed above. The process was to conduct a thorough climate model based downscaling exercise to establish the climate impacts and assess vulnerability of communities at a Block level. Subsequent to which, a socio-economic assessment was made on status of natural resource and a need for natural resource management. Based on the needs assessment of NRM, juxtaposing it with the projected climate impacts 20 /30 years from now, inferences were made on the type and quantum of infrastructure requirement. Once the core NRM asset was identified (collectively with the community) to fulfill the current needs of the community, while ensuring viability/resilience building in the longer term, the exercise of convergence was initiated. Convergence, essentially is an intuitive exercise which helps address gaps in resources, spreads the risks and diversifies livelihood economy. Once completed the Climate Resilient Works funded mainly through MGNREGS, not only generated employment but also garnered longer term infrastructure and livelihood security.

This process helped identify the key gaps in MGNREGA addressed above, and due to specific focused action, many of those issues could be addressed at an implementation level, even though some of these were systemic.

- 1- One of the key attributes to ICRG succeeding in using MGNREGA so effectively is extensive awareness activities and solution based engagement with the community. So, communities were made aware of their right to demand, while informing them of choices for which they could demand and benefits of doing so.
- 2- Convergence was a key action which helped address the resource crunch issue, MGNREGA will only provide employment, but innovatively using that to build a livelihood base and diversify the same was possible with focused convergence activities. For instance, using MGNREGS for construction of farm pond but connecting with the Horticulture Department for plantation on the embankments, or with agriculture schemes for diversifying crops (while making climate informed decisions on choice of crops) etc.
- 3- Addressing a future climate risk, and backing with a strategy plan to do so using MGNREGA also allows the Gram Panchayat to effectively negotiate with the district administration on diversion of funds on the back of a scientific demand, likewise, the fact that climate resilience demands a certain water infrastructure in a certain area, also helps navigate the social hierarchy and access benefits by the more vulnerable (frontier) communities.

Conclusion

The rights based framework that anchors MGNREGA provides a platform for vulnerable communities to enhance their livelihood security and therefore build resilience to the adverse impacts of climate change on their life and livelihoods. Framing the programme as a law has helped MGNREGA survive political changes and help push a larger quantum of funding into the wage employment programmes.

The failure to demand does not dilute the Governments responsibility for ensuring social protection to vulnerable communities. Demand is a function of capability and, lacking that does not imply that the need does not exist. Some needs are to be fulfilled by 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. Citizens need to be able to exercise their right to demand facilities and opportunities but ensuring basic conditions for their fulfilment and even to exercise rights through appropriate policy instruments is the responsibility of the government.

Instances of 'success' in people asserting their rights have been due to external factors- civil society organisations, or local leadership - an enthusiastic collector, secretary or sarpanch. Enhancing the understanding of climate impacts and different aspects of creating climate resilience will help address the issue of lack of demand. The knowledge created on how and why the community needs these assets beyond the short term view of wage for the day is critical for enhancing demand and resilience.

Some of the key opportunities and challenges rested within MGNREGA that could well be addressed by introducing the dimension of climate change adaptation or resilience are listed below. These will contribute to enhancing the intended benefits of the Act itself.

- Reconciling the two objectives of providing a universal safety net or employment is challenging and these objectives need to be coherently harmonised. If MGNREGA is a 'safety net', then, a targeted basic income transfer scheme can be worked at much lower administrative cost specially with the linking with Aadhar and Direct Benefit Transfer for households. By eliminating the material and administrative costs, more funds are available and by containing the guarantee, fiscal commitments are more certain. This may appear retrogressive, after more than a decade of celebrating the discourse of universal guarantee of at least hundred days, however, given the new dimension of climate change induced challenges and long term protection against those, this could very well function as a safety net. Conceding this may be a step towards reviewing and rationalizing commitments, focusing on delivering them as time-bound guaranteed transfers.
- If MGNREGA needs to succeed as primarily an employment programme for livelihood security, then the technical norms for normative performance, as presently inscribed in the guidelines, need strict adherence. This requires not just technical resources to plan and execute, but also the willingness of workers to work according to technical standards, and a steady fund flow. This also requires that wages be earned for work measured. This is not easy to reconcile with a social safety net that may require cash transfers, however, if the asset is to be created for a greater, longer-term purpose such as building resilience against climate change then it is very much possible to expect and ensure quality of works done, while the safety net is both current and for future. The measure of success then is not just the creation of job card and spending of money in minimum days of wage paid but the efficacy of the asset thus created. The metrics of measurement change, as the benefits are to be evaluated as immediate term as wage and short to long term as the natural resource managed and asset created to accrue long term benefits.
- MGNREGA is a rights-based Act and for it to fulfill its core mandate, it will require fiscal commitment to meet the potential demand of even the 5 crore households currently employed under the Act for 100 days of work. It will also require separation of powers between the implementing and adjudicating agencies and a mechanism that records demand transparently and independent of the guaranteeing agency. When the issue of Climate Change that is to be addressed through the creation of the MGNREGS assets is considered, there is

allusion to a larger issue that is very time sensitive. Establishing that a small asset created by this scheme, under the ACT can help build climate resilience would just enhance the chances of funds allocation in view of the pressing need for climate action identified by the governments. In addition, as soon as the issue of climate impact is included, several other actors come into play and this will strengthen the voice of the beneficiary.

- Communities do not demand enough, for various reasons listed above. Mobilization of communities alone is not enough, creating awareness and enabling information based demand is key. Ensuring external factors direct the action of the ACT toward the right result, will require a review of the institutional design. Accountability of the delivery system is key to MGNREGA. This cannot be effected by just poor communities' dependent on government, but needs a targeted support system, which can be created for building resilience against climate change. This would be a specific area, that will help prioritise actions based on scientific metric, create new opportunities for wage creation and long term livelihood benefits and create a voice for the demand.
- There is a great risk that if continued in the present form without any innovation –as just a mélange of social safety net, wage employment and public works programme, driven by executive will rather than the mandates of a rights - based law, then it may continue to plateau at about half the guaranteed work days dependent on fiscal vacillations. It will become a rhetorical repackaging of old policies by simply incorporating human rights language. However, if this great opportunity of utilizing an established mechanism and platform for addressing the pressing climate change issue is promoted and adopted, then not only will the world's largest social security programme become even more effective, it will also be able to help prevent loss and damage due to climate change, and enhance economic and livelihood benefits by a compounding effect.
- The experience of implementing Mahatma Gandhi NREGS, highlight the fact that rights are not just procedural but substantive. An *ad-infinitum* insistence on just 'unskilled manual labour' as the only guarantee the state can provide the poor increases the risk of perpetuating poverty. A large measure of resources spent on just unskilled manual labour rather than on graduating the workers towards higher capabilities to equip them for better choices and greater self-reliance is not desirable. Policies of the Ministry of Rural Development do in fact recognize the need to enable workers to break out of the cycle of unskilled employment¹⁸ and have tried to address this challenge in a number of ways: convergence being the most significant one - convergence for durable assets and for skill development are immensely important initiatives. These initiatives get diluted because of the design of law that insists on 'unskilled'. The Ministry has endeavoured to foreground 'skills' within the design of the law. It has instructed that the skilled labour be employed from persons of workers' families. It has also a policy for skilling workers who have completed 100 days of unskilled work. All these aspects are perfectly juxtaposed to integrate the climate change adaptation actions, which requires skills training and knowledge building to differentiate between the adaptation based natural resource management and random works assignment which in fact could be a maladaptation and in fact, reduce resilience in the longer term.

¹⁸ Annual Master Circular, 2019, MoRD

- Tying skilling to unskilled work and 100 days of criterion will be problematic as fiscal budgetary constraints restrict the scale and intensity of the work provided. So the number of workers who make it to the 100 days' work bracket will be determined by the funds available as well as the preferred choice and priority of work declared either by the central or state government - for example, houses, toilets, farm ponds, as the choice of the work type will decide the location and number of works, rather than just the quantum of need for work. Often, in states, to meet financial constraints, local, unstated policies of rationing of work is practiced, whereby only one worker gets work from one family, at a time. As such the criteria of 100 days of work is not tenable - as 100 days is not just a demand nor a willingness, but also resource availability to open works. Introducing Climate Resilient Infrastructure development or in this case the prioritization of works based on their resilience building impact on a larger community beyond the direct beneficiary (worker) could well help prioritise and maximize the intended benefit through this layer of prioritization.
- The Ministry guidelines¹⁹ recognize that the capacity building of MGNREGS functionaries and skilling of MGNREGS workers is important for effective implementation of the programme at one end and for facilitation of MGNREGS workers to break out of cycle of unskilled employment at the other end". This is a policy admission that providing unskilled manual labour is a short term temporary coping method to adversities. It does not transit the worker to a threshold of resilience that does not slip back into chronic vulnerability. Not just employment, but employability is the key to move beyond the threshold of bare subsistence vulnerable to lapsing into chronic poverty. Employability of the workers through education and skills will enhance their ability to access and chose from a diversity of opportunities and to move up the ladder of resourcefulness. This is likely to increase self- reliance and decrease dependency on programmes of temporary relief. This building of skills leading to confidence and choice will empower them to adapt to changing circumstances, whether of climate and ecology or (often because of climate change) of economy and the market or of geography under biotic stress as a result of demographic pressures or climate change.
- Such an approach is also anchored on the grounds of ethical obligations a state has towards its citizens. This raises a fundamental issue about 'rights.' Rights are not just about bare minimum survival; they need to be related to issues that help level inequalities. Inequalities are the result of unequal opportunities to resources that build capabilities in an individual, which as science points out, would be exacerbated given climate impacts. In today's world, with its knowledge driven economy, giving rights to unskilled manual labour is an unfair offering - temporary relief is one thing, and may be a legal state obligation. But poor and vulnerable people need a whole lot more than that. They cannot be guaranteed just the right to volunteer to be unskilled labour. They must be guaranteed the right to participate in the development process equally, hence an inclusive Climate Resilience Building action at a Gram panchayat scale would help achieve this dimension.

To conclude, it is important to understand that vulnerability is not just the biophysical dimension of climate change, that can be responded to through just appropriate technologies. It has a human face with people being able to understand their conditions and make choices. Enhancing the understanding

¹⁹ *ibid*

and capacity of the communities is a critical factor towards mainstreaming a rights framework to reinforce climate policy orientation towards equity and empowerment. Bringing MGNREGA with a focus on empowering people and entrenching it with strategies and actions that can help build long term climate resilience would offer that human and future face.

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