



**Rights-based Development and
Neoliberalism: Compatibilities and Tensions**
**A Case Study of the National Rural Employment
Guarantee Act in India**

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List of Acronyms

GDP	Gross Domestic Product
ILO	International Labour Organization
IMF	International Monetary Fund
IPE	International Political Economy
MEGA	Maharashtra Employment Guarantee Act
NGO	Non-governmental Organizations
NREGA	National Rural Employment Guarantee Act
PIL	Public Interest Litigation
RBD	Rights-based Development
UN	United Nations
UDHR	United Nations Declaration of Human Rights
WB	World Bank

Abstract

This paper seeks to examine, to what extent right-based development is compatible with neoliberalism using the case of the National Rural Employment Guarantee Act (NREGA) in India. This Act was legislated in 2005 and is often referred to as a 'ground-breaking piece of legislation.' The paper first discusses various theoretical points of view about the relationship between neoliberalism and rights-based development (RBD). Subsequently, it explores the genesis of neoliberalism and RBD in India, focusing on aspects that make RBD and neoliberalism unique and the historical reasoning for the emergence of these characteristics. The case of NREGA is further used to illustrate the complexity of the relationship between RBD and neoliberalism through analysing the process behind the Act and the features of the Act itself. The NREGA demonstrates compatibility with the neoliberal system but also brings to the fore several tensions. Interestingly, this case study shows that the RBD and neoliberalism, in the case of India, have a more complex relationship than assumed by certain academics.

Relevance to Development Studies

Unemployment is an important socio-economic problem world over and more so in a country like India which has one of the largest rural populations in the world. Academically, as a student of IPED, the National Rural Employment Guarantee Act which was passed in 2005 to alleviate poverty and unemployment in Rural India is an interesting case study for the field of development studies because it was born in an environment where neoliberal economic policies and RBD were taking place simultaneously. The analysis of this case exposes some unique characteristics of the Indian situation but also adds an additional perspective to development theories that deal with RBD and neoliberalism.

Keywords

Rights-based Development, Neoliberalism, National Rural Employment Guarantee Act (NREGA), India, Right to work

Chapter 1

Introduction

1.1 The Research Problem

The neoliberal reforms undertaken in India from the 1990s onwards have increased India's Gross Domestic Product (GDP) significantly and the general consensus in the country is that the reforms have been successful. However, farmer suicides, starvation deaths, unemployment and distress migration are still major problems.

So although the economic reforms have benefited certain sections of the population, others might have been adversely affected by the adoption of neoliberal economic policies. The state has tried to address these concerns through legislation such as the National Rural Employment Guarantee Act (NREGA) (2005). Thus the Indian state is promoting both neoliberalism as a set of policies and ideology and also initiating rights-based policy and legislation to address poverty and deprivation (Mooij 2012). However, it should be noted that while the state shows its adherence to neoliberalism through its economic policies, it is not necessarily a neoliberal state. (This will be explored later in Chapter 3). While this combination of neoliberalism and rights-based development (RBD) is not unusual, authors writing about RBD as well as neoliberalism have varying views about the implications of this combination for the state and for the usefulness of RBD.

In International Political Economy (IPE) literature, some theorists, such as Hickey and Mitlin (2009) consider the development of RBD as a counter movement to the detrimental effects of neoliberal policies and globalization; while some authors, such as David Harvey (2005) and Tony Evans (1998 and 2006), consider RBD as facilitating neoliberal discourse and practice. The former seem to consider rights-based development as ameliorative, while the latter claim that any development that is based on the individual as the basis of change doesn't structurally change issues of poverty and inequality.

This paper looks at the NREGA in the light of this debate. These dominant IPE perspectives do not explain the complexity of RBD and neoliberalism in India; the NREGA case exposes elements of compatibilities and tensions between the two making this an interesting case study.

1.2 Context

The predicament of casual labourers did not seem fundamentally different from that of slaves except that they were driven by economic necessity' (Jean Dreze 2011:3)

Social, Economic, Political Context of India

Perhaps, it is a cliché that India is a land of contradictions, but nonetheless it is true. Growing at an average of 6.6 per cent (GDP) between 1990 and 2010 (Indian Express, 2011), it is considered the fourth largest economy in the world (World Bank Country Overview, 2012). Yet electricity is yet to reach every village in rural India and the monsoon still determines the fates of the farmers. Poverty in rural India is still at 33% (World Bank Country Overview 2012) making employment a prominent socio-economic issue.

It is also important to note that:

The Indian economy has experienced a highly unbalanced structural transformation of the economy, with agricultural growth being stagnant and lagging far behind. The growth rate was less than 2 per cent during the 1990s. The agriculture sector, which contributes less than 20 per cent to the national GDP, employs about 57 per cent of the workforce, implying a very low average labour productivity. Since the majority of the cultivated area is rain-fed, depending on the erratic behaviour of the Indian monsoon (with the low level of assured water supply through irrigation), agriculture is also unstable and uncertain. Consequently, the highest incidence of poverty and vulnerability in India is on marginal and small farmers and agricultural labourers. (Hirway et al 2008).

However, as Amartya Sen points out:

In judging economic development, it is not adequate to look only at the growth of GNP or some other indicators of over-all economic expansion. We have to look also at the impact of democracy and political freedoms on the lives and capabilities of the citizens (Amartya Sen, Development as Freedom 1999: 150)

India is a 'Sovereign Socialist Secular Democratic Republic' and has a federal structure with a parliamentary system of government as per the constitution of India which was enacted in 1950 (National Portal of India, Government of India 2012). Commonly referred to as the largest democracy in the world, India's democracy is unusual not because its size but because it has persisted for 60 plus years (except for a brief period 1975-77 during the Emergency declared by Indira Gandhi). While Sen does not negate the influence of the British on Indian institutions, one of the reasons for the sustenance of democracy in India

is the long tradition of public discourse around politics, rights and duties that has existed for centuries (Sen, 2005). He claims the 'tradition of argument' makes 'heterodoxy the natural state of affairs', influences Indian politics and is relevant to the development of democracy (Sen 2005:12).

Since the inception of its constitution, India has a long history of trying to tackle social and economic ills. According to the World Bank there have been some tangible changes in recent years -

'India's surge in growth and rapid expansion in public spending in the past decade has created new possibilities for its social protection system. The growing importance of social protection (SP) is reflected in the Government of India (GoI) common minimum program and eleventh five year plan which commit to institutionalization of programs as legal rights (as in the case of public works, through the national rural employment guarantee act), continued up-scaling of interventions (e.g., social pensions and midday meals), and proposals to expand new types of SP interventions to the large unorganized sector (e.g., social security)(World Bank Country Overview, 2012).

Unemployment in India

Since the paper uses NREGA as a case study, it is important to contextualize unemployment in India. Labour and Employment Minister Mallikarjun Kharge (2009-present) said the unemployment rate had declined to 6.6% in 2009-10 from 8.3% in 2004-05, however as reported by the BBC, other studies show that unemployment is above 10% (BBC news, 2012). Another report suggests that there is *rising* incidence of unemployment. The overall rate of unemployment has increased from 6.1 per cent in 1993/94 to 8.3 per cent in 2004/05 (Hirway et al).

Unemployment is an issue that India has been wrestling with since independence, either directly or indirectly through schemes. Most recently, in the form of NREGA which was legislated August 2005. By virtue of this Act the government has undertaken one of the most prominent and expensive poverty alleviation schemes in its history. In 2009-10, Government expenditure on NREGA was 0.65% of the GDP and anticipated to rise to 1% (Dreze 2011:11). It is being lauded internationally as a successful poverty alleviation and rural employment method. Since it provides a right to employment, it is an example of rights-based development (RBD) initiated by the state and is regarded as a ground breaking piece of legislation. This Act provides 100 days of employment for all rural households across the country at the statutory minimum wage. All households who demand this work are supposed to receive employment at public works. However, what sets it apart from any other type of legislation is the fact that it

penalizes the government if it fails to provide employment on time by giving the participant the right to demand a percentage of his/her wages as compensation from the state government (MacAuslan 2008:1, Dreze 2011: 8). Also for the first time, it provides a legal right to employment at a *national* level.

However, this is not an uncontroversial Act. At the time of its enactment it was criticized by some for being a waste of resources and by others for not being radical enough (explored more in Chapter 4). Today, there are problems with the implementation of the NREGA scheme: surveys have shown that NREGA workers aren't often paid on time or work when demanded hasn't been allotted among other issues. The problems are often related to corruption and accountability and point to the problems of not having an independent monitoring system or grievance addressal system (Dreze and Siddhartha 2011: 74).

1.3 Research Objectives

This paper aims to use the case study on the NREGA to show the complexity of the interaction between neoliberalism and RBD in India.

- This paper looks at *how* and *why* the NREGA, as a product of RBD, has emerged as a policy in a neoliberal environment and what the implications of that are.
- Furthermore, it intends to illustrate, using NREGA as an example the compatibilities and/or the tensions between RBD and neoliberalism in the Indian situation.

1.4 The Research Question

Main Question

To what extent is rights-based development, as in the case of NREGA in India, compatible with, or in contradiction to, neoliberalism?

Sub-questions

How do different authors explain the connection between RBD and neoliberalism? What is the basis for these differing views?

What is the history of neoliberalism and RBD in India and how has this affected the development of economic rights?

How is the *right to employment* (as presented in the NREGA) an example of RBD? What does it aim to achieve?

What do the processes behind this legislation tell us about RBD and neoliberalism in the Indian situation?

1.5 Justification

The NREGA has not yet been analyzed in the light of the broader debate about RBD and neoliberalism. In the last seven years since implementation, the NREGA has been praised and criticized in the media equally; praised for its far-sightedness and scope but has also been scrutinized on grounds of problems with implementation, mostly to do with inefficiency and corruption (OECD 2010). In general, most of the literature on this subject has been based on pros and cons of effectiveness relating to its implementation and whether this Act has been able to deliver 100 days of payment for labour. However, I would like to look at the idea and processes behind NREGA, as an example of RBD, and how the right to employment has developed in India. The goal would then be to provide an additional perspective to the larger debate about the compatibility of RBD and neoliberalism.

1.6 Methodology

Through my work in India I have met many beneficiaries of the NREGA as well as bureaucrats who have had various opinions about the Act which has made me curious about this Act. This, coupled with my academic background in IPED, compelled me to situate this Act in the larger political economy of India in order to understand how and why this Act was formulated and understand what the 'right to employment' meant within a neoliberal structure.

At first, I began by reading articles about the NREGA and situated it as an example of RBD. As my specialization was in IPED, I already had some knowledge about neoliberalism and its various forms and the theoretical debates around it and had previously applied this knowledge, using India as a case study. Thus I began broadly researching neoliberalism and RBD and this led me to authors who viewed neoliberalism and RBD as being compatible (i.e in perfect harmony with each other) and others who saw tensions (i.e contradictions) between the two, which only made the case of the NREGA more interesting. This preliminary research informed my research question.

This paper, thus, looks at whether the case of NREGA *challenges* the argument (made primarily by authors such as Harvey and Evans) that RBD is simply the cooption of neoliberalism and simply reproduces it. My hypothesis is that the case study of NREGA adds nuances to the above argument, pointing out features of RBD that can be both compatible with neoliberalism and some elements that reveal a tension between RBD and neoliberalism.

My research question uses the words 'compatible' and 'contradictory' and while these words could be understood in IPE terms, I have chosen

to allow the case guide it's meaning because defining them would limit me to a particular IPE theory.

This paper is divided into two parts. The first, deals with the larger debate about neoliberalism and RBD. The second section illustrates, using the NREGA as a case study, the compatibilities and tensions between neoliberalism and RBD in India.

Research Methods

Analysis using Secondary Data & Theoretical Literature

In order to address the first part of the research problem, I analysed and attempted to map IPED literature on neoliberalism and RBD using academic journals and books. I discovered literature that made some claims about the relationship about neoliberalism and RBD that did not fit with the information I already knew about India and NREGA. Thus I knew there were gaps in the literature and set about trying to question this literature in order to pin point the limitations of it in order to later illustrate them with the help of my case study. This formed chapter 2 of the paper which answers some of my sub-questions: How do different authors explain the connection between RBD and neoliberalism? What is the basis for these differing views?

I also realized that in order to find compatibilities and tensions of RBD and neoliberalism in the Indian case, I needed to delve into the historical development of both RBD and neoliberalism in India which led me to their unique characteristics. This constitutes Chapter 3 and in it I used literature regarding the economic reforms of the 1990s in India as well as details about the course RBD has taken in India. An important source of information about RBD in India is embedded in interpretation of the Constitutional Rights and for this I primarily used Birchfield and Corsi's (2010) text on the Indian Constitution as well as Mooij's (2012) article on the Indian Welfare state. This chapter is used to provide a context for the following chapter on the NREGA itself as well as explaining why RBD and neoliberalism have a unique relationship in India.

Case Study using literature and newspaper articles

My aim for the case study was to uncover the processes in the passing the Act because this would expose the interaction between the supporters and detractors of the Act, allowing me to see the different actors and interests. In order to do this I looked at different academic articles written on the passage of the NREGA. In researching these sources I was able to see whose interests the NREGA met as well as the relationship that factions supporting and opposing had with each other

and which spoke to the larger issue of elements of compatibility and contradiction that exist between neoliberalism and RBD.

Jean Dreze's work on NREGA in India has been a major source of information as he is an important activist, economist and authority on the subject. I was able to interview him and this was important not only because of his academic work but also because he was part of the National Advisory Committee that drafted the first version of the NREGA bill. Reetika Khera, another activist and academic, work has also been an important source.

I was also able to communicate with James Manor, an academic, who is currently writing a book about the passage of the NREGA after having interviewed a few key members of the National Advisory Committee for a larger book on the NREGA that he is writing in collaboration with another author.

Another source of information was the Right to Food Campaign's website. The "Right to Food Campaign" is an informal network of organisations and individuals committed to the realisation of the right to food in India but are not limited to demanding food but also other governmental entitlements. The Right to Food Campaign also houses an archive of online newspaper articles written from the beginning of 2004 until the present. The website claims that "Writings from both sides are included here in the interest of pluralism; we leave it to the readers to evaluate the arguments on each side". I looked at 25 articles about the NREGA that show a particular leaning, either for or against the Act or have a particular opinion. I made the selection based on some specific criteria: publishing date, author, newspaper. I made an effort to pick articles written during the time when the bill was being debated in parliament (2004-2005). I tried to pick a random and wide selection of authors, without duplicating them and a wide selection of newspapers. The newspapers, such as Times of India, The Hindu, and Frontline, are almost all part of mainstream media. Interestingly, the articles in the Business Standard (which one can tell are anti-NREGA due to their titles) are no longer available on the internet, but this is possibly because they do not have archives that date back to 2004-5.

I also made use of official Government of India documents such as the NREGA Operating Guidelines 2008 and a result report that studies the impact of the NREGA from 2006-2012 (MGNREGA Sameeksha 2012). While these reports might be biased in favour of the government, they still provide insight into the aims of the state and the most recent data on the effects of the Act.

1.7 Scope and Limitations

- This paper does not discuss the pros and cons of the effectiveness of implementation of this Act

- The scope of the research is limited to the one particular Act therefore it limits the conclusions when can draw about RBD and neoliberalism in India
- I was not able to interview any of the “anti-NREGA lobby” and was only able to interview one activist, supportive of NREGA. Thus the business community’s interests are only supported through media opinion. Also the newspaper, Business Standard’s, anti-NREGA articles are not online anymore. This limits the representativeness of anti-NREGA lobby.

1.8 Structure

Chapter 2 presents a broader theoretical review of neoliberalism and RBD and the theoretical connections between the two. Chapter 3 highlights the historical contingencies of neoliberalism and RBD, specifically in India. Chapter 4 aims to elaborate the argument through the case study on the NREGA. Chapter 5 concludes by summarizing the research findings.

Chapter 2

Discussion of theoretical perspectives around Neoliberalism and RBD

[...] a theory must be tempered by reality (Jawaharlal Nehru's Speeches 1949 – 1953: 235)

This chapter seeks to discuss some dominant critical theories about neoliberalism and RBD focusing on assumptions and arguments made by authors of dominant perspectives. This chapter will first briefly talk about neoliberalism and RBD in general terms. Second, it will put forth a series of questions and use that as a basis of critiquing some of the existing literature on the topic, thereby pointing to the limitations of this literature, forming the background against which I look at compatibilities, and tensions between RBD and neoliberalism.

2.1 Neoliberalism

Neoliberalism is generally associated with the 10 point policy prescription presented in the Washington Consensus of 1989 that was promoted by the World Bank (WB) and International Monetary Fund (IMF). It is generally considered to be the embodiment of policies such as macro-economic stabilization, increase in foreign investment, trade liberalization and deregulation. This reform package was prescribed to developing countries, mostly Latin American countries, which were hit by financial crises in order for them to receive monetary help from WB and IMF. In recent years the meaning of neoliberalism has no longer been confined to the above mentioned set of reforms; now commonly understood as a system of free markets, it also encompasses the ideology that the market is the best allocator of goods and resources and the freeing of the market will lead to higher economic growth.

Neoliberalism has become a 'catch-phrase' in last decade yet there is no single definition of neoliberalism. Some academics state that neoliberalism has undergone a transformation, from a positive label coined by the German Freiburg School to denote a moderate renovation of classical liberalism, to a normatively negative term associated with radical economic reforms that took place mostly in Latin America (Boas and Gans-Morse 2009). There is no consensus about the term 'neoliberalism' and according to Boas and Gan-Morse, it is a problematic term for various reasons: 'First, neoliberalism is used asymmetrically across ideological divides, rarely appearing in scholarship that makes positive assessments of the free market. Second, those who employ the term in empirical research often do not define it. And third, scholars tend to associate neoliberalism with multiple

underlying concepts, including a set of policies, a development model, an ideology, and an academic paradigm' (Ibid 140).

Proponents of the trade liberalization, deregulation and increase in foreign direct investment, such Dollar and Kraay (2002) view neoliberal policies (such as trade liberalization, deregulation, integration with the world market) as beneficial to developing countries because they believe that these policies increase the GDP which ultimately decreases poverty as 'growth is good for the poor'. Other authors such as Rodrik state that after twenty years of following neoliberal policies it is quite evident that it has failed: most countries grew faster between 1950s and 80s, there have been widespread financial crises in Mexico, East Asia and Turkey (Rodrik 2002:1). In fact Rodrik claims other than India, China and Vietnam, who followed their homegrown versions of these policies; there have been very few cases of success (Ibid). Some reports claim that the gap between the poor and the rich has never been as stark as in the 1990s (Fortman 2006: 35).

Marxists and other offshoots of Marxism, claim that neoliberalism stretches beyond free markets and is about the dominance of capital and the state-economy relationship. David Harvey(2005), a prominent Marxist author on neoliberalism, states that neoliberalism goes beyond being a set of practices and is now a dominant way of thinking:

Neoliberalism is in the first instance a theory of political economic practices that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade [...]Deregulation, privatization, and withdrawal of the state from many areas of social provision have been all too common. [...]Neoliberalism has, in short, become hegemonic as a mode of discourse. It has pervasive effects on ways of thought to the point where it has become incorporated into the common-sense (2005:2).

There is a widespread debate about how and when neoliberalism originated. According to Rachel Turner's work on the origins of neoliberalism, it emerged as an *ideology* in the late 1940s in Western Europe as a symbol of anti-socialism and a voice of liberal hopes (Turner 2007:68). Turner argues that this revival and reinterpretation of liberalism was the product of changes that took place in the 1930s and 1940s in Western Europe which culminated in the formation of the Mont Pelerin Society in 1947. Hayek, a founding member of the Mount Pelerin Society, espoused that since the beginning of the 20th century there had been a movement away from the basic liberal ideals on which Western Europe had been built. He felt that liberalism had been driven out by socialism and was pushing Europe towards totalitarianism (Ibid, 69). While the significance and achievement of the Mont Pelerin Society remain rather obscure, Turner points out that the two essential

safeguards of liberty that the Mont Pelerin honed in on were: the limited state and the free economy. This, according to her, later became the cornerstone of neoliberal ideology (Ibid, 79).

Harvey too talks about neoliberalism's origins in the Mont Pelerin Society; however, he marks the events of the 1970s as the push needed for the 'turn to Neoliberalism' (Harvey 2005). According to Harvey the 1950s and 60s were distinguished by what is often referred to as 'embedded liberalism'¹, but in the 1960s and 70s Western economies saw the breakdown of this form of governance. There was widespread unemployment and inflation, fiscal crises, not to mention the oil embargo of 1973 and the collapse of the Bretton Woods system. In Europe and the U.S, the quest for a solution to these problems led to a development of two camps: those in favour of central planning and social democracy and those who wanted to re-establish market freedoms. Other important events such as Volcker taking over the US Federal Reserve in 1979, the election of Thatcher in Britain and Reagan in the US played into deciding which camp (pro-market freedom) became more prominent in deciding move toward neoliberalization (Harvey 2005: 11-13). Thus Harvey states that the 'capitalist world stumbled towards neoliberalization as the answer[to the question of how to resume 'capitalistic accumulation'] through a series of gyrations and chaotic experiments that really only converged as a new orthodoxy with the articulation of what became known as the 'Washington Consensus' in 1990s' (Harvey 2005:13).

While I agree to a certain extent with Harvey's definition of neoliberalism as being more than policies and an overarching ideology, the section (2.2) seeks to problematize the concept of neoliberalism as a *hegemonic* ideology in reference to how it interacts with RBD.

2.2 Rights-Based Development

By human rights this paper takes to mean the right of each individual as mentioned in the 1948 UN Declaration of Human Rights (UDHR)².

¹ 'Embedded liberalism' was term coined by Ruggie (1982) that referred to the post War years when countries had to manage domestic stability through state intervention while simultaneously promoting international trade.

² 'The universal recognition that basic rights and fundamental freedoms are inherent to all human beings, inalienable and equally applicable to everyone, and that every one of us is born free and equal in dignity and rights. Whatever our nationality, place of residence, gender, national or ethnic origin, colour, religion, language, or any other status, the international community on December 10 1948 made a commitment to upholding dignity and justice for all of us' (UDHR 1948).

Human rights are the basis of RBD and rights discourse. The promotion of human rights by the bodies such as the UN, International Labour Organization (ILO) and various non-governmental organizations (NGOs) has taken different forms since 1948. It's most current form being RBD. To understand RBD in developing countries and rights discourse in general it is important to understand the context in which RBD developed.

Human rights can be seen as having had a continuous relationship to development throughout history and are usually thought of having their roots as far back as the French and American revolutions. The Revolutions are generally thought of as the beginning of the human rights movement, even though the seeds were planted earlier through notions of natural law and natural rights according to some authors (Pogge 2008: 60). The link between human rights and development was made explicit in 1948 with the UDHR that declared the individual to have the right to civil, political, cultural and economic freedom and social welfare (Gready and Ensor, 2005: 16). Notably it stated that 'Everyone has a right to a standard of living that is adequate for the health and well-being of himself and his family [...] (UDHR in Fortman 2006: 34).

Though the UN declaration of 1948 made the language of rights important, the rights-based approaches to development or RBD, have only gained popularity in the last couple of decades. A number of specialist NGOs had been pushing for the recognition of this rights-based framework through bodies like the United Nations. And later the 1978 UN declaration affirmed the right to development (Gaventa 2002 in Mitlin and Hickey 2009: 6). Since then RBD has gradually evolved based on the human rights discourse and has become increasingly popular at the international level through bodies like the UN, International Labour Organization (ILO), national governments and non-governmental organizations (NGOs).

According to Tony Evans (who is critical of the human rights discourse), human rights are never without a power dimension (1998: 4). According to him understanding the post-war hegemony of the U.S is important in order to understand the development of the human rights *project*. This connection between U.S hegemony and human rights is not accidental. To explain it further Evans draws on the work of Gramsci and the notion of 'legitimation of intellectual and moral leadership'. According to Gramsci, hegemony is exercised externally through rewards and punishments and internally through opinions, beliefs and values (Gramsci 1971 in Evans 1998:5). Human rights (essentially political and civil rights at the time) became an excuse for the U.S to get involved in other countries and legitimize their involvement as morally correct therefore exercising hegemony as per Gramsci's definition above. Economic and social rights were largely ignored by the Americans (this point about the relevance of economic and social rights

will be discussed in the next section). As Loth states, 'Promoting human rights as a universal principle, as a symbol of solidarity related to idea of individualism, freedom and laissez-faire economics offered the potential to avoid the consequences of the inter-war years by mobilizing public support for a global US economic and political role' (1988 in Evans1998: 7). Additionally, 'the USA claimed the moral high ground by promoting universal human rights; Americans had the duty to remain engaged in world politics and to defend the universal human rights of people everywhere' (Hoffman 1977 in Evans 1998: 7). The success of this rested on rights and its basis on liberalism which were written into the American constitution (Evans 1998: 7).

Regardless of the reasons, it took until the mid to late nineties for rights to become an observable framework and deliberative objective of international institutions, agencies and organizations (Hickey and Mitlin 2009: 6). One of the major pushes to the development of RBD was a global trend toward democratization: authoritarian governments in a number of countries were challenged by political protests (UNDP 2005:20 in Hickey and Mitlin 2009: 5). According to Hickey and Mitlin with democratization came the rise of civil society organizations in newly democratic countries and subsequently the growing importance of human rights in these countries which had been subjected to repressive regimes (2009: 5).

2.3 Neoliberalism and RBD: Connections, Compatibilities and Contradictions

The focus of this section is to a) map how different authors view the relationship between RBD and neoliberalism b) scrutinize their arguments that lead to the conclusions they draw about neoliberalism and RBD

Some interesting questions with regard to academics who write about neoliberalism and RBD might be: What theoretical deductions are they making? What kind of rights are they talking about? What empirical evidence are they using to establish their theories? And what might be the scope of these theories?

I begin with Hickey and Mitlin (2009) assumptions about RBD and neoliberalism and what these assumptions are based on. According to Hickey and Mitlin, RBD grew in popularity, in part, because of the problems of that came out of neoliberalism (such as widespread protests, unemployment) which threatened the political stability of governments. Thus states and international agencies that supported neoliberal economic reforms needed to show that they were addressing these problems and this in part influenced the development of RBD (Robb in Hickey and Mitlin 2009:4). They claim that:

As the hegemony of market-based economics strengthened following both the increased influence of international financial

institutions and the collapse of the Soviet Union, legal principles and instruments emerged as promising tools for those seeking to counter market- oriented economic imperatives. The rise in popularity of the idea of “rights” in international development can therefore be understood as a product of the need to address tensions within and between experiences of neoliberalism and political transformation (Hickey and Mitlin 2009:6).

Thus Hickey and Mitlin see RBD as an ameliorating influence on the problems caused by neoliberalism and do not see RBD as coming from the same ideological strain as neoliberalism. They acknowledge the different experiences of RBD in different countries, but do engage with those who are ‘hostile’ to the importance of rights (2009). They do not problematize the emergence of rights and its connection with neoliberalism. Thus they see RBD and neoliberalism as being compatible with each other; both being able to exist at the same time. They do not consider neoliberalism as undermining the benefits of RBD.

On the other hand, Harvey (2005) and Evans (1998 and 2006) see RBD as having little value as an alleviating influence as they view it as a part of the hegemonic discourse of neoliberalism and do not see it affecting structural change. The both speak from the socialist tradition; seeing the end of capitalism as the larger goal. Thus they view RBD and neoliberalism as being compatible with each, but only because they consider the source of both RBD and neoliberalism as being based on the western concept of the ‘individual’.

Harvey and Evans argument about neoliberalism and rights have two overarching arguments in common, although of course they differ in the details:

1. RBD cannot affect structural change for two reasons a) RBD is ‘individual’ centric b) erosion of the state doesn’t allow for proper implementation of rights.
2. ‘Rights’ are a Western construction

1. Affecting structural change?

One of the common points that Harvey (2005) and Evans(1998 and 2006) make is that since neoliberalism is fundamentally based on the ‘individual’, and human rights is also based on the ‘individual’, rights based approaches can never tackle the problems of neoliberalism because the root cause of the problem is the same. Mohan and Holland also assert that ‘at the root of rights-based development is the liberal belief that development if a matter of personal choice and effort.’ (2001: 183 in Gready and Ensor, 2005: 35).

Harvey (2005) claims the neoliberal emphasis on the individual as the foundation in political economic life leads to individual rights activism. However, by focusing on rights *rather than* on the creation of democratic governance structures, the rights-based activists or

supporters cultivate methods that are 'trapped by the neoliberal frame' i.e an individualistic frame (Harvey 2005: 176). Harvey's assumption is that RBD and the creation of democratic governance structures cannot co exist nor can democratic structures pre-date RBD. Thus his argument is based on limited empirical evidence because there are examples of countries where democratic structures pre-date RBD or co-exist with RBD, for example the case of India, which will be explored in the following chapter.

Evans' (1998, 2006) is critical of the possibility of rights empowering people or having the ability to address any structural problems. He sees there being two different approaches to human rights: The traditional view sees rights as empowering people, the second sees rights as power over people , 'expressed in the exclusionary practices that deny the full participation of those who fail to support the interests of the dominant group' (1998: 4). Evans argues, 'far from offering protection, the notion of human rights is used to lend legitimacy to the practices and interests of powerful global economic actors' (2006). Like Harvey, Evans doesn't think that structural issues can be addressed by RBD because of its foundations being compromised

At the centre of all human rights talk is the cardinal role given to the individual, both as claimant and violator of rights. As claimant, civil and political rights are prerequisites for innovation, endeavor and enterprise in the free-market world order, which supports the conditions for globalization. As a violator, the individual is wholly responsible for his or her actions [...].The significance of social, political and economic structures in which action takes place is of only peripheral concern when attempting to explain violation or apportion blame' (1998:17).

So Evans argues when human rights violations occur, structures that reproduce violations are allowed to continue while individuals are punished thus not creating any significant change. However, this argument is limited because the existence of human rights and the occurrence of structural change are not mutually exclusive. It does not follow logically that because the individual is the basis of human rights, structural changes cannot be affected. In fact, Ensor and Gready(2005) make claim that rights can actually change structures, and this will be explored towards the end of the chapter. Also Evans argument does not take into account empirical examples of social mobilization around rights have in fact affected change at a structural level.

Additionally, Harvey, Evans and others claim that the erosion of the state doesn't allow human rights to be effectively implemented. In *Human Rights: An Appraisal* (ed. Tony Evans 1998) other authors raise similar points as Evans and Harvey. McGrew states that 'the erosion of state capacity and state autonomy raises serious questions about the ability of states in the context of contemporary globalization to deliver upon their human rights responsibilities' (McGrew in Evans 1996).

Galtung suggests that even if human rights were implemented in the third world, social and economic conditions in the third world would continue to decline because the upholders of these rights i.e. the state, is being eroded from within and without by globalization and privatization (Galtung in Evans 1998: 211).

2. 'Rights' as a Western construct

The second argument that Evans and Harvey make is about what they mean by 'rights' and which rights they are talking about. They contend that because the Western bloc won the Cold War, the western version of 'rights' (i.e. political and civil rights) became universal. While this probably true in some countries, it is not necessarily always the case.

Harvey states that it would be 'unfortunate to abandon the field of rights to 'neo-liberal hegemony' but dominant social processes are based on certain conceptions of rights and to change the foundation would mean seeing the connection between the two, which usually remain hidden (Harvey 2005:180). It seems that Harvey is talking about rights such as the right to private property when he is talking about the link between rights and neoliberalism but he doesn't specify which rights he's talking about and whether he is referring to social and economic rights or just political and civil rights.

Evans calls the current approach to rights (since the end of the cold war), the (neo)liberal approach to rights and argues that they mostly consist of civil and political rights that are embedded in the western liberal tradition that emphasizes the 'freedom of individual action, non-interference in the private sphere of economics, the right to own and dispose of property, and the important principle of laissez-faire' (2006:291). Evans points out that although the neoliberal consensus accepts the universality and unity of all human rights in legal terms, there has been a long history within the human rights regime of the practice of promoting civil and political rights over economic and social rights (2006:292).

Mohan and Holland also substantiate this argument in their article about RBD in Africa:

A key debate revolves around the distinction between political and economic rights. [...] Either way, there is a clear separation between the 'economic' and the 'political' which allows states and agencies to focus on one or the other, despite the supposed 'indivisibility' of rights. In general, the human rights discourse has privileged the political over the economic with some going further to suggest that this is because the recognition of political freedoms is relatively costless compared to economic rights which promise tangible material inputs such as housing and health care (Sengupta, 2000 in Mohan and Holland 2001:190).

However, Evans acknowledges that because the declaration of human rights was promoted by the UN, it wasn't limited to the United States perception and use of the term. During the Cold War, socialist countries resisted this liberal conception of rights. They wanted values such as the right to work and social security to be included within the domain of human rights (Evans 1998: 8). According to them, tolerance was accepted as a part of rights; however, rights did not extend to 'alternative visions of the future that prioritized collective social and economic rights' (Ibid). Socialist states argued that 'human rights should be determined by forces of history, not by western minds [..]' (Kudrayarstev 1986 in Evans 1998: 8). Therefore, according to Evans, the singular conception of human rights could not be sustained and during the Cold War, alternative versions became part of the larger ideological struggle between the socialists and the capitalists. However, the fall of socialism and the expansion of global capital ensured that the western conception of liberal rights remained the dominant one, even though social and economic rights were introduced into the agenda (Evans 1998: 11). Thus while Evans makes it clear which rights he is talking about (i.e political and social rights), Harvey talks about rights as a homogenous entity.

While Evans argument as presented above might be valid in certain countries, this is not always the case. Some countries, like India, negotiated what rights it was going to give importance to and how it was going to do so, whether through judicial interpretation or directly through the constitution. Evans and Harvey don't take into account the importance that democratic structures play *within* a country in choosing what rights the state emphasizes. Thus their argument is based on the evidence of countries where human rights has been externally enforced instead of countries where RBD has roots in the developmental plan of the state. Therefore they don't leave room for home-grown versions of RBD in different countries because their focus is on the external pressures on a state, especially developing countries.

Harvey sees rights-discourse as justifying western intervention in many countries and sees elected governments as better representatives of the peoples' needs (Harvey 2005:179). He sees the two as being dichotomous, such as in the case of a western country intervening on behalf of human rights violations and not respecting the sovereignty of the other country. However, Harvey doesn't talk about countries like India, where there hasn't been international intervention in terms of rights but where a democratically elected government has enacted rights. Even if the type of democracy and the leaders of the country were influenced by western thought because of British colonization there was no external country deciding which rights should or should not be included in the constitution or developmental plan.

Other limitations

Harvey and Evans' argument denies the ability of governments at the national level of making choices and sees them simply as recipients of international decision-making. They do not take into account the internal power struggles or negotiations that take place in countries between factions within society and state that affect the course of RBD or the *type* of neoliberalism that exists within it. They see there being 'one' type of neoliberalism and 'one' type of RBD that is imposed on developing countries. Thus their argument is a monolithic argument.

Also, the argument of RBD having developed out of individualism *negates that RBD also encompasses collective rights movements* which may then affect structures. While they do not explicitly address collective rights, by extension of their logic they might argue that collective rights are simply a collection of individual rights. However, there are enough examples of social movements/campaigns that are based on individual rights that have been able to pressure the state into giving into their demands and have thereby changed structures. This is not addressed in their arguments, thus they have not taken into account evidence of RBD having been able to change structures.

Harvey, Evans and other authors of the same strain see neoliberalism as homogenous and overarching because they view it as *hegemonic*³. The conceptualization of neoliberalism as hegemonic and a result of specific historic events are useful as it brings to light how neoliberalism came to be prevalent as more than a policy i.e. an ideology. However, seeing it as hegemonic by nature of its conceptualization doesn't acknowledge processes within states and the form that neoliberalism takes within a state is also affected by the state and its processes. It does not take into account the reality of people who are looking to make their day to day lives better without necessarily overthrowing the state. They limit themselves to looking at neoliberalism as a 'one-way' street by ignoring negotiations of power within a democratically elected state.

Other approaches

As mentioned by Ballard et al, some authors 'view collaboration with the state as pointless because the state represents "bourgeois interests" (ed. Ballard et al 2006: 401). Any decision to work with the state is viewed as detrimental to the ability to oppose the state in the future. As Ballard et al state 'The choice between participation with a view to

³ Evans and Harvey view the hegemony of rights differently. Evans (1998) views rights as being hegemonic in the context of the post-war years when the U.S was a hegemon and acknowledges the struggle for universal human rights. Harvey (2005) views rights and neoliberalism as a hegemonic ideology which he regards as pervasive as 'common sense'.

improving the state and opposition with a view to rupture, is to some extent, academic' (Ibid 402). Activists often work on issues of the marginalized and their focus is not on opposing neoliberalism (although they might by default). This doesn't necessarily mean that they agree with the current economic policy but rather on particular gains that they can make for which they have to engage with the state, especially if they have democratically elected the government. The discourse of rights often adds legitimacy to their activities and sometimes even more militant organizations use the language of rights to show that they are 'endorsed by a higher sense of 'good'' (Ibid 402). This nuanced view shows how rights-based approaches can engage with neoliberalism without necessarily being co-opted by it. However, it should be noted that these authors, unlike Hickey and Mitlin, do acknowledge the tension between neoliberalism and RBD. They see the two as compatible in the regard that RBD can achieve change from within the state, even if the state is neoliberal.

Similarly, Gready and Ensor (2005) who view RBD as being driven by and through diverse actors, governance relationships, reworking of the rights-duties binary and reinventing human rights on an everyday basis (2005:12). Unlike some of the authors above, who argue that the state is declining in importance, Gready and Ensor are of the opinion that many aspects of globalization remain driven by state-based decisions. However, the state is unquestionably one of the sites of power alongside NGOs, MNCs and private corporations (2005:5). Gready and Ensor make the point that *structural change and RBD are not mutually exclusive; both can take place simultaneously*. The authors agree that rights-based approaches can be democratic and pro-poor (2005: 286) and can still be critical of the problems with RBD. However, they see RBD having the potential to change structures and acknowledge the various forms RBD has taken in different countries.

According to Gready (2008) RBD is used by a wide range of actors and is not just about the individual and the state -*it is also locked into new kinds of relationships and governance structures (horizontal as well as vertical relationships; NGO-government relations, characterised by partnership and advocacy/ critique). And, finally, this revolution is forging new understandings of the indivisibility of human rights (civil-political and economic-social rights, process and outcomes, engagement on multiple levels from the local to the global, top-down and bottom-up approaches, public and private spheres, individual and collective rights, service delivery or emergency responses, and structural change)* (Gready 2008: 736). Thus for authors such as Gready structural change can be achieved by changing ideas and meanings rather than attacking the structural configuration of the system. Human rights are seen as norms open to reinterpretation.

So like Ballard et al (2006), Gready and Ensor (2005) and Gready (2008) acknowledge the tensions between RBD and neoliberalism and

yet see ways in which RBD can in fact create change. They do not see neoliberalism and RBD as being either on opposite ends of a spectrum nor hand-in-glove with each other but give due regard to actors, networks, power relations, therefore making room for different experiences.

Chapter 3

Neoliberalism and Rights-based Development in India

The Indian Constitution, which was enacted in 1950, acknowledged the existence of different kinds of rights and this, in part, formed the basis of the emergence of RBD. Neoliberal economic reforms were, however, only initiated in 1990s in India. Therefore, while it is difficult to point at exact dates, it can be said in general RBD predates neoliberalism in India. This chapter will discuss neoliberalism in India before it discusses RBD in India in order to situate the political-economic background of the case study.

3.1 The Notion of India as a Neoliberal State

The pro-reformers identify the opposition as belonging to the "loony left", caught in a time warp, oblivious of global changes and elementary economics. The other side paints the reform-mongers as "neo-liberal"(a widely used term of abuse in certain circles) and lackeys of global capitalism oblivious of the poor and the dispossessed (Bardhan, 2005: 4995)

To begin with it is important to put forth that it is a contested claim that India is a neoliberal state. Authors who are pro economic liberalization such as Bhagwati, Srinivasan and Bardhan, call the changes that have taken place since the 1990s 'economic reforms', where as authors such as Ghosh and Nayyar who are critical of aspects of these reforms call it 'neoliberalization' or simply 'liberalization' and use the words interchangeably (Chakraborty 2005: 54). As was mentioned in the previous chapter, those authors who use the word 'neoliberal' are generally critical of the term.

In 1991, the Congress Government under Prime Minister Narsimha Rao (1991-1996) undertook a series of economic reforms that gradually liberalized the Indian economy from what was considered to be a pro-socialist, state led economy. The early 1990s are generally thought of as the starting point of neoliberalism in India. According to Mooij, the path of India's economic reforms has not been linear as there had been spurts of liberalization in the 80s under both Indira Gandhi (1980-1984) and Rajiv Gandhi (1984-1989) but reforms began seriously only in 1991 and have continued even after different parties have come to power subsequently. Thus in reality liberalization has been a gradual process, that was triggered in 1991 but had roots in the 80s and continues until today. As Mooij mentions, it is important to note that regardless of when precisely it began, the economic orientation of India

has been distinctly different than it was in the early 1990s (Mooij 2005: 19).

The mainstream argument is that India did not really choose to liberalize but was compelled to out of economic necessity as it was on the verge of defaulting on foreign payments. The change in policy was most seen in trade and industrial policy: import tariffs were reduced, import licensing was abolished, and control on foreign capital inflows reduced and foreign investment was approved for high priority industries (Mooij 2005: 20).

In explaining the content and the scope of the reforms Corbridge and Harris say that the economic reforms/neoliberalization continued because they served the interests of the dominant class and did not run counter to their interests (2000 in Mooij 2005:24). 'It is argued that the reforms are in the interests of the dominant economic classes, particularly the new business groups that are politically articulate with the CII [Confederation of Indian Industry] as their main organization. International trade agreements, loan conditionalities and ready-made international blueprints are also considered as important pressures explaining the scope and content of the Indian reforms' (Mooij 2005:25). Thus, the dominant economic classes played an important role in deciding what sort of reforms would take place.

Mooij (2005) also questions (while acknowledging the fact that the balance of payment crisis might have been the trigger for liberalization), why the reforms were consolidated over time and why all the political parties accepted the change of direction. There are different arguments that Mooij presents that answer this question. For example, Jenkins' (1999 in Mooij 2005: 23) argument is that some reforms were implemented stealthily and quietly in order to bypass resistance - 'The reformers tried and succeeded in introducing change under the guise of continuity' (Mooij 2005:29). He also says that the reforms succeeded in taking hold because they did not threaten the interests of the politicians. The reform process was allowed to advance because the bureaucracy found a way to introduce the change without it threatening their interests. In short, India's democracy did not create any hurdles or any serious opposition (ibid, 29).

While it can be said that the reforms were consolidated because Indian democracy did not create any serious opposition, it does not mean there was no opposition at all, but that the opposition was not mobilized or powerful enough to pose a problem at the time.

Another important point that needs to be mentioned about the political structure of India is that the state is a federal state. This, in part (other reasons are historical and geographical), leads to non-uniform development and implementation of policies across states. A prime example is the Maharashtra Employment Guarantee Act (MEGA), which was a precursor to the NREGA, but was legislated only in the state of

Maharashtra. The MEGA will be discussed in the next chapter. According to Bagchi and Kurian, among other reasons, inequalities between the states have sharpened as a result of outside investment (in Mooij 2005:41). Investors invest in states that are better developed and thus these states become wealthier and more investor friendly thus reinforcing uneven development (ibid). It is important to mention this point because it shows that neoliberal policies are not evenly distributed across the country even if they are adopted at the national level.

However, as mentioned above, there is also a mass belief that the state is supposed to be concerned with the welfare of the people. This is evident in the media and often leads to much debate (as is seen in the next chapter around the NREGA). The Indian state to a large extent is considered to be a protector of political, economic and social rights. However, as Mooij points out, 'The Indian state is a contradictory phenomenon. It is entrusted with a major developmental role; yet simultaneously (in some regions more than others, in some periods more than others), it is co-responsible for the 'reproduction of poverty' [...] (2012:1). Mooij states that 'although the social provisions and services provided by the state do not suffice (and not just a little bit) to secure well being and human development, *the idea of the welfare state is very powerful*' (Mooij 2012:5). Representatives of the Indian state have often and explicitly stated that growth is a way of raising employment and living standards. Thus the government of India sees itself as a welfare state: the legitimacy of the government and its economic policies comes down to its contribution to the well-being of the people. The neoliberal reforms of the 1990s have not changed this (Ibid 5). This expectation can be seen in protests around the country as well as campaigns, which may get violent but are often not anti-state. An example of this tendency is the large protests and campaigns that were held around an anti-corruption bill, mobilized by a Gandhian, Anna Hazare in 2009-2010 where the government was forced to concede to some of the demands of the campaign.

While it is difficult to say who supports neoliberalism, one can presume that it is supported by the elite businesses, parts of the bureaucracy and land owners and to the middle class that believes that a strong economy will solve the problems of inflation and unemployment. In fact, public discourse in India provides an array of images that show the urban middle class as beneficiaries of this reform, (which according to Fernandes is not necessarily the case and is only a perception) (Fernandes 2000). While the middle class might be the ones who perceive they are benefitting, it does not mean that the lower classes are not affected by this ideology and do not buy into it.

This seeming contradiction, between the ideology the state should provide better for the masses, as well as the belief in neoliberalism as a growth engine, is reflected in the media where on one hand one sees

great pride in foreign investment and on the other hand, mass mobilization in rural India around land, against dams and factories. However, as will be explored in the next chapter around NREGA, citizens demanding greater state involvement may not be those who are anti-neoliberal policies.

In conclusion, today, India is a state that has deregulated, liberalized and privatized *parts* of its economy and where the dominant class' ideology is that the market is the most efficient allocator of resources, thus one can say that there are elements of neoliberalism present in policy as well as ideology. However, in what might seem to be a contradiction, in terms of the ethos in India, there is an underlying expectation from citizens, regardless of which class they belong to, that the state is supposed to provide for them and even protect them. The history of the political economy before 1990s has affected the form that neoliberalism has taken in India and one cannot therefore call India a neoliberal state in the traditional sense. It is a state that houses elements of neoliberalism but where neoliberalism is both contested and propagated by different interest groups. The contentious nature of the existence of neoliberalism in India forms the backdrop against which rights-based legislation such as the NREGA arose which will be explored in the next chapter.

3.2 Rights-based Development in India

Sceptics grumble that, at best, a rights-based approach raises unrealistic expectations among the poor. At worst, it may encourage bad policies--especially by overburdening the state in areas where it has already failed. For all the inherent hypocrisy, however, India's appetite for rights is the expression of a young democracy's hopes. If only for this reason, it would be wrong to dismiss it altogether. Moreover, India's crusading judges sometimes take on too much, but they have often held the government to account--and Indians like them for it (The Economist, 2010).

While RBD might have become more of a catch phrase in the last few decades, Birchfield and Corsi (2009-10) claim that the rights discourse has been a part of governance in India since 1950, when the Indian Constitution came into effect. By defining and recognizing 'justice as social, economic, and political' in nature, 'India was ultimately established as a social welfare state' (Birchfield and Corsi in Mooij 2012:6). These rights are often taken up as the basis for larger social change by the judiciary itself, by NGOs and/or campaigns.

In order to understand RBD in India there are certain unique factors that one must take into consideration a) The inclusion of economic and social rights in the Indian constitution b) The nature of Indian democracy and the role of activism in India c) Domestic law taking precedence over international law

a) Economic and Social Rights in the Indian Constitution

Harvey, Evans and Mohan and Holland make the assumption that RBD favors political and civil rights over economic and social rights (discussed in Chapter 2). However, the Indian constitution (enacted in 1950) can be considered revolutionary because it was born out of struggle against colonialism but also reflects the international Cold War conflict between civil and political rights championed by the Western bloc and economic, social and cultural rights promoted by the Communist bloc (Birchfield and Corsi 2009-10: 706). In terms of rights, the uniqueness of the constitution lies in the fact that economic, social and cultural rights have a place, albeit a less important place, (because economic, social and cultural are not Fundamental Rights) in Indian constitutional law.

Civil and political rights are considered 'Fundamental Rights' and are therefore justiciable and though social and economic rights are not justiciable, they are included under 'Directive Principles'. While this may seem contradictory or in favor of civil and political rights over economic and cultural rights, these two sections of the Constitution are interdependent and open to reinterpretation by the Supreme Court (Birchfield and Corsi 2009-10:706-10).

While jurists of other Commonwealth jurisdictions might recoil at the idea of importing principles located in a section entitled "Directive" and designated as non-justiciable into an Article located in a section denoted as "Fundamental" and judicially enforceable, Indian legal history not only tolerates but upholds this move (Birchfield and Corsi 2009-10: 710)

Therefore economic, social and cultural rights embodied in the Directive Principles hold an important place in the Indian Constitution and are supposed to be taken into account by the State when passing laws (Mooij 2012:6). This inclusion of social and economic rights was one of the factors that made the passing of the NREGA possible as NREGA is primarily about an economic right.

b) The nature of Indian democracy & activism

Sen argues in 'The Argumentative Indian', that India's historical commitment to democracy is often attributed to British influence and democracy's connection with the Indian tradition of public discourse is often missed. The argumentative tradition has helped make 'heterodoxy the natural state of affairs in India' (Sen, 2005: 12). He claims that India's record as a robust, non-western democracy is marked by the fact that it has 'tenaciously persisted' unlike other ex-colonies. Additionally, according to him, 'Even though, Indian democracy remains imperfect and flawed in several different ways, the ways and means of overcoming those faults can draw powerfully on the argumentative tradition'(Ibid 13). He traces this history of public discourse to the 2nd century CE onwards and through the colonial period. This is important

to mention in the context of democracy in India because public reasoning is central to participatory governance and the sustenance of democracy (Ibid 16). This tradition of public discourse also plays a part in influencing activism in India.

Activism in India is not a new phenomenon and has taken many forms such as grassroots activism, judicial activism, dalit activism and others, which revolve around rights of the disadvantaged. This is in part due to the long history of activism in the country that is, in part, influenced by the Quit India Movement that was led by Mahatma Gandhi and the struggle for Independence. Recently, activism in India has included large campaigns such as the Narmada Bachao Andolan. The campaign was started against World Bank financed dams, in the mid 1980s and is still ongoing and has drawn support from celebrities and writers amongst others. In this case, the state tried at various times to stop protests and arrest activists. After seven years of deliberation, the latest Supreme Court ruling supports the construction of this dam (BBC News, 2000).

Most recently activism has included Anna Hazare's hunger strike in support of an anti-corruption bill called the Jan Lokpal Bill which instigated protests against the UPA government in every metropolitan city in India. This is not to say that the government is supportive of protests, as can be seen by Hazare's arrest few months later. He was later released because arresting him sparked even more controversy for the Government. The point, however, is that non-violent dissent/criticism is tolerated by the state to a certain extent because of the tolerance towards activism which is in part due to the democratic structure of the state as well the historical tolerance toward divergent political opinions.

Two types of activism are worthy of mention in this context: i) Judicial activism ii) Campaigns and NGO activism:

Judicial Activism

India's Supreme Court judges have increasingly demanded action. They have typically done so by redefining economic and social rights as fundamental and legally enforceable. That should make the government uphold them. In a few cases, however, the judges have gone so far as to dictate how it should do so. In 2001, citing the right to food, the Supreme Court demanded that the then government provide a hot lunch to every Indian schoolchild. Over 120m are now officially supposed to receive this (The Economist, 2010)

According to Cassels, under the banner of Public Interest Litigation (PIL) 'and the enforcement of fundamental rights under the Constitution, the courts have sought to rebalance the distribution of legal resources, increase access to justice for the disadvantaged, and imbue formal legal guarantees with substantive and positive content' (Cassels 1989: 497). Cassels also states that PIL in India is distinctive

from PIL in countries like in Canada and the United States because PIL in India may be contrary to the traditional legalistic understanding of the judicial function because the legal aid and public interest movement in India has been led by the judiciary (Bhagwati 1985: 561 in Cassels 1989: 497). According to Cassels, this judiciary driven movement is unique because of 'liberalization of the rules of standing, procedural flexibility, a creative and activist interpretation of legal and fundamental rights; remedial flexibility and ongoing judicial participation and supervision' (ibid).

In fact the judicial interpretation of Article 21, Right to Life, has set a precedent.

As a result of public interest litigation, the Supreme Court has 'expanded the meaning of a right to life to mean the right to live with dignity, which includes, according to the Court's ruling 'the bare necessities of life such as adequate nutrition' (Birchfield and Corsi, 2009-10: 717 in Mooij 2012:7).

This reinterpretation, which took place in 1981, facilitated the activism around the right to food which later grew into a campaign in 2001 (and will be discussed below).

NGOs, Campaigns and Activism in India

In reality, vast sections of the Indian population are not able to enjoy many of the rights mentioned above because of several reasons such as the failure to enforce laws, the lack of accountability and the exclusion of certain groups. In the 1960s and 70s micro level action in India was undertaken by the left-wing parties who through the mobilization of peasants and workers, aided land reform and tried to establish a minimum wage across the country. However, the 1980s saw an increase in non-government, non-party political processes and a decline in the popularity of parties from the traditional Left. Larger mass organizations championed the right to information, food and education while other organizations continued to work with marginalized groups such as dalits (formerly lower castes) and adivasis (tribal people) on land reform and other social and economic rights (Akerkar 2005: 145). Thus from 1980s onwards there was an increase of NGO activity and the beginning of mass campaigning by civil society groups and networks.

The word 'NGO' has many different connotations in the Indian context. For example, Leftist parties often take a hard anti-NGO stance seeing them as products of imperialism; right wing parties have established non-secular NGO's that are blamed for inciting communalism in the popular media. 'In other words, the term 'NGO' in India is no longer associated only with progressive liberal groups, but with organizations of all kinds [..]' (Akerkar 2005:145).

In 2001, the Right to Food Campaign was established as an informal network of people and organizations supporting multiple rights such as the right to work, land reform and social security. The Right to Food Campaign is particularly unique in this context because the right to employment was one of the mandates of this campaign and this campaign serves as an example of how rights-based development is negotiated in India today.

In the last two decades, rights have been further strengthened through social mobilization, PIL and judicial activism which have led to Supreme Court reinterpretations and new legislation [such as the NREGA and the Right to Education] with the aim to improve welfare (Mooij 2012:7). Additionally, another national campaign, worthy of note is the Right to Information campaign which led to the legislation of the Right to Information Act in 2005. After a nine year campaign by people's organizations the government passed the Right to Information Act which is supposed to empower citizens to hold the government accountable, reduce corruption and be involved in decision-making.

However, it is important to note that while right-based activism is gaining popularity, its goals haven't necessarily been met. Most demands are in their nascent stages and the ultimate goal of changing structures hasn't taken place yet.

On the headier claims of rights activists about the benefits of their approach, the jury is still out. Their central idea is that once citizens understand that social goods are an entitlement not a privilege, they will demand them. This will in turn force the state to perform where it has previously failed, and start to overturn the traditional power structures so entrenched in India's villages. The ambition goes beyond poverty alleviation to the cleansing and improvement of a rotten administrative and social system (The Economist, 2010).

c) Domestic law and International Law

While clearly rights are not simply western notions that have been forced upon India through international law agreements, there is obviously an interaction between international law and domestic law. In fact as Birchfield and Corsi (2009-2010) state, Indian legislation favors domestic law to international law even on matters concerning international human rights.

'India's dedication to its Constitution and laws is illustrated in an analysis by Rajat Rana [2009] of 46 Supreme Court decisions regarding human rights from the years 1997-2008, which suggests that the Supreme Court rarely relies on or follows international human rights norms in reaching a decision. While the justices mention international human rights norms in their opinions, those norms do not regularly play a significant role in reaching a final

decision. Rather, emphasis is on the Court's own precedents. Further analysis of Supreme Court cases suggests that the Court is likely to explicitly follow international human rights norms in reaching a decision only in the absence of any domestic law that provides for effective enforcement of the human rights in question' (Birchfield and Corsi 2009-2010: 704).

Thus in conclusion it can be said that RBD in India is unique because economic and social rights have a place in the constitution, judicial activism supports these rights, the democratic structure of the state allows campaigns and activism around rights and international human right laws are given less importance than domestic law.

This chapter shows the uniqueness of the Indian case, particularly highlighting the domestic influences on RBD in India, showing that that RBD is not simply an imposition of a neoliberal or western frameworks. In particular, the development of RBD in India contradicts the claim about political and civil rights being more important than economic rights that Harvey and Evans (as mentioned in Chapter 2).

Chapter 4

The Case Study on NREGA

4.1 A Summary of Employment Schemes in India

After independence from the British (1947), the first public works programme, Rural Works Programme, was introduced in the 1960s and was followed by a series of wage employment programmes including the Crash Scheme for Rural Employment, Pilot Rural Employment Project, the National Rural Employment Programme, 1980/81–1989, Rural Labour Employment Guarantee Programme during 1982/83–1989. The Jawahar Rojgar (employment) Yojana (programme) was introduced in the mid-1990s involving panchayati raj institutions (local government) and an adaptation of this program, Sampurna Grameen Rojgar Yojana, was introduced in the late 1990s to provide massive wage employment to the rural population (Hirway and Terhal in Hirway et al 2008). The Maharashtra's Employment Guarantee Act (MEGA) of 1977, was especially important because of several features but specifically guaranteeing work to all those who were willing to work at a fixed wage rate in rural areas (Hirway et al 2008) therefore acting as a precursor to the NREGA but limited to the state of Maharashtra.

4.2 The NREGA

The NREGA is a landmark in the history of social security legislation in India - or indeed, anywhere in the world - [...]However, the path to the NREGA has been far from smooth. It required sustained campaigning on the ground, lobbying with political parties, and overcoming active opposition from votaries of the "minimal state" (Right to Food Campaign Website 2012).

The National Rural Employment Guarantee Act of 2005 created a justiciable 'right to work' for all rural households across India, through the judicial reinterpretation of the 'right to life' which is a Fundamental Right as per the constitution. The main aim of the act and the scheme that followed was to reduce rural poverty by providing employment. The Act was passed in 2005 and the scheme that followed was started in 2006. At the time, it was only for the 200 most impoverished districts however the Act was amended in April 2008 to include all rural areas (Hirway et al 2008: 14)

According to Jean Dreze, an activist and economist, the passing of the NREGA in 2005 was unexpected. While this was a long standing demand from labour unions, it had never really been taken seriously

(Dreze 2011: 6). One can say it was ‘unexpected’, not because it was passed but because of how quickly it was passed. There were certain critical reasons that facilitated this legislation. In the late 1990s starvation deaths resulting from inadequate employment and drought was being publicized by the media and activists, and this made it important for there to be some sort of response from the new UPA government in 2004. According to MacAuslan (2008:1) the key elements that played a role in this legislation were the Congress Party (who had included employment guarantee in their 2004 election manifesto), the democratic system that shaped the Act after 2004 and prevailing attitudes that predisposed decision-makers towards rights-based approaches. The ‘tipping point’ came with the Congress’ surprise win in the 2004 elections. MacAuslan states that the Congress was compelled to pass this Act which they had included in their agenda when they really hadn’t believed winning this election was possible (Ibid 6).

Features of the Act & Scheme

An Act to provide for the enhancement of livelihood security of the households in rural areas of the country by providing at least one hundred days of guaranteed wage employment in every financial year to every household whose adult members volunteer to do unskilled manual work and for matters connected therewith or incidental thereto (National Rural Employment Guarantee Act 2005).

The above quote shows that the Act states its main aim (‘livelihood security’) but also spells out the number of days of work it guarantees (‘one hundred days’). Therefore the Act and Scheme⁴ are not really separable; the Act directly informs the scheme. Thus, in much of the literature, NREGA is used to refer to the Scheme and authors tend to refer to the Act and Scheme interchangeably.

The fact that the Act does not guarantee the right to employment all through the year in effect dilutes the power of the Act because it means the Act then only provides work for a third of the year. This dilution took place during parliamentary deliberation and will be explored further in this chapter. Having said that, this Act is still important for putting in effect a legal entitlement at a national level, where one had not existed earlier.

The Scheme that follows the Act provides 100 days of work per year to all rural households whose adults are willing to do unskilled manual

⁴ Officially called the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS)

labour at the statutory minimum wage notified for the programme. Work is supposed to be made available to anyone who demands it within 15 days of receiving an application to work; else the state government is liable to pay an unemployment allowance. Thus it is self-targeting rather than being based on the poverty line. Open village meetings (gram sabhas) are to identify suitable projects and local government institutions (gram panchayats) are given a central role in planning and implementation (Dutta et al 2012). The inclusion of state and local government also make the Act participatory instead of being dictated by the Central government. Women are to be given one-third quota of registered work (NREGA Operational Guidelines 2008: 3).⁵

Official national guidelines (which originate at the national level) claim that the goals of the Act are:

- a. Strong social safety net for the vulnerable groups by providing a fall-back employment source, when other employment alternatives are scarce or inadequate*
- b. Growth engine for sustainable development of an agricultural economy. Through the process of providing employment on works that address causes of chronic poverty such as drought, deforestation and soil erosion, the Act seeks to strengthen the natural resource base of rural livelihood and create durable assets in rural areas. Effectively implemented, NREGA has the potential to transform the geography of poverty*
- c. Empowerment of rural poor through the processes of a rights-based Law*
- d. New ways of doing business, as a model of governance reform anchored on the principles of transparency and grass root democracy (NREGA Operational Guidelines 2008)*

As the Operational Guidelines state, its goals are to be an empowerment tool, safety net as well as a growth engine and model of governance reform. Thus, it shows how this Act is a mixture of seemingly contradictory elements- clearly elements such as 'empowerment' stems from activists' interests and 'growth engine' stems from more economic interests. Thus this Act in both its wording and goals reflect mixed interests.

Also, because of the federal nature of the state, state governments are allowed flexibility in how they wish to execute the Scheme as long as it is consistent with the guidelines mentioned above.

⁵ For more details about the salient features of the Act please refer to Appendix A

There are two aspects of the Act that are particularly relevant in the NREGAs relation to RBD and neoliberalism specific features from the inception to legislation of the Act and the discussion around NREGA.

4.3 Behind the NREGA: From Inception to Legislation

a) A constitution that includes social and economic rights

As mentioned in Chapter 3, the Judiciary upholds economic and social rights through the importance given to 'Directive Principles' in the Indian Constitution. It is probable to assume that had the right to employment not been supported by the constitution, its detractors would have had an easier time squelching the Bill and those campaigning for the right to employment would not have a legal claim to it. Thus constitutional support aided the passing of this Act as the Supreme Court has the legal discretion to enact bills that fall under 'economic rights'.

b) Democratic structure that allows debate

The NREGA was not passed in Parliament because of the support of any *one* faction in India. The Bill went back and forth in Parliament and the democratic debate around the Act shaped the content and form of the Act. The struggle between the different interests in the government is best brought out in the events between 2004 and 2005. On 21 December, the government tabled the NREG Bill 2004, which was diluted to the extent that it defeated the purposed of having passing this Act to begin with, according to ardent supporters of NREGA. For instance, according to Dreze, it left to the Central government to decide where and when the guarantee would come into effect (Dreze 2011:7). After being tabled in parliament, the Bill was referred to the Parliamentary Standing Committee on Rural Development. This was followed by a campaign to repair the Bill and ensure that the salient aspects of the Bill was reinstated. Universal coverage to whole of rural India, irreversible guarantee, minimum wages were some of the elements that were recovered (Dreze 2011: 7). 'The NAC, the Left Parties, and a wide range of organizations committed to the right to work played an active role in this campaign' which led to amendments in July and August 2005 (Ibid). The amendments were based on the Standing Committees recommendations, who had agreed to most of the claims of the campaign. After a series of negotiations, the bill was passed on 23 August 2005 (Ibid, 8).

Even though in its last stage the bill was passed unanimously, there was behind-the-scene opposition from the Finance Ministry. This opposition was linked to a powerful Anti-NREGA lobby that were very vocal in the corporate-sponsored media and related forums. According to Dreze, 'The fact that this small lobby nearly succeeded in derailing the Act (and

did succeed in diluting it in some important respects), in spite of its tremendous appeal, is a telling symptom of the elitist nature of Indian democracy' (Dreze 2011: 8). Thus this process of the enactment of the NREGA shows us that this Act was the result of a complicated battle between different interests. As Dreze states, 'The enactment of NREGA is a victory of sorts for Indian democracy. It shows that the underprivileged majority is not completely marginalized in this elitist political system. With adequate political organization, their demands sometimes prevail over privileged interests' (Dreze 2011: 5).

The debate between different groups can best be seen in the media at the time that the bill was being most discussed in Parliament. The various opinions in the media are discussed in the next section.

c) Activism around Right to Food Campaign

The activist network at the time was pushing the government to prevent starvation both through providing food and employment. According to MacAuslan this was bound up with the criticism of neoliberal economic reforms first initiated by the Congress in 1990s (MacAuslan 2008:2).

The campaign began with a writ petition submitted to the Supreme Court in April 2001 by People's Union for Civil Liberties, Rajasthan. The petition demanded that the country's food stocks should be used without delay to protect people from hunger and starvation. This petition led to a prolonged; public interest litigation (PUCL vs Union of India and Others, Writ Petition [Civil] 196 of 2001). Supreme Court hearings were held at regular intervals, and significant "interim orders" had been issued from time to time (Right to Food Campaign Website, 2012) and the Supreme Court issued directives for improvement of programs. This legal process was strengthened by the effort to build a larger public campaign for the right to food called the Right to Food Campaign.

The Right to Food campaign came to be an informal network of organisations and individuals committed to the realisation of the right to food in India. They believe that realising this right requires not only equitable and sustainable food systems, but also entitlements relating to livelihood security such as the right to work, land reform and social security. They consider that the primary responsibility for guaranteeing these entitlements rests with the state and the lack of financial resources cannot be accepted as an excuse for abdicating this responsibility (The Right to Food Campaign Website, 2012). The campaign demands included the National Employment Guarantee Act amongst other demands such as universal mid-day meals in primary schools, revival and universalization of the public distribution system, social security arrangements for those who are not able to work, equitable land rights amongst other things. A wide range of activities were initiated including public hearings, rallies, *dharnas*, *padyatras*,

conventions, action-oriented research, media advocacy, and lobbying of Members of Parliament.

d) The Trigger: The events around the 2004 election and the formation of the NAC

The 2004 Election

When the United Progressive Alliance (UPA) led by the Congress Party defeated the Bhartiya Janta Party (BJP)-led alliance in the parliamentary election of 2004, the international and national media claimed it was because the rural poor were voting against the neoliberal policies of the BJP (although it should be noted that the reform process was started by the Congress in the 90s). While there is an argument between academics about whether this is true or not, the *perception* (in the media) was that the Congress won because the BJP ignored rural India in its policies and campaigns. Because of this perception, there was added pressure on the Congress to adhere to passing the NREGA whether or not they had been serious about when including it in their mandate. Initially, the Congress had added the promise of employment guarantee to its manifesto, when the general perception was that they were going to lose the election. The Left parties were part of the Congress alliance that won the election and strongly supported employment guarantee (Dreze 2011: 6).

The NAC

After winning the election, Sonia Gandhi, the leader of the Congress Party, declined the opportunity to become Prime Minister and instead decided to preside over a National Advisory Council (NAC) which she created in 2004, which would devise new policies. The NAC was an extra-constitutional body which included retired civil servants who were known to be imaginative and progressive, and a number of leading figures from India's civil society (personal communication James Manor, August 7 2012). They included figures like Aruna Roy, who had been involved in the work of MKSS (Organisation for the empowerment of workers and peasants) in Rajasthan for many years as well as Jean Dreze, activist and economist.

The NAC designed a number of new policies, programmes and draft laws for the UPA government in New Delhi and was integral to the passing of the Right to Information bill and the NREGA. According to Manor (personal communication, James Manor, August 7 2012) the members of the NAC brought a new perspective on the issues of poverty and how to deal with it. The NAC drew upon on the experiences of progressive civil society organisations. They influenced the change in definition of poverty from one that was only based on income and assets to one that included opportunities, liberties, capabilities and information (ibid).

Importantly, the NAC draft was based on a draft prepared by civil society and concerned citizens and this set the framework for all discussions of the Act. This draft was the one that was opposed by the anti-NREGA lobby and was revised many times until finally being passed in 2005.

4.4 The buzz around the NREGA

According to Jean Dreze, this Act is important for a number of other reasons: Firstly, the Act places an enforceable obligation on the state and gives labourers bargaining power, whereas only a scheme would leave labourers at the mercy of government officials. Secondly, while schemes come and go, under this Act, labourers have legal entitlements and the hope is that over time they will become aware of their rights. Thirdly, this Act has far reaching economic, social and political significance such as preventing distress migration. Fourthly, this Act makes it possible to create useful assets in rural areas through labour-intensive public works. Fifth, it strengthens local governance by giving them purpose and financial resources. Finally and most importantly, by mobilizing for the enforcement of this Act, unorganized workers have a reason to organize which could lead to mobilizing for other entitlements (Jean Dreze 2011: 9-10)

Primarily, the NREGA is unique because it is more than a scheme. It is an Act that provides the rural population with an entitlement. To begin with one must acknowledge that, 'it would be naïve to think that empowerment for demanding work will emerge overnight amongst poor people who have faced a history of exclusion from the processes of public action, and of subjugation to the will of local elites. However, creating the legal right is certainly a first, positive, step' (Dutta et al 2012: 55). This Act is India's first employment scheme that comes out of rights-based development at a national level; this legal right to work for an entire rural population is what makes the NREGA a groundbreaking piece of legislation.

No other national policy or legislation has ever *guaranteed* employment (other than the Maharashtra Employment Guarantee Scheme of 1977 which was limited to the state of Maharashtra). Employment Guarantee is different from Conditional Cash Transfers (CCTs) because it requires the beneficiaries to work for compensation. Therefore it is not an emergency policy or substitute but is supposed to complement private sector employment (Kamath IIMB Management Review 2010: 42) According to Aruna Roy, an activist, CCT is now being sold as an alternative to NREGA because the World Bank claims that it has been successfully implemented in South American countries. But she claims that CCT is a concept that had been rejected in India a while ago for being backward and not being participatory. According to Aruna Roy an activist and member of the NAC, 'Conceptually, structurally and

democratically CCT will set India back. It will lead to increased levels of corruption. It is a dependence programme, as opposed to the NREGA that is an empowerment programme' (IIMB Management Review 2010: 54).

The Act gives people the right to choose work [..]. The Act assures us that people will have the right to know how much they are working, how much they will be paid and what the schedule of rates is. This has forced governments perhaps for the first time since independence, to commission time and motion studies to scientifically examine the nature of work time and payment and to assess how much work a person can do.[..]The Act promises a grievance redressal mechanism [..]. The Act has enabled enforcement of law from outside, initiated by citizens and citizens groups and not by mechanisms within the government alone. [..] This is the first time that citizen based public accountability is mandated in any programme of the government (Aruna Roy, IIMB Management Review 2010: 50)

According to Dreze one of the major motivations (for activists, civil society) was to help to break the 'dictatorship of the private employer.' He stated 'Today rural labourers have no bargaining power. The fear of unemployment divides them and puts them at the mercy of private contractors and other exploiters. If rural labourers can get employment on public works at the minimum wage as a matter of right they will be able to demand minimum wages from private employers as well. Guaranteed employment on public works will also empower them to resist exploitative work conditions in the private sector' (Jean Dreze in 2011:5)

In the end, the NREGA was passed unanimously in Parliament, but this according to Jean Dreze is rather deceptive as it makes it look like there was little opposition.(Dreze 2011:8). Opposition was not limited to those representing business interests only but also from economists. Advocates for the Act were called 'jholawala' economists (a person who carries an inexpensive shoulder bag, usually with associated with socialist leanings), deceptive statistics were used to claim that the NREGA greatly exceed the budget stated and there were suggestions of using CCTs instead of organizing public works through legislation (Dreze 2011: 13).

Opinions in the Media

However, it wasn't simply a Left versus Right debate or Business community versus Activists debate. There was also notable opposition in the media from journalists who represented a spectrum of ideologies and according to Dreze (2011) this was aimed at influencing the bill which was being discussed in parliament. Having analysed 25 newspaper articles from 2004 -2005, when it was being debated in parliament, one sees that the opinions show a multitude of ideologies

being represented. The newspaper articles also show that there wasn't simply opposition from the business community but also from those that believed that the Act wasn't progressive enough and wouldn't effectively be able to guarantee jobs for the rural poor.

Supporters

13 of 25 articles showed support for the Act but not necessarily for the same reasons. Representing the Left, a website that describes itself as 'Weekly Organ of the Communist Party of India (Marxist)', states 'It is a fantastic challenge to the march of global finance. Given its dissonance with the neo-liberal expenditure cutback policies of deflation, its implications for the resistance to globalisation is huge' (2005). Showing that some writers from the Left were supportive of the Act, but this could simply be showing political support as the Communist Party was allied with the Congress within the UPA Government of 2004.

Other articles, while still in support of the NREGA were of the opinion that the NREGA was not nearly as radical enough as it should have been. One of the articles in *The Hindu* (considered centre-left ideologically) stated that if the NREGA is in fact a right, it should not be limited to 100 days of work (Shah, 2004). Another mainstream newspaper, scathingly reported, 'The latest draft of the proposed legislation, the National Rural Employment Guarantee Act, 2004, belies this hope. It has the stamp of the neo-liberalisers, the blindfolded men, who refuse to see the gross inequalities and increasing poverty their policies have caused. At every level, the proposed draft seeks to undermine the assurance for employment, and circumscribe its application and conditions of eligibility' (Karat, 2004)-(This last comment was made when the Bill was in the Parliament the first time and was cut down heavily).

Detractors

Some of the journalists or authors claimed that the Act fundamentally does not solve the problem of unemployment. One such article stated that 'The Employment Guarantee Act must not become a smokescreen to push policies that make a mockery of employment guarantee itself while furthering the neoliberal agenda of privatisation of public services through the erosion of State finances; wage flexibility; retreat of the state from all development activities that are not targeted; and so on. There are powerful forces at work that want an early passage of this farcical legislation in the hope that populist rhetoric will provide the fig leaf to their intent. The fight for an effective Act must continue within and outside Parliament' (2004); Clearly showing that she considered the Act a piece of legislation that served the neoliberal agenda.

Another trend visible in the articles is the view that the NREGA and the scheme that followed was a waste of tax-payers money because of corruption within governmental institutions. One article mentioned 'So what we are witnessing is not poverty alleviation but a massive new racket in which taxpayers will end up paying for political patronage

instead of economic benefits' (Singh 2005). Additionally, 'the fear is that this will be another big anti-poverty scheme, swallowing torrents of money, without in any way helping the poor' (Financial Express, 2005)

In a different strain a prominent economist said, in an article titled 'Poverty Reduction by Helicopter' that NREGA 'doesn't cure the problem. I suspect the most sustainable way of reducing poverty is to provide all-weather roads, power (without subsidies) and telecom to every village in India. Then the rural economy will take off, thanks to new economic opportunities. Reducing corruption, ensuring attendance, and improving the administration and courts will reduce poverty too. But this approach will not please politicians and NGOs who want to be seen giving the poor palliatives, rather than curing their ailment' (Aiyar 2004).

According to Dreze, the comments were the most vicious at the time of parliamentary debate because it was 'propaganda war' between the supporters and the detractors (2011). This debate highlights the seemingly contradictory nature of the NREGA showing a multitude of ideological positions in the mainstream media.

This section also exposes the structures, actors and networks that were involved in passing legislation further highlights that it wasn't a top-down process.

4.5 Impact and Effects of the Act

This section seeks to briefly mention some of the effects of the Act. It does not go into details about the impact because the paper is primarily about the inception of the Act. However, it is still important to talk about its effects so one can see how the contradictory and compatible elements of the Act have played out in reality through the Scheme.

First, it's important to keep in mind because of India's federal nature, each state has its own experience of the NREGA and all the surveys show a large discrepancy in results across states. Having said that there has been a recent report by the Ministry of Rural Development that states:

While implementation remains uneven and patchy across States and districts, there is evidence to suggest that MGNREGA has contributed to (a) increased rural wages everywhere; (b) reduced distress migration from traditionally migration-intensive areas; (c) usage of barren areas for cultivation; and (d) empowerment of the weaker sections and giving them a new sense of identity and bargaining power (MGNREGA Sameeksha, Ministry of Rural Development, Government of India 2012: 8)

The above mentioned successes of the NREGA are corroborated by activists Khera and Dreze and are in line with their findings in their

report 'The Battle for Employment Guarantee' (ed. Khera 2011) which draws on data from an NREGA Survey done in 2008⁶. Thus one can say that some of the goals of the Act have been met.

An important challenge has been making the target population aware of their rights. The 2008 NREGA survey shows that less than half of the sample workers were aware of their entitlement of 100 days of work or the minimum wage or their right to being paid within 15 days. Also few workers made an application for work as they did not know this was possible (Dreze and Khera 2011:50).

The 2012 Report shows a similar picture: there was low level of awareness about unemployment allowance, low awareness of work on demand and low awareness of a grievance redressal mechanism (in some states less than 10% of the beneficiaries)(MoRD report 2012: 55). The only state to show a high level of awareness in both the surveys was the state of Rajasthan, that Khera and Dreze point to having a long history of public mobilization for employment, having experienced many droughts in its history (Dreze and Khera 2011: 50).

This last challenge of 'awareness' seems to be crucial in the larger context of RBD and begs the question: What use is an Act for the rural population if less than half the population does not know what their right is, what they are entitled to and/or their options but only know about the scheme. Does this make the importance of NREGA as an Act redundant?

One of the claims made by Harvey and Evans was that RBD would not be able affect structural change because of its links with neoliberalism, while other authors such as Gready and Ensor saw structural change as possible. Gready states that the 'process requirements [rights-based approaches] provide the potential for building a platform for local voices about rights, from which perhaps a meta-narrative will emerge' (Gready 2008: 744) and this view was shared by activists who were lobbying for the NREGA. According to Khera (2011), one of the hopes around the NREGA was that it would lead to greater social mobilization, thus in the long run leading to structural change but possibly because of the low awareness of rights that have been reported, this hasn't taken place.

As it has only been seven years since the passing of the Act and four years since the scheme has been implemented in all of rural India it is too early to know if there will be any kind of social mobilization and/or structural change or if the scope Act will be limited to what the Scheme entails.

⁶ Based on the findings from the NREGA Survey 2008 covering 10 districts spread over 6 north Indian states (Dreze and Khera 2009: 45)

Chapter 5

Conclusions

Through this research I have explored the compatibilities and tensions between neoliberalism and RBD in India as highlighted by the case of the NREGA. The main question posed at the start of the research paper was:

To what extent is rights-based development, as in the case of NREGA in India, compatible with, or in contradiction to, neoliberalism?

To begin with Chapter 2 explored the theoretical discussion among various authors and their assumptions and arguments about neoliberalism and RBD. Delving into the literature, it was evident that different categories of authors view the relationship between neoliberalism and RBD differently

Hickey and Mitlin (2009) view RBD as an antidote to the problems of neoliberalism and saw the two as being compatible.

Harvey(2005) and Evans(1998 and 2006), on the other hand view RBD as being part of neoliberalism hegemonic discourse, being unable to create any structural change because of the basis of RBD being compromised; as well being based on a western conception of rights. In their view because neoliberalism is hegemonic, the state falls into the neoliberal framework and therefore RBD fails to create structural change. This view does not see domestic actors as having agency to reinterpret structures or norms. Harvey and Evans also see RBD and neoliberalism as being compatible, but in a very different way than Hickey and Mitlin; they see RBD and neoliberalism as being able to co-exist in harmony because at the core they are based on the same individualistic principle.

Alternative approaches such as Ballard et al (2006) do not view engagement with the state as co-option and claim that activists and social movements might be able to disagree with neoliberal policies while still working within the framework of the state. Ensor and Gready (2005) and Gready (2008) too, view RBD as being able to achieve structural change because of the complexity of actors, networks, movements and different sites of power. They do not view neoliberalism as being an overarching hegemonic ideology because they allow for the reinterpretation of norms and ideas which allows actors to take ownership of structures. This then allows one to see the relationship between neoliberalism and RBD as being dynamic and playing out differently in various contexts because domestic dynamics influence this relationship.

In Chapter 3 the paper explores both neoliberalism and RBD in India. This chapter reveals that RBD is in part, connected to the Indian constitution and is older than neoliberalism. Rights movements and activism haven't been divorced from the onset of neoliberalism but have continued to exist mostly engaging with the state. The state has been tolerant to this because it is sustained democracy with a history of public discourse and activism. This chapter thus shows the unique characteristics of RBD in India and the importance of democratic structures within the country that allow for this development. This is best seen through the integration of economic rights in the constitution which has facilitated the legislation of rights-based Acts such as the NREGA.

The process of the legislation of NREGA (Chapter 4) brings the complexities of the relationship between neoliberalism and RBD to the fore. Structures that allowed for its inception as well as the lobbying against it in Parliament by the 'anti-NREGA' group show the different centers of power within the state. The Act itself is a product of the tensions between neoliberalism and RBD.

The NREGA as an example of a rights-based Act displays tensions with the neoliberalism in India because it:

- a) Provides a legal entitlement for the right to a work thus giving those that do not get jobs through the functioning of the Market a right to a livelihood where one did not exist before
- b) It tries to tackle inequality by raising wages and providing a better livelihood to rural landless labourers who would otherwise be paid less than the minimum wage (as the minimum wage is not enforced in India)
- c) According to activists supporting this legal entitlement one of the goals is for it to be a catalyst for social mobilization leading to empowerment and participation in movements for greater structural change
- d) It is participatory and self-targeting. Instead of the State choosing who will receive a job, the entitlement allows for any household to file an application for work (or receive allowance if work is not given to them).

However, there are also ways in which this Act is compatible with neoliberalism:

- a) While this Act is supposed to provide a *guarantee* of work, by virtue of the 100 days clause, this guarantee is made less empowering
- b) This Act also does not try and tackle the causes of unemployment and doesn't challenge the present neoliberal economic structure
- c) While the hope is that this Act (because of its participatory and empowering nature) leads to social mobilization, this has not

happened, in part, due to a lack of awareness around what a legal entitlement means.

Thus the process of the legislation of NREGA, the features of the Act as well as RBD in India in general, shows a very different trajectory than is explained by Harvey and Evans. It shows the negotiation between actors and networks, reinterpretations of ideas and norms, tensions between structures and social mobilization that has created of a unique version of RBD. As Mandar (an Indian activist) states, rights-based approaches 'derive strength and legitimacy [...] from various other sources such as national law, socially acknowledged ethical principles of equity and justice, or from the organization and struggles of people's organizations' (in Gready and Ensor 2005: 237–8). This gives rise to the complex relationship between neoliberalism and RBD; constituted by both compatible and contradictory elements.

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Appendices

Appendix A

FEATURES OF THE ACT (Source: Ministry of Rural Development 2008)

- i) Adult members of a rural household, willing to do unskilled manual work, may apply. For registration in writing or orally to the local Gram Panchayat
- ii) The Gram Panchayat after due verification will issue a Job Card. The Job Card will bear the photograph of all adult members of the household willing to work under NREGA and is free of cost
- iii) The Job Card should be issued within 15 days of application.
- iv) A Job Card holder may submit a written application for employment to the Gram Panchayat, stating the time and duration for which work is sought. The minimum days of employment have to be at least fourteen.
- v) The Gram Panchayat will issue a dated receipt of the written application for employment, against which the guarantee of providing employment within 15 days operates
- vi) Employment will be given within 15 days of application for work, if it is not then daily unemployment allowance as per the Act, has to be paid liability of payment of unemployment allowance is of the States.
- vii) Work should ordinarily be provided within 5 km radius of the village. In case work is provided beyond 5 km, extra wages of 10% are payable to meet additional transportation and living expenses
- viii) Wages are to be paid according to the Minimum Wages Act 1948 for agricultural labourers in the State, unless the Centre notifies a wage rate which will not be less than Rs. 60/ per day. Equal wages will be provided to both men and women.
- ix) Wages are to be paid according to piece rate or daily rate. Disbursement of wages has to be done on weekly basis and not beyond a fortnight in any case
- x) At least one-third beneficiaries shall be women who have registered and requested work under the scheme.
- xi) Work site facilities such as crèche, drinking water, shade have to be provided
- xii) The shelf of projects for a village will be recommended by the gram sabha and approved by the zilla panchayat.
- xiii) At least 50% of works will be allotted to Gram Panchayats for execution

- xiv) Permissible works predominantly include water and soil conservation, afforestation and land development works
- xv) A 60:40 wage and material ratio has to be maintained. No contractors and machinery is allowed
- xvi) The Central Government bears the 100 percent wage cost of unskilled manual labour and 75 percent of the material cost including the wages of skilled and semi skilled workers
- xvii) Social Audit has to be done by the Gram Sabha
- xviii) Grievance redressal mechanisms have to be put in place for ensuring a responsive implementation process
- xix) All accounts and records relating to the Scheme should be available for public scrutiny

Appendix B

[MG]NREGA Sameeksha (source: Ministry of Rural Development 2012)

The average wage per person-day has gone up by 81 per cent since the Scheme's inception, with state-level variations. The notified wage today varies from a minimum of Rs 122 in Bihar, Jharkhand to Rs 191 in Haryana. Scheduled Castes (SCs) and Scheduled Tribes (STs) have accounted for 51 per cent of the total person-days generated and women for 47 per cent, well above the mandatory 33 per cent as required by the Act. 146 lakh works have been taken up since the beginning of the programme, of which about 60 per cent have been completed. Of these works,

- 19 per cent relate to rural connectivity (e.g. village roads)
 - 25 per cent relate to water conservation and water harvesting
 - 14 per cent relate to irrigation canals and renovation of traditional water bodies
 - 13 per cent relate to flood protection and drought proofing
 - 13 per cent relate to land development
 - 14 per cent relate to work done on private lands (lands belonging to small and marginal farmers/SCs/STs/Below Poverty Line (BPL) households/Indira Awas Yojana (IAY) and land reform beneficiaries)
- 12 crore Job Cards (JCs) have been given and these along with the 9 crore muster rolls have been uploaded on the Management Information System (MIS), available for public scrutiny. Since 2010-11, all details with regard to the expenditure of the MGNREGA are available on the MIS in the public domain.

TABLE A An Overview of the Performance of MGNREGA
(FY 2006–07 to FY 2011–12*)

	FY 2006–07 (200 districts)	FY 2007–08 (330 districts)	FY 2008–09 (All rural districts)	FY 2009–10 (All rural districts)	FY 2010–11 (All rural districts)	FY 2011–12* (All rural districts)	Total FY 2006–07– FY 2011–12*
Number of Households provided employment (In crore)	2.1	3.4	4.5	5.3	5.5	5	**
PERSON-DAYS (In crore) [% of total person-days]							
Total:	90.5	143.59	216.3	283.6	257.2	209.3	1200
SCs:	23 [25%]	39.4 [27%]	63.4 [29%]	86.5 [30%]	78.8 [31%]	46.2 [22%]	337 [28%]
STs:	33 [36%]	42 [29%]	55 [25%]	58.7 [21%]	53.6 [21%]	37.7 [18%]	280 [23%]
Women:	36 [40%]	61 [43%]	103.6 [48%]	136.4 [48%]	122.7 [48%]	101.1 [48%]	561 [47%]
Average person-days per employed household	43 Days	42 Days	48 Days	54 Days	47 Days	42 Days	**
FINANCIAL DETAILS							
Budget outlay (in Rs crore)	11300	12000	30000	39100	40100	40000	172500
Expenditure (in Rs crore)	8824	15857	27250	37905	39377	37303	166516
Expenditure on unskilled wages (in Rs crore)	5842	10739	18200	25579	25686	24660	110706
[% of total expenditure]***	[66%]	[68%]	[67%]	[67%]	[65%]	[66%]	[66%]
WORKS (In lakh)							
Works taken up	8.4	17.9	27.8	46.2	51	73.6	146
Works completed	3.9	8.2	12.1	22.6	25.9	14.3	87

*Note:** Provisional Data: At the time of the preparation of the report, data entry for States was still open for the year 2011–12.

**Data cannot be averaged as households from one year to another are not distinct.

*** Percentage has been calculated from the total expenditure including administrative expenditure, during the FY.

Source: Mahatma Gandhi National Rural Employment Guarantee Act (official website), <http://www.mgnrega.nic.in>.