Chapter 6. Mediation in India’s Policy Spaces

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Introduction

Much has been written about India’s historic social policy, the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), some celebrating but most criticising its implementation processes and outcomes as a pro-poor rights-based law. This chapter looks at the other end of the policy process – the making of this policy – in order to demystify both the mediators who were involved in the Act’s making, and their actions that led to the Act being formulated in its present shape. In identifying the mediators, this chapter disaggregates ‘state’ and ‘society’ actors involved in the policy making process, and critically assesses their positionalities to posit that mediators sit within, outside as well as in between these two groups. In fact, as my analysis will show, mediation can be understood as a tenet of state-society interactions, through which the distinction between the state and society are reproduced.

Through the analysis of the case study and the actions of the mediators, this chapter highlights three objectives of mediation that were present during the different stages of formulation of the MGNREGA – mediation in generating and highlighting demand from citizens (bus yatra, media); mediation in negotiations with state (formal and informal mediation); and mediation in staking claim to implementation (participation in formal state committees and monitoring initiatives). It also seeks to identify strategies that mediators use in these different modes. This chapter also proposes that an assessment of the outcomes of mediation as positive or negative, especially for the most marginalised, implies examining the power dynamics that underlie positionalities of mediators, which may lead to the inclusion of some interests but also to the exclusion of others.

The chapter begins with a theoretical understanding of mediation, and its application to the policy process literature. It then presents the role of different mediators during the formulation of the MGNREGA through four phases – genesis, articulation, negotiation and enactment. In reflecting on the processes of mediation within these three phases, it is shown that both the type of mediators and the modes of mediation, vary within and across these different phases. After analysing these modes of mediation and the strategies followed by mediators in the making of the MGNREGA, this chapter ends with reflections on mediation outcomes and processes within state-society relations in India’s policy spaces.

Mediation in Policy Spaces

The involvement of actors in policy processes has largely been conceptualised through the extent, type and nature of participation of actors, with mainly two types of actors –
state and non-state actors. The literature on participation in policy processes distinguishes between different types of participation - functional/instrumental forms, self-provisioning approaches, and more empowering approaches such as participation in activities related to democratic governance (Cornwall and Gaventa 2001). Participatory practices enable the opening up of ‘policy spaces’ (Grindle and Thomas 1991), which can be understood as the ‘the room for manoeuvre and influence’ (ibid: pg 8). However, studying the policy process as simply a case of engagement between ‘state’ and ‘society’ misses out the crucial role of informal processes and mediating actors in these processes. There is a growing recognition that informal institutions and practices play a critical role in the everyday interactions between state and society (Harriss-White 2003, Chatterjee 2004, Corbridge, Williams et al. 2005).

However, these accounts relate to the everyday functions of the ‘administrative’ state, especially in India (Gupta 1995, Corbridge, Williams et al. 2005). This literature fails to explain the role of informal institutions in terms of policy processes, especially in the Indian scenario. This gap becomes bigger when focussing on a national scale rather than at the local level, which has typically been the focus of the everyday state literature. My work seeks to fill this gap by providing in-depth empirical data regarding the formulation of a contemporary national level social policy in India. In so doing I make it possible to reflect on the workings of informality and mediation in the context of policy processes at a larger spatial scale.

Mediation can be understood as (often undemocratic) forms of representation by usually unelected intermediaries, mainly in relation to public authority (Introduction, this volume). These intermediaries work in a range of ways in relation to the state – ‘with’ the state, ‘against’ the state, ‘in parallel to’ the state, and sometimes even ‘within’ the state. This paper thus understands mediation as being primarily about state-society interactions. In understanding the ways in which these intermediaries work, their strategies of mediation and the positionality of these mediating actors helps in breaking down the distinction between ‘state’ and ‘non-state’ actors. As I have shown elsewhere, this boundary between state and society is fuzzy and porous (Chopra 2011a,b), and is redefined through the act of policy making. I now extend this line of thinking further, using Mitchell’s quote - ‘rather than searching for a definition that will fix the boundary, we need to examine the detailed political processes through which the uncertain yet powerful distinction between state and society is produced’ (Mitchell 1991: 78). This paper therefore posits that mediation is one of these political processes through which this powerful distinction is produced and also renegotiated.

It would be misplaced to assume that mediators are a homogenous category, even within a particular context. Some mediators may have more power than others, and it is important to disaggregate and identify who these mediators are, the extent of their power, and importantly, the source of their power (knowledge, skills, connections etc). In addition, it is important to understand whether mediation leads to positive outcomes (and for whom)? It needs to be recognised that although mediators advocate for the
views of the poor and marginalised, they do not necessarily deepen the engagement of the marginalised with the state. Power dynamics between different mediators may mean that the engagement of some (other) groups with the state may actually be restricted/stifled (as I have shown in Chopra 2013), leading to differential outcomes for these groups.

In order to explore these issues in detail and examine how these concepts play out in practice, the next section will provide an empirical description of the process of policy formulation of a particular policy in India, before drawing out some analytical conclusions.

Making of the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA)

In a parliamentary democracy, policymaking in the form of law is largely assumed to lie within the domain of the Parliament. If the Parliament and Parliamentary actors were the only important actors in policymaking, then this story would have started and ended with a summary of parliamentary debates (GOI 2005; GOI 2005) and the proceedings within the Parliamentary Standing Committee as an affiliated institution of the Parliament. Told from the lens of mediation however, a number of other actors emerge, as can be gauged from the following analysis. In order to do this, I present the story of the making of the MGNREGA in four phases – genesis, articulation, enactment and notification, identifying the mediating actors involved, the acts of mediation, and the outcomes of this mediation in every phase.

*Genesis: The idea of an employment guarantee*

Employment programmes and the demand for employment is not new. Political parties in India (including the Congress, BJP and the Left) have had a long association with the idea of guaranteed employment, with the Left parties having had this demand as early as the 1970s. However, these ideas have lain dormant, emerging in the recent decade through civil society action as a response to the recent agrarian crisis. A spate of farmer suicides in the early 2000s that sparked off a Public Interest Litigation (PIL) on the Right to Food filed in the Supreme Court by the Peoples’ Union for Civil Liberties (PUCL) against the Indian government. This can be said to be the first act of mediation by a group of activists who were representing the needs of the poor and marginalised groups and holding the state accountable for the deaths of a few of its poor citizens.

This PIL established a link between the Right to Life and the Right to Work, as supported by the Commissioner to the Supreme Court Saxena 2003. Subsequently, several groups came together under the umbrella of two main organisations – the Right to Food (RTF) campaign (a national level network), and a state consortium in Rajasthan called the ‘Akal Sangharsh Samiti’. This consortium consisted of a wide variety of organisations and institutions working on the issue of drought in the state. These included block and
village based organisations such as *Wagad Mazdoor Kisan Samiti*; district and state level organisations such as *Mazdoor Kisan Shakti Sangathan* (MKSS), *Asth, Social Work Research Centre (SWRC), Prayas* etc. as well as bigger national level organisations such as Action Aid and PUCL. While the state consortium was more focussed on issues of drought and the effective provision of existing public works programmes, the national campaign had broader objectives. It was in the first national convention of the RTF movement in 2004, that the demand for a ‘Right to Work’ was first articulated.

*Articulation: the Draft NREG Bill*

Articulation of the idea of an Employment Guarantee Act initially took place at the level of the Rajasthan state government, with activists approaching the then Chief Minister with a draft of the Bill that they had prepared. This is the second act of mediation in the policy process – the activists acted as mediators by drafting a Bill for the state of Rajasthan. Some of these activists were leaders of a small social movement in Rajasthan, with a history of work on the state campaigns, and were also quite influential in both the RTF campaign and the state –level *Akal Sangharsh Samiti* in Rajasthan.

While initially resisted, over time electoral pressures made this idea more acceptable with its potential ability to generate electoral dividends for the ruling political party (Congress) in Rajasthan in the up-coming 2003 elections (C1, 26/05/07). However, lack of funds meant that the state was unwilling to make a commitment to this idea, and instead the activists were directed towards the National Congress Party office (C1, 10/03/07), who was at that time in opposition but was also starting to think about its election campaign for the 2004 national elections. It must be emphasised that the strategies of these mediators to convince the political party leaders were of multiple types – personal connections played as important a role in the state level activists gaining access to national politicians, as did more formal meetings and presentations. An example of a more formal meeting was that of the activists making a presentation to the All India Congress Convention (AICC) meeting of Chief Ministers, which took place in Guwahati in mid 2002, followed by a couple of meetings with Sonia Gandhi (C1, 26/05/2007; A3, 20/05/2007). This idea eventually found traction with the Congress party and appeared in their manifesto (INC 2004) as a cornerstone of their ‘aam aadmi’ (common man) campaign, albeit with some changes.

With Congress and its allies winning an unexpected victory over the National Democratic Alliance (NDA, led by another party, the BJP) government in 2004, the idea of an Employment Guarantee Act became more real. The activists interpreted the defeat of BJP as indication that something needed to be done for the poor, whose interests and voices they were representing through the idea of the MGNREGA:

...[that] BJP lost, depicted to them [Congress] that the poor person is really very troubled, and it’s their issues that made BJP lose...the new government...won unexpectedly...and understood why they had won...because the previous
government had paid no attention to the issue of the poor people, and this was the voice of the poor people... (C1, 06/03/2007).

The Congress party with its allies (UPA) formed the national government in 2004 with external support from the Left parties\(^v\). This shaped the mandate and progress of the idea of an employment guarantee significantly. The promise of formulating an Act was accorded a high priority in the National Common Minimum Programme (NCMP)\(^vi\) of the UPA, which provided a huge leverage to the supporters of the idea. A further critical impetus came from the formulation of the National Advisory Council (NAC) as an advisory body, which would monitor the implementation of the NCMP. The NAC was headed by the UPA chairperson Sonia Gandhi, but importantly, included several intermediaries who had been propagating and supporting the idea of an Employment Guarantee Act, including academics, civil society activists, political party leaders and Commissioner to the Supreme Court. This lent legitimacy to the ideas being put forth by these intermediaries because of their presence in this high profile institution. At the same time, this can also be seen as the creation of another mediation body.

In the very first meeting of the NAC, the activists put forth a draft of the NREG Bill, which was subsequently whetted and forwarded it to the Prime Minister’s Office (PMO) on 19 August 2004, recommending it for expeditious action (NAC 2004). The NAC also suggested that the draft Bill be handled by either the MORD or the MOPR (ibid). While initially the Bill languished in the Ministry of Labour, it was again the vigilance of the NAC\(^vii\) that forced the government to recall it from there and send it to the Ministry of Rural Development (NAC 2004) which is where the course of formal drafting of the Bill began. In this process, two acts of mediation can be identified. Firstly, the intermediaries put forth a proposal to a public authority body (though unelected). Secondly, this body acted as a mediator by forwarding this draft proposal to the Central government, as well as monitoring its progress.

*Enactment: Negotiating the NREG Bill to an Act*

The MORD was designated as the nodal ministry for piloting the Bill by the PMO on 18 September 2004, with a copy of the NAC draft sent to the relevant officials (PMO 2004). The PMO also directed that the MORD was to ‘work out the final draft in consultation with the representatives of the Planning Commission, Ministry of *Panchayati Raj*, Ministry of Labour, Ministry of Finance and the Prime Minister’s Office’ (ibid). This directive set the tone of the consultative mechanisms that were to be followed throughout the Bill’s formulation. The MORD senior officials began their drafting of the Bill by forming an inter-ministerial task group to discuss the outline of the proposed legislation (MORD 2004). The drafting of the Bill in the early days was characterised by the presence of senior leaders such as the PM, a quick turn-around time, and modification and review of existing drafts and policies, most notably the Maharashtra Employment Guarantee Act (G2, 09/05/2007).
Once the Bill was drafted, there was significant opposition from within the government on the proposed Bill, with the Planning Commission opposing this central law because of financial implications (MORD 2004). However, there was an attempt at building consensus regarding this Bill from the highest echelons of policy making like from the Prime Minister himself (MORD 2004). In addition, there was opposition from the intermediaries. Objections came from within the NAC itself, with two members submitting a note to Sonia Gandhi expressing ‘deep concern about the fate of the Draft National Rural Employment Guarantee Act’, stating that the draft prepared and circulated by the MORD ‘substantially dilutes some key provisions of the NAC draft’ (Dreze and Roy 2004). The NAC again played a mediating role, through forwarding these comments to the MORD from the NAC.

These and other suggestions were collated and another draft was circulated towards early December 2004 (MORD 2004). At this stage, a certain pressure of introducing the Bill was also there, reflected by certain developments such as the urgency of introducing the Bill in the winter session of Parliament (Azad 2004). On 15 December 2004, the Cabinet Secretariat approved the introduction of the NREG Bill in the current session of Parliament (GOI 2004). The Secretariat also directed the setting up of a Group of Ministers (GOM) to deliberate on any further amendments (ibid).

The Lok Sabha finally adopted a move to introduce the NREG Bill in Parliament on 21 December 2004, two days before the end of the winter session of Parliament. With no time for it to be discussed, it was immediately referred to the Parliamentary standing committee on rural development. It is important to note here that while there was pressure from within the government, there was also mounting pressure from civil society groups who were tracking the progress of the Bill very closely. Incidentally, the Bill was tabled in Parliament the same day as these groups came together with a signature campaign demanding for the Bill to be tabled, which was displayed through banners outside the Parliament (T1, 17/03/2007). This reflects the importance of the insistent pressure of civil society groups and the NAC to push the Bill into the public domain, as a result of which, the Bill was tabled during that session itself.

The introduction of the Bill in Parliament heralded the start of a new period of negotiations. A significant event following this was the birth of an umbrella organisation called the People’s Action for Employment Guarantee (PAEG) which subsumed all further acts of mediation (except through the NAC) under a common banner:

...[the] draft...presented in Parliament...[was] completely watered down...some of the basic provisions were diluted...we decided that we have to have a core group of people’s action...a loose network of people who are interested in the issue...planned a series of events to take this thing forward and partly lobby with MPs, political parties, but also get a whole lot of media attention... (C3, 22/03/2007).
Here is a brief summary of the mediation activities undertaken by these two primary mediating organisations – the NAC and the PAEG – sometimes independent of each other, but mostly in tandem or subsequent to each other. This joint mediation effort was facilitated by common individuals who were members of both organisations and who, as a respondent commented, ‘masterminded the whole show’ (C10, 10/12/2011).

a) The PAEG co-ordinated the memorandums and subsequent depositions to the Standing Committee, targeting different issues through different individuals and organisations who were members of this group.
b) The PAEG organised a bus yatra across 10 states to garner support for their demands.
c) Other campaigning measures were also undertaken, such as mobilisation of political party leaders and women’s and trade unions.
d) The PAEG also sought and gained participation from another set of actors – students from a prestigious University and their links with the Left parties.
e) In addition, parliamentary negotiations and debates within the Planning Commission regarding the Bill were highlighted by sustained debate in the media, fuelled by regular updates by the media cell of the PAEG.
f) The NAC directed its concerns and recommendations through the PMO as well as the Group of Ministers, thereby lending powerful pressure and credibility to its recommendations.
g) Another example of political pressure was through public demonstrations organised by the PAEG.
h) Several PAEG members had unofficial meetings between the MORD officials, through which certain objectionable provisions of the Bill were re-negotiated.
i) The PAEG put forth a list of 12 essential safeguards (PAEG 2005) that the MGNREGA needed to incorporate, and focussed all their mediation around these 12 aspects.

The primary reason for all the contention and debate was that the NREG Bill tabled in Parliament was seen by a large group of people, including the original writers of the NAC draft, as highly diluted (C3, 22/03/2007). This, they feared, would not meet the guarantee that had been fought for and promised in the NCMP. On the other hand, the Bill was subjected to harsh critique by its detractors, mainly based on the projected financial burden that this would place on the government (both state and central) (Archaya 2004; Bhalla 2004). Its objectives of creating durable assets and strengthening the livelihood base of rural populations were also criticised severely (G9, 26/03/2007). This then generated another round of debates and writings that put forth the arguments in favour of the idea of an Employment Guarantee Act, while highlighting the problems with the current formulation of the Bill.

All these debates outside the formal decision-making spaces, as well as the formal recommendations of the Standing Committee on Rural Development fed into the re-drafting of the Bill by the MORD officials. At the same time, procedures within the
MORD, as well as its consultations with other Central level Ministries and the state rural development departments threw up further issues and contentions. The recommendations of the standing committee were subsequently examined by a Group of Ministers that was set up to examine the various provisions of the NREG Bill. This suite of deliberations, debate and negotiations had a substantial impact on the Bill’s tenets. In addition to civil society and administrative inputs through formal means, another characteristic of this phase of negotiations was the exertion of political pressure on the MORD to sway the Bill towards certain directions (NAC 2005).

Despite a sense of urgency evidenced through requests for early replies, early convening of meetings and the dedication of a full time senior official at the MORD to the drafting of the Bill (MORD 2004; MORD 2005), it took a good seven months of negotiations and debates and re-drafting before the Bill could be tabled again in the Monsoon session (July to August) 2005 of the Lok Sabha. In August 2005, the Bill was taken up for deliberations in the Lok Sabha on 18 August 2005. While there was no doubt at this stage regarding the passage of the Bill, there were intense last minute negotiations over what form and shape the final Act would take. There were two competing pressures – while the UPA government wanted to pass the Bill in the Monsoon session, there were some issues viii that the civil society actors and Left parties were not ready to compromise on (I2, 19/03/2007). This created conditions for active negotiations and hectic dialogue regarding contentious provisions that were being objected to.

Another interesting dynamic that was playing into the scenario at this stage was the high powered support that this Bill was getting from the NAC Chairperson, Sonia Gandhi (NAC 2005). This meant that while there were many objections to the Bill’s provisions, it became politically unfeasible for anyone to publicly oppose the Bill. It was in this politically charged situation that several meetings of the UPA-Left Coordination Committee of the government were held. These meetings saw Left leaders actively negotiating with the UPA leaders outside the Parliament but still within the confines of closed doors; hectic and lengthy discussions and debates within the Parliament. There was also a huge civil society presence outside the Parliament in the form of a signature campaign and a Dharna at Jantar Mantar organised by the PAEG to monitor the parliamentary proceedings and demand that certain changes to be made to the Bill. These mediating actors also involved themselves in intense after-hours consultations and the convincing of political party leaders for support of their points.

These negotiations resulted in several changes being made in the Bill during the last few days and even hours. According to some activists, while the other issues were taken up and argued primarily by Left party leaders ix, the minimum wage issue was one that they had agreed to let go (C1, 17/04/2008; C3, 19/04/2008). It was in the final hours of the debate that the mediators made their last attempt at negotiating this clause – they met with Sonia Gandhi and pleaded with her to intervene – this she did through an informal communication to the PM, and the minimum wage clause was finally reworded such that it was ‘not perfect but acceptable’ (C3, 22/03/2007) to the civil society actors.
Finally, after hours of parliamentary debates, the Bill, with amendments, was put to the 
Lok Sabha, and was passed with 100% majority on 23 August 2005. Subsequently, the 
Bill went to the Rajya Sabha, where there were again extensive debates on its 
provisions, but no change was made. The NREG Bill finally received the President’s 
assent on 5 September 2005. While the immediate feeling amongst most of the 
mediators was that of elation because the Act had been passed and some concessions 
had been gained, there was also a feeling of resignation at the concessions that had not 
been won, or, as one civil society actor expressed, that had been ‘given away’ (C3, 
22/03/2007). However, this did not mar either the relief regarding the MGNREGA being 
in place, nor the credit-taking that started immediately, especially amongst the different 
political parties regarding its enactment.

Notification and early Monitoring

After the Act was passed, the main work of detailing fell to the nodal ministry, MORD. 
Two main activities were undertaken – deciding the initial 200 districts in which the Act 
would be implemented; and the rules and guidelines fleshing out the details of the Act. 
While identification of most of the initial 200 districts was done by the Planning 
Commission through a report listing the most backward districts, some of the districts 
were also chosen keeping in mind an overall allocation of districts across the various 
states (Nayyar 2003). The Planning Commission also worked out the financial 
implications and budget calculations for the first financial year of the programme.

It was in this phase that the international organisations that had hitherto been largely 
absent from the earlier phases, also made a contribution. These included the World 
Bank, and the UNDP, which became (and remains) the only external agency to offer 
technical help on implementing the programme. The International Labour Organisation 
(ILO) also entered the discussions during this phase. It organised a round table on the 
MGNREGA and its potential effects, with the main thinking being how the ILO could be 
useful in operationalising the MGNREGA and working towards its ‘Decent Work’ 
mandate (ILO 2005).

It was in the making of the rules and guidelines that the mediating actors played a 
significant role. Though officially within the ambit of the MORD, a couple of activists 
were involved in the drafting of these guidelines, and working very closely with (and by 
advising) the MORD officials on this front (A3, 14/03/2008). Consultations between 
these two groups took the form of both informal talks and emails, and formal 
consultations. Another significant aspect during this phase was the formulation of the 
‘Central Employment Guarantee Council’ (CEGC). This was mandated by the Act, and 
again, a responsibility of the MORD. Accordingly, the MORD Minister was appointed as 
Chair of the CEGC and several other high ranking officials from MORD were nominated 
as members. In addition, several other civil society members (all of whom were active 
members of the PAEG) were also appointed to this council.
The MGNREGA was finally notified on 2 February 2006, to be operationalised initially in 200 districts as identified by the Planning Commission and agreed to by the MORD. Facing a lot of demands, the MGNREGA was extended to an additional 130 districts on 1 April 2007, and subsequently to all districts on 1 April 2008. Civil society actors who had been involved in the formulation of the Act continued to be actively involved in the monitoring of its implementation, both through their own initiatives, as well as through processes led by state actors such as the CEGC. These actors were also part of various initiatives that were sanctioned by the MORD but carried out by these same mediating actors - showing how these actors had successfully transgressed the ‘state’ boundary and made a place for themselves in monitoring activities.

In addition, several monitoring activities were undertaken by these actors independently of the state. These took the form of consecutive rounds of surveys conducted by the RTF campaign, with outcomes published in weekly magazines, journals and subsequently as an edited book (Khera 2012). Other initiatives involving these mediators have included conducting regular social audits, training of ‘mates’, formulation of formats for muster rolls and other documents pertaining to MGNREGA, and organisation of Labour days etc. These activities have accorded legitimacy to the actors, as well as ensured their continued mediation in the implementation processes of the MGNREGA. One tangible outcome of this mediation is the change in rules and operational guidelines; another is the circulars and notifications issues by the central ministry or state level departments pertaining to the implementation of these guidelines.

**Mediating Actors: State or Society?**

From the above discussion, it can be seen that there were a large number of actors involved in the formulation of the MGNREGA. However, because of the multiple positionalities, affiliations and roles that various actors played, it is difficult to classify these actors clearly as ‘state’ and ‘non-state’. Instead, the story of MGNREGA’s formulation can be understood as taking place in four decision-making domains – parliamentary, executive, party political and civil society domains (Chopra 2011a,b).

Further, examining the institutions and actors within these four domains highlights that as the state cannot be said to be monolithic (ibid: 104), the mediating actors cannot be neatly classified as being within the state or within society. In the genesis phase, most of the mediating came from actors who were outside the state, and were holding the state to account through legislative action, or through ideas expressed within political parties. However, in the articulation phase, these boundaries start to blur. While mediators like members of the Right to Food Campaign are ostensibly within ‘society’, they play a crucial role in the NAC, a quasi-state organisation. The NAC in turn, takes up the role of a mediator between ‘society’ and the executive, but also through party politics. The negotiation phase sees many more actors involved, including mediators from within the
state, especially political party leaders. However, because most of these actors are involved in a variety of spaces and change their positionalities in these different spaces, it becomes even more difficult to easily pinpoint which group these mediators belong to.

While several activities undertaken by the mediators reinforced and constituted the ‘idea’ of the state (such as oppositional writings and pressure on what the ‘state’ should do through demonstrations), the mediators also redefined the boundary between ‘state’ and ‘society’ actors. An example is that of the creation of the NAC and its taking up the role of the state (in putting forth a draft NREG bill), which ensured its legitimacy both as being a part of the state, as well as a mediating institution. Similarly, while the PAEG set itself as an opposer to the ‘state’ through oppositional tactics, its members were part of closed door negotiations, as well as informal mediation activities. Another example comes from the party political domain, wherein some Left leaders were both part of the ‘state’ through parliament, as well as leaders of trade unions and members of the PAEG. This discussion highlights the point that the distinction between ‘state’ and ‘non-state’ actors is fluid and fuzzy (Chopra 2011a,b), and that mediators are both from ‘state’ and ‘society’ groups.

The final enactment phase sees a continuation of the blurring of boundaries, both with the mediators changing positionalities, but also a clear attempt to separate out and formalise roles of mediators, for example through constituting the CEGC. From this and from the analysis above, it can be concluded that mediation is about state-society interactions through which the distinctions between the state and society are reproduced.

**Modes of Mediation and Strategies of Mediators**

The above discussion has highlighted that instead of conceptualising mediators as actors between state and society, these actors need to be seen as falling both within the state, within society, as well as within spaces where the boundaries of state and society overlap and blur. Mediators can be seen to use the binary of state vs society as a political resource. The following section reflects on the objectives of the mediation leading to different modes of mediation, and the strategies that these varied mediators undertook during the making of the MGNREGA.

In the genesis phase, the objective of the mediation was about germinating an idea about state-provided employment guarantee, with the outcome being of laying the foundations on which the idea could be crystallised. Examining the remaining three phases of mediation (articulation, enactment and notification) brings to the fore three different modes in which mediation was carried out, each mode fulfilling a specific objective. In the discussion that follows, it will be important to underscore that these modes do not directly correspond to each of the phases, but are in fact overlapping across these phases.
The first mode of mediation involved surfacing and demanding employment as a guarantee. This encompassed talks with political party leaders to ensure that the commitment towards the idea was written down (articulation phase), and also the Bus Yatra, accompanying media briefs and various public demonstrations (enactment phase).

The second mode of mediation included both formal and informal linkages with various ‘state’ actors in order to negotiate with the state for inclusion of specific provisions in the Act and in the rules. Formal initiatives included depositions and memorandum to the Standing Committee (enactment phase), participation in the NAC (articulation phase) and formation of the PAEG and its subsequent activities (enactment phase). The formulation of the CEGC with inclusion of mediators within this body was an example of the outcome of building inter-linkages and networks that the mediator undertook. All these activities were backed up by regular media updates provided to sympathetic journalists thereby building pressure on the decision makers. The third mode of mediation used by the mediators was their continued engagement and providing assistance to the MORD in formulating rules and guidelines (in the enactment and notification phase), at the same time as undertaking their own monitoring activities (in the notification phase). Through these, the mediators continued to stake claim to implementation and monitoring activities associated with the Act.

In these three modes, a defining strategy that the mediators followed was the use of multiple entry points through different tactics, into the formal decision-making processes of the Indian state. This can be seen in the articulation phase by the idea of employment guarantee and a right to livelihood being expressed not only through the Congress manifesto and subsequent NCMP of the ruling coalition, but also via Supreme Court writs directing the government to use unused reserves of grain for Food-for-Work programmes. This also included informal activities such as building personal connections with central level politicians, out of hours meetings with parliamentarians, informal engagement with the MORD officials (including sitting in or participating in their meetings during both the negotiation and the enactment phase), and mobilisation of party leaders and trade unions. Using personal connections to advance political and strategic ideas was thus another cornerstone of the mediation process. In the enactment phase, use of personal connections and multiple entry points became an especially important strategy:

...we tried to speak to Left party MPs...tried to convince them, this would be the danger if you pass this Bill like this...that time also there was not much positive response unfortunately from many corners... the day this Bill was discussed in Parliament, [P3] was going to meet Sonia Gandhi, and we gave a letter in his hand, to deliver to Sonia Gandhi – and he also spoke to her...and [C4] and [A3] also met Sonia Gandhi...then the third amendment to the Bill [regarding
minimum wages] was brought...that was a very big fight actually... (T1, 17/03/2007).

Strategies of negotiations, deliberations and compromise marked all the phases and modes of mediation. Negotiations were also marked by an objective of consensus building, driven at the highest echelons of policymaking. Most of these negotiations were conflictual (with different high powered actors disagreeing with each other’s point of view) and therefore often fraught with tensions.

Another critical strategy used for mediation was the creation and use of windows of opportunity. The creation of the NAC and the invitation to civil society to join in was a significant landmark in the formulation of the Act. It was to their credit that these actors made full use of this window of opportunity. The final strategy that is important to note was the use of the principle of accountability. The promise made in the Congress’s manifesto was translated into a firm commitment by the incumbent UPA government and this formed the basis on which various mediators demanded the enactment of the Act. This meant that the government was continuously held accountable to the promise that it made. This also had the effect of hastening the speed of formulation, with considerable pressure to formulate the Bill as soon as possible.

**To Conclude: Outcomes of Mediation**

This paper has narrated the story of the formulation of the MGNREGA in India in order to reflect on the positionality of mediating actors, and the modes through which this mediation was carried out. It was seen that mediating actors included individuals as well as organisations/ institutions/collectives. Further, it was difficult to establish clear and distinct positionalities of the mediators, thereby demonstrating that mediators could belong within the state, within societal groups, as well as operate in the fuzzy boundaries between these. As this chapter set out in the very beginning, this case has therefore established that mediation is a process of representing the poor and marginalised to public authority through which a) the boundaries between state and non-state are constantly redefined and b) these social categories are used strategically for political ends in the policy process.

In analysing the objectives of the mediation process, three distinct modes were identified, which operated across the four phases that were used to describe the Act’s making – genesis, articulation, enactment and notification. The first mode of mediation encompassed generating and highlighting a demand, in this case for state-provision of guaranteed employment to the rural poor. The second mode of mediation was to negotiate for specific benefits, in this case, provisions to be included within the policy document. The third mode of mediation was to establish and crystallise the continued role of the mediators. These three modes incorporated strategies such as use of multiple formal and informal links, negotiation, deliberations and compromise, creation and use of windows of opportunity, and the use of the principle of accountability. These
strategies differ depending on the nature of the relations between the state and non-state actors, and also on the outcomes that are being negotiated.

Before concluding, I present a final discussion on the outcomes of the mediation process. These are clearly positive in this case – the MGNREGA was passed unanimously in Parliament, and within two years, was extended to all districts of India. Many of the concerns that the initial actors had regarding the pro-poor intent of the MGNREGA were laid to rest, both through specific provisions in the policy, as well as through detailed rules and operational guidelines. And civil society actors continue to play a role in monitoring the Act’s implementation and pushing for pro-poor outcomes (rising wages, increased community assets, increased awareness and mobilisation of the poor on rights based issues) of the MGNREGA to be realised. Finally, this process perhaps signifies an increased openness of the Indian state to engage with civil society.

In sum, this case has demonstrated the possibilities for bringing pro-poor social change through civil society influence. However, three crucial caveats pepper this celebratory conclusion. The first caveat relates to the motivations and orientations of the mediators. In this case, mediators were largely operating in the interests of the poor, and hence we can celebrate the Indian state’s openness to listen to them. But this may not necessarily be the case, and one can easily imagine a scenario where the motivations of mediators, and thus the objective of the mediation, may be detrimental to the interests of the poor.

Secondly, it needs to be remembered that although there were a large variety of mediating actors involved in the MGNREGA’s making, the depth of the participation of ‘society’ at large, and marginalised groups in particular, was shallow. This implies that while mediation has the possibility of bringing about pro-poor outcomes, it does not necessarily lead to a deepening of the engagement between the state and the most marginalised. Finally, it needs to be remembered that while mediation implies power, this is not uniform across all mediators, which leads to varying outcomes. For example, in the MGNREGA story, the urban poor were totally neglected. So were old people, disabled and the sick, with the focus being on ‘able-bodied’ individuals. While there were some mediators specifically arguing for pro-women and pro-gender tenets, there was only a partial resolution of these and other critical aspects in the policy (Chopra 2014 forthcoming). These incomplete resolutions and failures are reflective of the varying power of mediators, both through their own positionalities, as well as through the networks and personal connections that these mediators can draw upon. Mediation thus also leads to inclusion and exclusion of interests, and outcomes that may not necessarily be in the best interests of the most marginalised and the poorest.

References


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i Even if seemingly the Executive drives policy, but this is done on direction of, and in consultation with Parliament.
ii This four-phased classification needs to be seen as a mere heuristic device, as argued elsewhere, because policy making is not linear, and is much more complex and iterative (Chopra 2011a, b). The phases described below actually follow a rough temporal division, which does not signify linearity. This is primarily because actors, activities and events in each phase have links to, and influence on other phases, and are thus iterative.
iii Registered in the Indian Supreme Court as ‘PUCL vs. Union of India and Others, Writ Petition (Civil) 196 of 2001’ (Right to Food 2008)
iv Translates into: Organisation to fight against Drought.
v This meant that although the Left parties would vote for the Congress in Parliament, no member of the Left parties wanted to be given positions in the Cabinet. This would allow the Left to maintain autonomy but yet have influence over the ruling coalition.
vi The NCMP was the basis of the support of the Left parties to the UPA government, and was jointly formulated by them.
iii NAC members who were interested in the Bill raised the issue of its delay in NAC meetings, leading to the NAC chairperson sending a letter to the PMO requesting that the Bill’s progress be expedited.
viii Notably on minimum wage provision, switch-on-switch-off clause linked to corruption, transparency issues and reservations for women workers.
ix This included adding reservations for women workers, and removal of the switch on-switch off clause.
x My data collection ended in April 2007 hence I am able to report back only until that time.
xii Mates are worksite supervisors, who are chosen from amongst the workers – they are responsible for worksite attendance and maintenance of basic records which in turn determine payment to workers.