

fourth edition

right to food



human rights law network
india

Right to Food

Salient features

- **The Indian Right to Food Case**
– Colin Gonsalves
- **Supreme Court Orders**
- **High Court Orders**
- **Commissioners' Reports**
– Dr NC Saxena
– Harsh Mander
– Biraj Patnaik
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- **CVC Report on Public Distribution System**
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- **Voluntary Guidelines on the Right to Adequate Food**



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- Work towards an increased awareness of rights as universal and indivisible, and their realisation as an immediate goal.

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INTRODUCTION

to the First and Second Editions

We were in Jaipur for a meeting organised by Kavita Srivastava of the People's Union for Civil Liberties (PUCL) unconnected with starvation deaths, where we met Jean Dreze, a professor of economics in Delhi. He suggested that we go with him to a village nearby to see the extent of hunger in the countryside. An hour's drive from Jaipur and we were in another world – that of the dispossessed. People had no food at all and fluoride in the well-water had prematurely aged the young people.

Mere miles away were the godowns of the Food Corporation of India (FCI) – full of grain, some of it rotting and a feast for rats.

This is the spectre of starving India.

In December 2000, the union minister for consumer affairs and public distribution wrote to all chief ministers admitting that five crore people were victims of starvation. A few days later, the chief minister of Rajasthan complained to him that he had heard that lakh of tonnes of food grains were sitting in the godowns of the corporation and that there was a proposal to dump it in the sea. To make storage space for the next crop. When Manoj Parida, senior regional manager of the FCI, was interviewed on the Star TV news channel, he said that he could only give the grain to the states if the central government allocated it, and that his dilemma was that he couldn't just throw it away!

In 1988, in the case of Pradeep Kishen, when starvation deaths were brought to the notice of the apex court, the court accepted the assurances of the Government of Orissa that the situation would be looked into, and hoped that starvation deaths would cease. Ten years later, another petition was filed, detailing hundreds of starvation deaths. In 2001, when Kavita Srivastava of the PUCL (Rajasthan) filed a petition, the condition of the people had not changed.

NO WILL TO ACT

Why is it that with 60 million tonnes of grain over-and-above the 'emergency' buffer stocks, India still has hunger on this scale? Why are half of India's children malnourished? No answer. Shanta Kumar, the minister responsible, remains unruffled despite widespread condemnation. And the prime minister appeared on television recently to say that the reports of starvation deaths are false and politically motivated.

All this in a situation where it has been calculated that it is cheaper to give this grain away free to the poor than to transport and store it! A compassionate court would have none of that. It was found to be incomprehensible that a litigant would have to move the highest court merely for a direction to government to implement its own schemes.

"Cut the flab somewhere else", said the Court when confronted with the argument that the states had no funds to feed hungry children. From the Ratlam municipality case onwards, the apex court has held that when it comes to the enforcement of a fundamental right, courts will not entertain the argument of financial incapacity.

Hunger spreads not because the State lacks the funds to act but it chooses to use its money elsewhere in what V. R. Krishna Iyer once called “a perverse expenditure logic”. A second aircraft carrier for the Navy, to be purchased soon, will cost a thousand crore, an amount that could feed all of this nation’s children. But macho muscle flexing is more important than that! And we have examples of ostentation such as the foreign trip of the Vice President of India, Krishna Kant, and his family, at the State’s expense.

SCHEMES IN DISARRAY

As a result of this trend, we are now in a situation worse than the colonial era. Governments do not care that people remain illiterate or in ill health, not even if they die. It just does not matter.

The British evolved a *Famine Code* which ensured that anyone needing food in a famine area had only to turn up at a work site – a road, a school building, a watershed management programme – to get work. At the end of the day, a woman would get half of her wages in grain. Famine records show that the prompt implementation of food for work programmes reduced hunger and prevented starvation deaths. For those unable to work – the old, infirm and disabled – there was a dole of fifty paise per day.

Fifty years after Independence, this Famine Code is in disuse and the elaborate procedure laid down for tackling famines disregarded. The watered-down remedy – the Employment Assurance Scheme (EAS) – provided for employment for two family members on food for work projects for 100 days in a year. This was never implemented. And recently, the prime minister announced from the Red Fort that the scheme was being upgraded and renamed as the *Sampoorna Gramin Rozgar Yojana* (SGRY). This ‘upgraded’ scheme, however, provided work for only ten days in a year!

The ration card system, the only mechanism in place to feed the poor, is in disarray. In India’s capital, the identification of Below Poverty Line (BPL) families started after the court case and there were many complaints of corruption in the issuing of forms.

The *Mid-Day Meal Scheme* (MDMS), introduced as far back as 1995 and requiring a cooked meal to be given to all children in government and government-assisted schools, was implemented fully only in Tamil Nadu. The Delhi government only gave a few biscuits to its school children.

The *Annapoorna Scheme*, which provides grain to the poorest of the poor at Rs. 2 per kg was also not implemented. The beneficiaries of the national Old Age Pension Scheme usually received their pensions six months late if at all.

No wonder that the Comptroller & Auditor General, in his Year 2000 Report, found significant systematic weaknesses in the fair price shop system. He found the reports of employment generated not genuine. The Employment Assurance Scheme, which promised a hundred days of food for work, in practice provided only nine days of work. Scarce resources were lost in the labyrinth of a slothful administrative system. The report found one-fifth of rural households facing the prospect of hunger. Forty percent of all households did not get two square meals a day. Concluding, the Comptroller & Auditor General found serious flaws in design, execution and monitoring of the schemes.

A study conducted by the Tata Economic Consultancy Services found a large number of bogus ration shops, and 30 percent of the grain being diverted.

SUPREME COURT ORDERS

The court directed that the targeted public distribution system be fully implemented by January 2002 and that all governments complete their identification of Below Poverty Line (BPL) families, issue ration cards and distribute 25 kg of grain per family per month by that date.

A similar order was passed for the *Antyodaya Anna Yojana* (AAY) scheme, under which the poorest of the poor get grain at Rs. 2 per kg. The Supreme Court directed that the governments should consider giving the grain free to people who are too poor to buy it. It directed the governments to provide a cooked mid-day meal in all government and government-assisted schools.

It directed governments to implement the National Old Age Pension Scheme (NOAPS) fully by January 2002 and to make payments of pension by the seventh of each month.

Similarly, directions were made in respect of the Annapoorna Scheme, the Integrated Child Development Services (ICDS), the National Maternity Benefit Scheme (NMBS) and the National Family Benefit Scheme (NFBS).

The final order was dated May 8, 2002. In this order the gram panchayats have been empowered to frame the food-for-work schemes, wherein special emphasis is to be given for the poor, women and dalits. Contractors are prohibited. The gram sabhas are also empowered to conduct a social audit of all the food and employment schemes and to report instances of misuse of funds. On such reports being made, the authorities are required to punish the guilty. The gram sabhas are also empowered to monitor the implementation of the various schemes and to have access to relevant information as to how beneficiaries are selected and how benefits are dispersed. A grievance redressal procedure is set out in this order. Complaints of non-implementation of the Supreme Court's order are to be made to the CEO/collector and these complaints are to be acknowledged with a receipt. Ultimately it is the chief secretary who is made responsible. Dr. NC Saxena, former planning secretary, and Mr. SR Sankaran, former secretary for rural development, have been appointed as commissioners of the Supreme Court for the purpose of looking into people's grievances. The Supreme Court has also directed government to frame clear guidelines for the proper identification of the BPL families as there were complaints that these criteria were neither clear nor uniform. Ration shops have been directed to remain open throughout the month during fixed hours, the details of which should be displayed on notice boards.

TRANSPARENCY

Most officials do not even know of the schemes in their own jurisdiction. There is no way for people in a village to know what schemes they are entitled to. The order of the Court in the Rajasthan PUCL case will hopefully change the situation for the better. A translated copy of the Supreme Court order and the list of the beneficiaries of each scheme are to be displayed on every gram panchayat notice board and in schools. Doordarshan and AIR are to publicise the schemes.

When all is said and done, even with the apex court order, the level of compliance will go up to, say, 35 percent. Hunger will remain institutionalised. For as long as priorities do not change, half of India's population will be kept deliberately hungry by State policy. Only a revolution in thinking can change that.

Madhura Swaminathan, in her recent publication "Weakening Welfare", has studied the Public Distribution System (PDS) in India. Noticing that food deprivation and insecurity persists on a mass scale,

she concludes that this situation of mass deprivation is likely to worsen in the current context of “liberalisation, structural adjustment and the weakening of welfare systems”. She argues that there is a need to expand and strengthen – not undermine or disband – the PDS system. She has identified ‘targeting’ as a dangerous policy introduced as a mechanism to ultimately close down the PDS. A substantive part of the information in the next part of this introduction is largely taken from her book.

HISTORY OF THE PUBLIC DISTRIBUTION SYSTEM

- 1964 : FCI set up as a sole central agency for procurement, storage, transportation and distribution of food commodities viz. rice, wheat, sugar, edible oils, kerosene and coal.
- 1964-1978 : Drought of 1965/67 and 1972/73 provided strong impetus for the expansion of PDS.
- 1978-1991 : Food grain distribution through PDS peaked in 1991 at 20.8 MT.
- 1991 onwards : Food grain distributed through PDS falls substantially to 14 MT in 1994. Stocks accumulate.
- Between 1991 and 1994 PDS process doubles. The poor are priced out. Sales drop, stocks build up in this period, because global prices are temporarily high. Export takes place at the cost of nutrition in India.
- 1997 : Targeting introduced.
- 1998 to 2001 : Above Poverty Line (APL) prices were increased 85% (wheat) and 61% (rice) and BPL prices by 66% and 62% respectively.

THE SPECTRE OF MASS HUNGER

The National Sample Survey data shows that per capita consumption of cereals declined in every state except Kerala in both urban and rural areas. **A shift is noticed from cereals to other food items of lesser nutrition among the poor. This exacerbates under-nourishment.**

Nutritional surveys done by the National Nutrition Monitoring Board confirms this inadequacy of food (and cereal) intake by large parts of the population well below the recommended intake of 460 grams. Referring to “hidden hunger” it found an inadequate intake of micronutrients, which play a critical role in body functioning.

The National Sample Survey Organisation found in 17 of India’s most populous states that the average calorie intake declined between 1972 and 1994. **The decline was particularly sharp in rural areas.**

At the all-India level, total calories per head in rural areas has fallen to 2149 by 1999-2000 compared to 2211 in 1983, a decline by 72 calories per head. This level of 2149 calories per head in 1999-2000 is substantially lower than China or Brazil’s level of 2757 calories and 2797 calories in 1993. It is also lower than Tanzania or Kenya’s level of 1980.

A commonly used indicator of under-nourishment is the Body Mass Index (BMI). For this ratio of weight (kg) to the square of height (m), 18.5 is normal. Using this indicator, Shetty and James found 46% of persons chronically deficient in 1991-1992. Severe under-nourishment was observed among 9%. In other words, one half of the population in the country is malnourished. Of these 53% of children were found to be undernourished and 21% severally undernourished.

POVERTY LINE EXCLUDES MANY HUNGRY PERSONS

The original standard for the definition of the poor was thrice the food expenditure as it was shown that poor families spend 1/3 of their expenditure on food. Any household that spends more than 1/3 of its income on food is considered poor in the United States and eligible for food stamps. If this standard were used in India, 95% of all households would be considered poor. If one uses the China standard of a food share of 60%, then 80% of the rural population and 60% of the urban population would be considered poor. Thus in India, at most the top 20% of the population can be excluded from systems of food security.

When there is mass hunger the weight attached to every undernourished person who is wrongly excluded should be much higher than the weight attached to a rich person who benefits from the scheme.

The conclusion drawn by Swaminathan is that the proportion of persons suffering deprivations in food and nutrition is higher than those classified as below the poverty line. For example 37% of urban household were BPL in 1993-94 while 80% of household were calorie deficit.

If the objective of PDS is food security then it should also look at those facing the risk of under nourishment. While anthropometrical measures suggest 50% of adults are undernourished, 70% of households are deficient in food consumption.

Swaminathan concludes: chronic hunger persists on a mass scale in India.

STRUCTURAL ADJUSTMENT AND THE DECLINE IN PER CAPITA OFFTAKE

There are sharp regional variations in total and per capita offtake. Some of the southern states, Andhra Pradesh, Tamil Nadu, Kerala and Karnataka, accounted for almost one half of the PDS offtake of grain in the country. By contrast the four northern states – Bihar, Madhya Pradesh, Rajasthan and Uttar Pradesh – accounted for only 10% in 1995. Kerala was undoubtedly the leader with a fair system of public delivery. The average per capita offtake was 53.3 kg. per year as compared to 2.3 kg. in Bihar and 4.6 kg. in Madhya Pradesh.

The most striking feature of immediate post-structural adjustment (1991-1995) was the widespread decline in per capita offtake.

In Uttar Pradesh and Bihar in 1987, 98% of the rural population did not purchase any grain from PDS. In Kerala by contrast, 87% of the population purchased grain from PDS. The data indicated that PDS was not serving the vast majority of the country's population and that there was a near total collapse of the PDS system in Bihar and some northern states.

CORRUPTION AND MALADMINISTRATION

In Thane district in Maharashtra, Swaminathan found that ration cards of scheduled tribes showed full offtake though the tribes had not purchased food from the ration shops. Other research has found bogus ration cards, poor quality grains and short weighing of foods. Researchers have estimated that only 17% of the wheat lifted from FCI by the state governments reaches the final consumer in Bihar!

Insufficient supply of grains was the most important reason given for not using PDS. Forty percent did not buy grain because there was none to be bought.

TARGETS, FOOD STAMPS AND OTHER RACKETS: AN INTERNATIONAL PERSPECTIVE

Mexico

Changes began in the 80s when food subsidies were cut by 80%. In April 1986 a targeted food stamps programme was started where stamps could be exchanged for food. Targeting was done in three ways. First there was an income criterion where only those with an income less than twice the minimum wage were eligible. Then there was geographical targeting of low-income neighbourhoods. Thirdly there was self-targeting as households had to go to a particular place to register. Targeting led to a fall in the number of households receiving subsidised food. The decline was 80% between 1983 and 1987. Secondly, the market price of food rose sharply. In 1982, the basic food basket was 30% the minimum wage; it rose to 125% in 1990.

Sri Lanka

For more than 30 years, Sri Lanka had an effective universal system of heavily subsidised food rationing. The individual entitlement was 7.2 kg. of rice per month. In 1972 a distinction was made between persons paying income tax and those not paying. In 1977, encouraged by the International Monetary Fund (IMF), it was decided to cut food subsidies. The IMF wanted food subsidies to go completely whereas government wanted to maintain the food subsidy for the bottom 40% of the population. In 1978, targeting was introduced with an income qualification. In 1979, there was a shift to the targeted food stamp programme. As a result, there was a fall of 50% in the participating households. A significant proportion of low-income groups were excluded from the food stamp programme. Then the value of food stamps declined as inflation increased causing the food subsidy to decrease. The prices of food commodities rose sharply. In the evaluation of the scheme the ministry of plan implementation found more families put at risk nutritionally, a decline in per capita calorie intake of the poor and increase in the proportion of children suffering from acute malnutrition.

Zambia

In January 1989, food coupons were introduced, and in July targeting on the basis of income began. Many poor households were excluded and food security worsened.

Jamaica

Until 1984, there was a system of generalised price subsidies. In 1984 these were eliminated and replaced by food stamps and a school-feeding programme. There were two target groups. The first category included pregnant or lactating women, children under five, the elderly, poor and the disabled. The second category included those below a particular income level. This standard was lower than the cut-off used by the Statistical Institute of Jamaica to identify the lowest income group.

As a result, government spending on food subsidies fell dramatically. While 1% of GNP was spent on food subsidies in 1972, spending on food stamps in 1994 was only 0.23%. Spending in 1994 was only 57% of the 1991 level in real terms. Secondly, the real value of stamps fell by 17%. Thirdly, high inflation led to a steep rise in the cost of the minimum food basket. In October 1984, for example, the cost of the minimum food basket was three times the minimum wage. Fourthly, the number of participants was restricted. Fifthly, many of the poor were excluded because their identification was based on crude surveys with no attempts to verify reported income except through observing “quality of housing and consumer goods” during a brief home visit. There was no system of continuous verification or registration. Participants had to collect the stamps on certain days of the month. As a result of all this, it was found in 1988 that 53% of households in the poorest quintile were not receiving food stamps. Sixty three percent of households with pregnant or lactating women were excluded. Fifty percent of the household with malnourished children were denied benefits. In the poorest quintile of households with elderly persons, 45% were excluded from food stamps. This situation worsened in the 80s.

Tunisia

In December 1993, a doubling of the prices of cereals was announced. There were widespread and spontaneous “bread riots”. The President rescinded the price increases. In the early 1990s as part of a structural adjustment loan, targeting was introduced. The extensive and successful system prevailing in Tunisia since the 1970s came under attack. Expenditures on food subsidies fell. In 1993, food subsidies accounted for 2% of GDP as compared to 4% a decade earlier. Between 1990 and 1993 there was a 14% fall in caloric intake and a 16% fall in protein intake.

Columbia

A study done by Pinstrip and Anderson in 1993 found the food subsidy programme targeted out of existence.

India: Sabotaging the Public Distribution System

In recent times, advisors to the Government of India and the World Bank (WB) have suggested a shift from PDS to a system of food stamps or coupons. Such advice generally ignores not only the experience of other countries but also the inherent difficulties in implementing such a system, Swaminathan points out that a food stamp system entails extensive book keeping, revalidating of coupons and the possibility of fraud by the counterfeiting of coupons.

Two major moves were made by the Government of India to sabotage the PDS system—in all probability with the nudging of the WB and the IMF. The first came in 1992 with the ‘Revamped PDS’ (RPDS) and the second in 1997 with the ‘Targeted PDS’ (TPDS). This came together with another major policy shift in the 1990s, away from the agricultural strategy of self-sufficiency in food grains production.

One way of weakening the PDS in the early 1990s was by repeatedly raising the price in the PDS shops. These prices were increased to such an extent that the cumulative price increase of food grains in the PDS shops was higher than the rise in the general price index. Coupled with this, government sharply reduced the supply of food grain to the PDS since 1991. Thus from 1991 till 1998 there was a fall in per capita offtake.

Revamped PDS involved targeting specific areas such as drought-prone, desert, tribal, hilly and urban slum areas. Targeted PDS used the poverty line to demarcate the poor and the non-poor. This system was so arbitrary and irrational that it resulted in large numbers of poor persons being excluded. There was no method at all to determine whether the family fell below the poverty line. The income criterion was not followed in most states and particularly in the rural areas, as following the stated income criterion would result in 90% of households falling below the poverty line. Reports from many rural areas indicated households were classified as falling below the poverty line on the basis of visual inspection as to whether the household had a tiled roof or a mud floor. In many tribal areas poor families were excluded if they stated that they ate meat!

Madhura Swaminathan's study of the revamped and targeted PDS found that entitlements were lower in the revamped PDS areas than under general PDS. She found that retail prices in PDS shops in Maharashtra were the highest in the country and rising faster than at the national level. As a result, quantities of grain sold were falling since 1991. Targeting had replaced the per capita norm by the family norm. Using the poverty line resulted in misidentification of households and mistargeting.

Moghe, in his study of Maharashtra, found that when targeted PDS was announced there were 60 lakhs households, according to the central government, eligible for BPL category. The state restricted this number to 43 lakhs.

In slums, households were classified as BPL or A ('above') PL on the basis of a few enquiries resulting in absurdly low numbers. In Dhavari, Asia's largest slum with a population of 0.5 million, the rationing control officer identified only 365 PBL families in 1997 and after 're-checks' the number fell to 151 in 1999.

The World Bank has recommended that PDS be targeted to the "very poor" and that a distinction be drawn between the "very poor" and the "moderately poor" to improve transfer of food to the "ultra poor". The very poor are defined as households that have expenditure less than 3/4 the BPL expenditures. The remaining 1/4 are defined as moderately poor. In short, an extremely narrow form of targeting is being propagated to groups within the poor. This, Swaminathan concludes, is most undesirable. What we need is a system of near universal provision. At most, the top 20% of the population can be excluded.

When there is mass hunger, the weight attended to every undernourished person who is wrongly excluded should be much higher than the weight attended to a rich person who benefits from a scheme.

When there is targeting, especially with a low-income cut-off, errors in measurements can mean disqualification for genuinely poor persons. Secondly, there is an incentive to cheat. Thirdly, time specific cut-offs makes little sense when there is downward income mobility. Gaiha, in his 1987 study, found that 13% of the non-poor in 1968 had become poor in 1970.

GLOBALISATION AND THE PLANNED DESTRUCTION OF INDIA'S AGRICULTURAL PRODUCTION

Utsa Patnaik has written on this issue. In this part of the article we rely on her inputs.

Food grain output dropped sharply to 1.66% (1999-2000) compared to 3.54% for the previous decade. There was a decline of eight million ha in the area sown as food grains. The sharp cut back in

government rural development expenditures reduced growth in rural employment to only 0.6% (1993-1999) as compared to 2% (1987-1993).

Surplus production of a few 'advanced countries' accounts for 4/5 of the global trade in cereals. These countries have focussed their attention on the markets of the 'developing world'. To penetrate these economies and attack their agricultural production systems, the advanced countries ensured that their export of grain would be at very low prices so as to make local prices appear exorbitant. One of the ways in which the prices were kept artificially low was by the grant of large subsidies to the farming sector including grants to agro-business corporations.

During 1980 to 1986, for example, cereal prices fell by one-fourth, the US increased the Producer Subsidy Equivalent (PSE) as a percentage of the total value of agricultural output from 9% to an astronomical 45%, and European countries followed suit. Ten European countries raised the PSE to agricultural output percentage from 25 to 66 while Japan raised it from 71 to 93. These highly inflated mid-80s subsidy levels were then deliberately made the base from which a mere one-fifth cut was undertaken by advanced countries in the Agreement on Agricultural of GATT in 1994.

There is another indicator of farm subsidies. It is called the "Total Support Estimate" (TSE). This is the figure of total support to farmers. The USA which had reduced its TSE to 34% of its value of agricultural production by 1997, raised it by 51% in 1991 and then hugely in 2002 thus transferring between 71 to 96 billion dollars between 1997 and 1999 to the farm sector. There is a farm bill before the US Congress proposing to pay additional subsidies of 73.5 billion over the next 10 years. Similarly the 24 OECD countries including Japan increased their TSE from 46.5% in 1997 to 59.4% by 1999.

As a result, the global prices of major staples like rice, wheat and maize have been halved and developing countries, where protection has been removed, have become vulnerable.

The proponents of globalisation thus have double standards. While massively subsidising their farm sectors, including massive agro-corporations, the argument is simultaneously made in the developing world for subsidies to be removed! Advanced countries have, through incessant pressure applied via the WTO, succeeded in getting quantitative restrictions removed fully years before the mandatory date. They are now pushing for the winding up of the PDS. Thus opening up to free trade in agriculture is taking place at the worst possible time when global food prices have been crashing.

After grain inputs for Eastern Europe and CIS countries declined sharply in the early 1990s, the USA turned its attention to penetrating South East Asian countries using the familiar rhetoric that all subsidies were bad. The Philippines, for example, gave up its functioning grain procurement and distribution system and became a net importer of US grain.

SUICIDES

In India, liberalised trade policies, have resulted in massive losses for farmers. Farmers in Andhra Pradesh, Maharashtra, Karnataka and other states have been devastated. Many have committed suicide. Cotton farmers have been killing themselves since 1998. In the first month of 2002, above 25 new cases of suicide were reported from Andhra Pradesh. Many have resorted to selling body parts such as kidneys. Recovery proceedings have resulted in the taking away of land, houses, farming tools and equipment and even household articles including utensils!

LOW FOOD SUBSIDY: NOT A BURDEN

Swaminathan has demolished the myth that the 'burden' of food subsidies is too high pointing out that food subsidy as a percentage of GDP has remained unchanged over the last 31 years at 0.31% of GDP. This compares favourably with Sri Lanka (1.3% in 1984), Mexico (0.63% in 1984) and Tunisia (2% in 1993).

KERALA LEADS THE WAY

According to Swaminathan, the Kerala experience shows that with political commitment food security can be obtained. The establishment of an effective PDS system in Kerala was the outcome of a strong people's movement for food. As a result, the coverage is almost universal. In 1996, 95% of households were covered. The poor depend on and use PDS more than the rich. The functioning and delivery system is far better than other states.

RUTHLESSNESS

Returning to the petition in the Supreme Court. The government responded to the Orders of the Supreme Court with stealth, guile and ruthlessness. While compromising on minor issues, the government set about sabotaging the already fragile system of food security in the country.

First, it dealt with the excess food stocks not by using them for appeasing hunger in food-for-work schemes, but by exporting the grain. In the two years, between 2000 and 2002, the Government of India exported 20 million tonnes of grain to Eastern European countries, much of it for cattle feed, at prices below the BPL price.

Second, it proposed a slashing of the BPL list and attempted to remove millions of BPL families from the list. The principal justification for this were articles of dubious merit claiming that poverty in India had declined from 37% of the population to 27%. Utsa Patnaik, Professor at Jawaharlal Nehru University, made a stinging response basing her calculation of poverty on the calorie intakes and demonstrated that if the BPL cut-off line (fixed in 1979 at an intake of 2400 calories per person per day) were used today, 80% of the population should be at or below the poverty line. Even if the cut-off was taken at 1800 calories, 40% of the population should fall below the poverty line.

Third, while exporting grain, the Government of India is poised to import genetically modified grain, thus capitulating to the grain transnationals, giving them not just a toe-hold, but allowing them a stranglehold of the Indian grain market (reportedly one of the largest in the world). Unfortunately, there are some individuals and NGOs supporting this move.

This book is, therefore, coming out at a very critical juncture of the struggle for the Right to Food.

Kavita Srivastava of the People Union for Civil Liberties remains the champion of the cause and its true leader. Hundreds of other activists work without recognition in the field feeding the Supreme Court with information. The Government commissioners, Dr. NC Saxena and SK Sankaran, have done a passionate and erudite job. Jean Dreze and Harsh Mander have put in relentless work. The Human Rights Law Network's Legal team has found its way through rooms full of documents. The assistants to the commissioners have kept up the pressure on the state governments month after month. The campaign for the 'right to food' is gaining momentum.

The First Volume (edition) of the HRLN's 'Right to Food' explores the basis of the revolutionary steps by the Indian Supreme Court, in upholding Article 21 of the Indian Constitution. This volume is divided into four substantive sections.

The first section contains the orders of the Supreme Court itself, these being the result of an on-going legal petition in which the HRLN has been involved for over three years. The petition, and the Orders handed down as a result of them, are the basis for the substantial and growing campaign to guarantee the right to food for the people. These judgements are the basis in law on which it is incumbent on the government to act. There are also the judgments that the rest world is watching, the first of their kind. As such, they are contained as an entire and substantial section because they are the platform on which the rest of these volumes, as well as the effective realisation of the right to food itself, are and will be built.

The second section contains all of the Reports of the Commissions to the Supreme Court. The commissioner's were appointed to oversee the compliance, the progress and effectiveness of the implementation of the Orders of the Supreme Court, and their reports detail just that. The report's also suggest recommendations as to how the realisation of the Supreme Court Orders may be better facilitated and effected, in a practical sense.

In the third section, we have included the two recorded Proceedings of the National Human Rights Commission (NHRC). These proceedings and their recommendation are extremely persuasive for any who are interested in the realisation of the right to food.

The fourth section of this volume contains articles from qualified observers and protagonists involved in the development of the right to food in India. The incisive critical analysis of the process and progress made on the right to food, the implementation of the Orders of the Supreme Court and the effectiveness of and necessity for that implementation process, are the substance of articles included.

The Second edition of the 'Right to Food' explores the basis of the revolutionary steps taken by the Indian Supreme Court, in upholding Article 21 of the Indian Constitution. The fight for the fundamental right to food for all is very much on-going: though battles have been won in the courts, the outcome of the war is still to be decided...

(May 10, 2004 & August 11, 2005)

INTRODUCTION

to the Third Edition

I have no doubt that if the national press had not taken up the issue in the manner in which it did; had the right to food campaign not been galvanised into action; and had the Supreme Court not intervened by passing splendid orders, then the Government of India would have closed down the PDS in the country. The right-wing hawks that head the planning commission and the ministry of agriculture would rather see the Rs.30,000 crores which subsidises food be directed to middle class interests rather than hunger. Adding to this inhospitable climate, there is a large lobby of contractors both from India and abroad that roam the corridors of power looking for ways of making money out of misery.

A huge achievement between the second and third edition of this book were the Supreme Court Orders on the Integrated Child Development Service (ICDS). In these orders the Supreme Court directed the central and state governments to double the number of anganwadis, with special emphases on creating more centres in dalit and tribal hamlets. The child rights organisations, the health groups, and the right to food Campaign contributed immensely to these legal victories.

There were also large setbacks. The Government of India exported more than 20 millions tonnes of grain, sometimes for cattle fodder to East European countries, thus depriving our own citizens of desperately needed grain. This was a most cruel act by the government.

Then Sharad Pawar, the minister for agriculture, proposed to increase the prices for Below Poverty Line (BPL) grain. Nothing came of this proposal. But such a move is still being seriously contemplated by the finance minister, the planning commission and the minister for agriculture.

The commissioners office headed by Dr. NC Saxena, including Harsh Mander, Biraj Patnaik, Dipa Sinha and others continued to do spectacular documentation and analysis as they collected material for every state in India. This data was critical for a wide-range of activists' work.

Kavita Srivastava of Peoples Union for Civil Liberties (PUCL) continued to lead the movement for the reform of the PDS. Dubious studies, done by neo-liberal economists, have argued that poverty in India has declined, thereby indicating the success of World Bank and IMF policies in India. A spirited report by Utsa Patnaik and others looking at recent national family health survey data and other surveys has showed instead that 70% of the population lives below the poverty line in terms of food intake of 2400 calories per person per day. The magnitude of poverty has been hidden from international scrutiny because the planning commission has shamefully set the poverty line at Rs.15 per person per day.

The Government of India has also attempted to knock lakhs of poor persons from the BPL lists. This was resisted by the right to food campaign and the government's attempt was temporarily stopped. But there are still many in the higher echelons of the administration who feel that feeding the poor is a waste of money and if people die of hunger so be it.

A shameful cynicism stalks the land. One lobby siphons money away from the PDS system. Another lobby argues that instead of reforming the system by removing corruption that the system should be closed down. Then there are 'experts' who are quick to suggest corny ideas like food stamps and

coupons; schemes that have failed miserably abroad and indeed are designed to fail while making a pretence of reform.

Below is the draft stand of the Human Rights Law Network on the right to food, food sovereignty and the right to work.

HRLN recognises the huge crisis in agriculture. Land reforms promoted by the UPA government on the prompting of the World Bank, the Asian Development Bank and other international financial institutions has had terrible consequences for the poor and middle peasantry and agricultural labourers. Contract farming, the massive infusion of pesticides, land consolidation, displacement from land, SEZs and the acquisition of the agricultural lands for “public” and industrial projects has led to displacement and pauperisation on a hitherto unimaginable scale. The campaign, therefore, extends its solidarity to all those sections of the rural poor who are struggling against these right wing reforms and recognises that fierce resistance to these developments is the only way forward.

HRLN recognises that the taking of arable land out of food grain production is an integral part of the neo-liberal agenda. This will in turn mean reliance on imports from the multinational grain corporations based in America and Europe. HRLN resists this move. The campaign calls for a pro-farmer approach where state procurement is expanded to areas other than existing procurement states, where coarse grains are procured and sent into the public distribution system, and the campaign also seeks an increase in the minimum support price.

Noting the harmful effects of genetically modified organisms particularly in food as studied and documented by the Gene Campaign and other expert groups in the country, the HRLN is unhesitatingly opposed to the experimentation with GM organisms within India and the import of GM foods.

The Seeds Bill pending in Parliament seriously compromises rights of farmers to use seeds of their choice, undermines traditional practices, permits corporations to develop a stranglehold on the production and use of seeds through patents and other methods. It promotes the pirating of traditional knowledge and practices by corporations. HRLN therefore calls for the repeal of the Seeds Bill.

Mr. MS Swaminathan while heading the farmers commission and in his book “Agriculture Cannot Wait” has emerged as the face of neo-liberal reform of the agriculture. The RTF campaign believes Mr. Swaminathan’s vision for the future will advance corporate interest and deepen poverty in the rural areas.

Though the HRLN welcomed the introduction of NREGA, HRLN does not accept the restriction placed on the providing of employment at 100 days and that to for only one person in a family. Rather it calls for open ended employment to be provided to all persons desirous of work and unable to find work. HRLN condemns the very poor implementation of the NREGA by the central and the state governments. We have reason to believe that while making grand promises, monies were deliberately not released and NREGA sabotaged by not providing job cards, work, minimum wages, earned wages on time and unemployment allowances.

HRLN condemns the UPA government for playing around with poverty estimates and pretending that poverty has reduced. Recent data available in the country including the national family health survey indicates that 70% of the population is below the poverty line in terms of the food intake standard of 2400 calories per person per day, a standard fixed by the planning commission in 1979. Data relating to

body mass index and related data concerning the height and weight of Indians discloses a frightening situation of mass hunger. The UPA government refuses to recognise this. Likewise, the right to food campaign condemns the planning commission for declaring the poverty line as approximately Rs. 15 per day per person in the country. In the era of globalisation, where international standards are supposedly adhered to, it is shocking that the poverty line is kept so low. This is obviously an attempt by the planning commission to hide the extent of poverty in the country.

HRLN condemns the UPA government and the international financial agencies for attempting to sabotage both the ICDS scheme and the mid-day meals scheme by introducing contractors. Secondly, a powerful micronutrient fortification lobby is apparently getting its way so that when even basic food is not available to the poor for the absorption of micronutrients, hair brained schemes are being floated zinc, iron and other supplements to be supplied by corporations in India and abroad. HRLN opposes this approach completely and calls for local naturally grown food to be used in hot cooked meals and particularly for the introduction of eggs and milk in the ICDS and mid-day meals.

COLIN GONSALVES

January 2008

Looking backwards, looking forwards: The Right to Food case

It has been more than eight years since the right to food petition was filed in the Supreme Court. The trajectory of the court case has surprised us all. We can clearly say that the case has changed the discourse on the right to food in the country. In 2001, it was a desperate attempt by more than 54 groups in Rajasthan, which came together under the banner of *Akaal Sangharsh Samiti*, to demand from the state and the Central government that the doors of the Food Corporation of India (FCI) godowns be thrown open and food be provided as payment to labour at the famine relief works, as entitlements of the public distribution system and in the form of gratuitous relief to the people living with hunger. There were more than 40 million metric tonnes of grain yet our demand fell on deaf ears. It was a situation of hunger amidst plenty. We decided to come to the Supreme Court as the People's Union for Civil Liberties (PUCL). We wanted the Court to intervene and make the Government of India and the Rajasthan government provide food to the people as demanded. We also prayed that the right to food be made a fundamental right. The apex court took the matter seriously and pulled the case out of a drought framework and made it an all India case. All states, union territories, FCI and the union of India were made parties. The trend of decision-making has been that of making existing schemes entitlements and setting up accountability mechanisms in order to ensure that food reaches the deserving mouths.

Looking back it can be said that the right to food case has been a historic litigation. But the more significant feature of the case has been the fact that it has enabled the formation of several platforms around the diverse elements of the issue. The national campaign for the right to food — a network of individuals and organisations who are committed to work for the realisation of the right to food — was the first such platform to emerge along with several State and thematic campaigns. One of the most active and dynamic of all the thematic campaigns has been on the child's right to food, which has brought together from all over the country groups, researchers, doctors and all those interested in seeing that the situation of malnutrition of our children end. The office of the Supreme Court Commissioner has emerged as an independent people's research body. It has carried out the role of continuous evaluation and monitoring of the implementation of the Court's orders. It has emerged as the mediating force between civil society groups and the State agencies, ensuring that the beneficiaries get their entitlements besides playing a very important role in getting schemes recast, creation of new policies and programmes including impacting the increase of government budgets where needed.

Vikas Samvad, a media research and advocacy group has emerged in Madhya Pradesh with a focus on critical engagement with the state on elimination of hunger, malnutrition and realisation of the right to food. Using tools like that of the right to information and tying the publication of their research with newspapers, the group has managed to raise issues even in the state assembly on hundreds of infant deaths in the state. Hundred of such platforms have come up in the country where people are intervening in the area of ensuring right to food.

That the Supreme Court case and the campaign has actually led to a point where political parties would have to include in their manifestos bringing in a Food Security Act or an expansion of the PDS or ensure pensions to single women, not widows alone, shows that the right to food discourse has come of age. It has tilted the political discourse in the country towards '*Rozi, Roti*'. Thus, there is an

opportunity for the first time in eight years to consolidate the gains of the Supreme Court in the form of a law and also get entitlements beyond it.

Economic policies of the governments in the last two decades have seen a large number of people being dispossessed of their livelihoods and being forced to leave their homes and villages. People's farmlands have been made available to corporates to mine the mineral resources or for some other commercial venture. The biggest casualty has been the people's right to food. The NSSO 61st round data states that the consumption of women and men has gone much below the calorie content of 2,700 per day. It can be stated that in the last decade there have been movements demanding the implementation of the Directive Principles of State Policy of the Indian Constitution. That they be not just mere intent of the Indian State but become entitlements. It is this part of the Constitution that delivers socio-economic justice. The right to food case in many ways made the State accountable towards the elimination of hunger, making food accessible to the vulnerable and the destitute, including the old, homeless and primitive tribes. The issue of children's nutrition was central with attention being given to a woman from an ante-natal state till the child attains 14 years of age. It saved the public distribution system from being completely dismantled although the present policy is designed to meet only a handful.

While it can be said that there is much to be desired yet there has been some commitment of the State apparatus in public provisioning of food and work. The enactment of the NREGA is a step closer to making Article 41 (Right to Work) a reality. The Right of Children to Free and Compulsory Education Bill despite flaws has now put the responsibility on the government to ensure an education which imparts constitutional values to all children between 6 to 14 years. Although the most important issue of equity which can be delivered through the common school system has been left out, the gains of the RTE Bill cannot be ignored. It is in the same breath we would like to argue that since the government has announced that it will formulate the Right to Food Act, it is important that we go beyond what we gained through the Supreme Court in terms of entitlements.

The orders of the PUCL litigation on the Right to Food tried to link Article 47 (Right to Nutrition), to Article 21 — Right to Life, Article 14, 15 (equality and abolition of untouchability) to Article 21 in the right to food context, Article 21 to Article 21A (Right to Education), or Article 41 (Right to Work) to Article 21, and Article 19 (Right to Freedom of Speech and Expression) to Article 21. What can we expect of the present Act, can it go beyond this?

What this Act can do while ensuring food entitlements is to give people an actual right to food by also eliminating all those policies and programmes which actually snatch people's right to continue to produce their own food. However, what it can definitely do at the least is ensure that nobody ever goes to sleep hungry in this country.

KAVITA SRIVASTAVA
General Secretary, PUCL, Rajasthan



**Introduction to the
Fourth Edition
“The Indian Right to Food Case”**

by

COLIN GONSALVES



THE INDIAN RIGHT TO FOOD CASE

Colin Gonsalves

Writ petition (civil) 196 of 2001 in the case of Peoples' Union for Civil Liberties (PUCL) versus Union of India and all the states and union territories of India, popularly known as the Right to Food (RTF) case, had a rather casual beginning. I was visiting Jaipur in the state of Rajasthan to attend a meeting on police reform and turned up at Kavita Srivastava's home early morning for breakfast. Jean Dreze, the economist, was also there with other friends. He suggested that we visit some of the villages outside Jaipur city to take a look at the situation on hunger. On the spur of the moment we got into a jeep and went to these villages. Though I was familiar with the situation in the rural areas, the starkness of hunger and malnutrition in the Rajasthan countryside was really unsettling. Jean then explained the situation of hunger amidst plenty. He told us that there were 60 million tonnes (MTs) of grain lying in the godowns of India and that if one were to put these grains in a straight line they would go to the moon and back. Why then was there so much hunger? Why did the government not distribute grain to the poor? How could politicians and ministers allow their citizens to die of starvation when they had it in their power to release food for the poor? These were the questions that confronted us immediately and for which there were no easy answers. I suggested to my friend that we ought to try a public interest petition in the Supreme Court of India. They readily agreed. Jean and Kavita put the data together for Rajasthan. The petition originally drafted was restricted to the state of Rajasthan and sought only the implementation of the Famine Codes.

THE FAMINE CODES

The Famine Codes were a set of executive instructions issued prior to Independence by the British government. In the context of the utter callousness of the ministers and the administrative services, these Codes made interesting reading. They were designed to set up an "efficient system of intelligence" with respect to famines and scarcities so that the administration would be warned in time of the prospect of a famine and would not be taken by surprise. The Codes were also meant to put in place a programme for relief works to "fortify the people" in difficult times (Famine Code of the state of Rajasthan, writ petition (civil) 196 of 2001 in the case PUCL and others Vs Union of India and others, page 55). These Codes, in turn, relied upon the rules for the collection and preparation of statistics as laid down in the land records manuals and the tenancy statutes of the various states. The *patwari*, a local revenue official, was required to maintain a diary containing therein his reports regarding the general condition of crops and fodder in his area, the availability of drinking water, the occurrence of any calamity such as locusts, flood, disease and drought, the rainfall and migration. The Code laid down the duties of the inspector of land records as requiring the officer "to watch the season, so as to detect early signs of coming distress and to be ready to report." (57). The *tehsildar*, a more senior official was required to supervise the junior officials and to comment on calamities and mortality among men and cattle. Likewise the sub-divisional officers, the collectors and the relief commissioners, a whole hierarchy of officials were required to keep track of the situation and take action wherever necessary. "There is no greater evil than the depression of the people; for moral depression leads directly to physical deterioration" (78), the Codes warned.

With the onset of any calamity and in order to prevent the migration of people and cattle in distress, the authorities were required to immediately start "works of permanent public utility" (62) with special attention given to "desert areas and hilly tracts inhabited by scheduled tribes (STs) and backward classes (62)". These were classes in the population specifically mentioned in the

Constitution of India as suffering a historical social and economic backwardness and deprivation. The public works were meant to provide employment for “six months” for “twenty percent of the population (63)”.

The Codes set out the facts that would indicate the onset of scarcity or famine as follows: (1) Sudden migration of cattle; (2) sudden migration of persons to cities and towns or to better areas; (3) sudden rise in prices of food grains and fodder; (4) sudden increase in crimes; (5) increase in or resort to begging; (6) sudden fall in rates of wages of labour; (7) shrinkage in private charity; (8) deterioration of health of cattle; (9) shrinkage of credit facilities; (10) decrease in civil litigation; (11) failure of crops and fodder; and (12) shrinkage of water level in wells and tanks.

With the onset of the famine, the authorities were to grant loans liberally, suspend the collection of land revenue and give wide publicity to the relief programmes and the construction of roads, tanks, canals were to be immediately started. Elaborate provisions were made for fodder to be made available for cattle. Cattle camps were to be opened. Agriculturalists were to be provided seeds and implements. Artisans were to be provided tools and stock-in-trade. Water supply arrangements were to be made, to the railways, private tankers and by the drawing of water from wells by the “employment of bullocks” (140). Tools and shelter were to be provided, persons coming for work were to be admitted and registered and paid proper wages and the adequate supply of food was to be ensured. Interestingly, it was stated as the duty of the officer-in-charge that he conduct a “daily hearing” and an “investigation of complaints” (95) with respect to relief works.

Every famine Code had a specific entitlement giving every person who came forward for work to be provided employment. Those who were “physically unfit or disabled” (101) were to be provided “gratuitous relief” (101). Wages were fixed at the “lowest amount sufficient to maintain a healthy person in health” (103). A rest day with payment was also provided. If childbirth occurred while a woman was at work, the mother would be given Rs 1.5 per day “for medical comforts” (104) and was permitted paid leave for three weeks. There was a special provision for distressed weavers.

Gratuitous relief was to be provided to: “(a) the aged and infirm who are incapable of earning their living; (b) the blind, crippled, insane and idiots; (c) all persons whose attendance on the sick or an infant children at their own home is absolutely necessary; (d) women who are debarred by custom from appearing in public and are unable to provide themselves with sufficient food; (e) men who are unable to earn their livelihood by finding employment at the relief works and are in danger of starvation; (f) pregnant women or women with two or more young children or with the children at the breast; and (g) young children whose relations will not or cannot support them and the like” (133).

Every adult was to be given Rs 0.5 and every child was to be given Rs 0.3 per day as in 1962.

The district medical officers were required to maintain a list of competent *vaid*s and *hakims* operating in the district whose services would be available in an emergency. These were traditional medicine persons following the disciplines of Indian medicine. The population was to be inoculated against epidemics. A satisfactory supply of drinking water was to be secured. “Deep trenched latrines” were to be constructed (98). Provisions were in place for dealing with the outbreak of cholera. Mobile units “of medical and veterinary dispensaries” (113) were to be provided. These provisions have been set out in detail to indicate how serious governments were in those days about bringing quick relief to people in distress. When we began the case in 2001, the government officials were uniformly

ignorant not only of the provisions of the Famine Codes in their states, but of the very existence of the Famine Code itself!

Dealing with the Famine Codes, on second May 2003, the Court “directed the implementation of the Famine Codes.”

THE PETITION

The petition began by referring to the “innumerable cases of starvation deaths reported across the country ... largely due to non-availability of food to people over a long period of time.” There was “no food available in the public distribution system (PDS) and prices at commercial shops are exorbitant, making it impossible for people to purchase food grains”(4). The petitioner pointed out that the buffer stocks of grains with the central government at that time were approximately 20 MTs. The minister for consumer affairs and public distribution was quoted as saying that there was “surplus food stocks in the country” (8). Thirty thousand and 583 villages in Rajasthan with a population of 33 million persons were drought affected. At the time of filing of the petition, the people had been through two previous years of drought. “Things were very bad ... matters had reached an alarming state.” The petitioner warned “many people are facing starvation and will die soon if nothing is done immediately ... there is massive unemployment, the people are sinking deeper and deeper into debt, children are dropping out of school, and cattle are either dying or being abandoned in large numbers because their owners cannot provide them with fodder ... the relief measures provided by the state of Rajasthan and the Union of India have thus far proved inadequate, incompetent and unable to stem the misery...” (9). The petitioner complained that though 50 million tonnes of grains were lying idle in public godowns in Rajasthan and across the country, so much so that government had run out of storage space, yet people were dying. In some cases, petitioner pointed out, “there is barely a distance of 75 kilometres between these godowns and the places where starvation is rampant”(10).

Quoting the national family survey (1998-99) the petitioner pointed out that even in ordinary years more than half of all the children in Rajasthan below three years were malnourished and about half of all women suffered from anemia. According to the national sample survey data, in 1993-94, almost of the half of the rural population in Rajasthan were below the poverty line (11). Summing up the petitioner charged the state of Rajasthan and the Union of India as having “failed abjectly in discharging its responsibility ... under Article 21 (The Right to Life) of the Constitution of India”(18). The petitioner quoted from an article written by Prof. Madhura Swaminathan of the Indian Statistical Institute indicating, “the courses associated with maintaining of buffer stocks in 2000-01 accounts for nearly 45 percent of the so-called food subsidy” (26). Referring to the reported statements of a parliamentary committee, the petitioner submitted “rotting grains may account for as much as one million tonnes of current stocks. Some of it is not even fit for animal consumption and may end up being dumped in the sea. It seems that the government of India would rather feed the fish in the Arabian Sea than the people of India” (26).

On the basis of these pleadings, petitioner sought directions from the Supreme Court to the state of Rajasthan and the Union of India to enforce the Famine Codes, to release food grains lying in the godowns and to frame a scientific and reasonable scheme for the distribution of food grain in the drought affected areas of the state.

I remember telling my colleagues working on the case that we ought not to spread the word too wide as I felt the chances of admission were remote. I had in mind the cryptic order of the Supreme Court

of 1996 when the Supreme Court dismissed a similar petition filed by the legendary social activist Kishen Pattanayak making similar allegations against the state of Orissa in the background of repeated deaths by starvation reported throughout the state. The Supreme Court dismissed this petition with the following words:

“In this letter, they have brought to the notice of this Court the miserable condition of the inhabitants of the district of Kalahandi in the state of Orissa on account of extreme poverty. It is alleged that the people of Kalahandi, in order to save themselves from starvation deaths, are compelled to subject themselves to distress sale of labour on a large scale resulting in exploitation of landless labourers by the well-to-do landlords. It is alleged that in view of distress sale of labour and paddy, the small peasants are deprived of the legitimate price of paddy and they somehow eke out their daily existence. Further, their case is that being victims of ‘chill penury’, the people of Kalahandi are sometimes forced to sell their children... Another writ petition being writ petition (civil) number 1081 of 1987 has been filed by the Indian People’s Front. This writ petition not only relates to the misery of the people of Kalahandi, but also of the people of another district, namely, the district of Koraput. In this writ petition, it has been alleged that the starvation deaths of the inhabitants of the districts of Koraput and Kalahandi are due to utter negligence and callousness of the administration and the Government of Orissa. It is alleged that the starvation deaths, drought, diseases and famine have been the continuing phenomena in the said two districts since 1985. The Government of Orissa has been accused of utter failure to protect the lives of the people of the two districts... The measures which have been taken and are being taken, as stated in the written note submitted by the learned advocate-general, have been briefly mentioned. There is no reason not to accept the statements made on behalf of the state of Orissa that the measures, stated above, are being taken for the purpose of mitigating hunger, poverty, starvation deaths, etc., of the people of Kalahandi. If such measures are taken, there can be no doubt that it will alleviate to a great extent, the miseries of the people of Kalahandi. Such measures are also being taken in respect of the district of Koraput. We hope and trust that in view of the prompt action that has been taken by the government, soon the miseries of the people of these two districts will be over.” (Kishen Pattanayak Vs State of Orissa (1989 Supp. (1) SCC 258)

This is why we were all deeply apprehensive about the outcome of the case. We had, of course, nothing to lose.

PUBLIC INTEREST LITIGATION

At this stage it may be useful to digress a bit and say a few words about the public interest litigation (PIL) in India. This is necessary because a lay reader may find it very difficult to understand how events in Court took the turns that they did. How did the Court permit a petition to be filed on behalf of over 300 million people without the signature of a single affected person and without reference to a single individualised case of malnutrition or starvation? How was the petitioner to gather the extensive documentation required for the case when the PUCL had no funds of its own and the task was gigantic? Was it permissible for the court to make extensive and minute directions on every aspect of food security – matters usually understood as exclusively within the sphere of the executive? Could the State not claim to have financial constraints limiting its ability to do away with the hunger prevailing on such a large-scale? How could the Court acquire the expertise to deal with complicated issues of nutrition, policy and finance, when it admittedly did not possess that when the case was filed? Given the notoriously low level of compliance with Court orders, would the directions of the Court not remain mere paper instructions incapable of being enforced? The answer to these questions

lie in the revolutionary development that took place in Indian jurisprudence in the eighties which gave birth to a new branch of public interest law commonly known as PIL.

The first step was taken by the Supreme Court in *SP Gupta Vs Union of India* (1981) (supp. SCC 87) when the Supreme Court broadened the application of the legal principle of *locus standi* saying:

“Where a legal wrong...is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right ... and any such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the high court and in case of breach of any fundamental right, in this Court under Article 32 seeking judicial redress. Where the affected persons are really helpless the Supreme Court will not insist on a regular writ petition to be filed. The Court will readily respond even to a letter addressed by such individual acting *pro bono publico*, despite the fact that formal rules exist with regard to filing of petitions, the Court has to innovate new methods and devise new strategies for the purpose of people who are denied their basic human rights and to whom freedom and liberty have no meaning (210). The strict rule of standing which insists that only a person who has suffered a specific legal injury can maintain an action for judicial redress is relaxed and a broad rule is evolved which gives standing to any member of the public who is not a mere busybody or a meddling inter-loper but one who has sufficient interest in the proceeding”(212).

THE CASE BEGINS

Mondays and Fridays are exciting days in the Supreme Court. These are the fresh matter days. The Supreme Court currently consists of 24 Judges sitting usually in benches of two-judges with an occasional three-judge bench. Each bench would have on the admission days, about 70 matters placed before it. This is an enormously high workload. The Supreme Court of India is by far the court with the heaviest workload in the world. Between Tuesdays and Thursdays, final hearing matters are dealt with. The pace slows down and matters are heard somewhat at length. Mondays and Fridays see a great deal of activities in every court with lawyers having to present their case in a minute or so. The atmosphere is like a circus with lawyers being aggressive at times, interrupting judges, speaking while the judges are speaking and arguing with their opponent lawyers. The judges, to their credit, put in long hours of work, and work on every weekend, and come to court fairly well prepared, are not ruffled by the carnival atmosphere and finish their quota of 70 cases by lunchtime. It was on such a day that the Right to Food case came up for hearing before a three-judge bench. This was one of my first cases before the Supreme Court. I did not have to argue. Justice Kirpal, the presiding judge, said as he opened the papers “this cannot be. We cannot allow the state of affairs to continue” (order dated 9.5.2001). Issuing notices to the respondents to show cause, he orally requested the Attorney-General for India to appear in the matter and we were off and running!

CUT THE FLAB SOMEWHERE ELSE

On July 23, 2001 when the Attorney-General for India, Mr Soli J. Sorabjee appeared, one of his first statements was to the effect that PIL was not an adversarial litigation. He then went on to say that though he appreciated the substance of the petition, India was a country with a huge population and, given the financial constraints, it was difficult to do away with hunger and malnutrition. Till that day, it was common perception that a large country like India could never really be able to do away with malnourishment because that would require huge investments that the State was just not in a position to do. Prior to the PUCL case, the courts were generally very reluctant to make orders

imposing huge liabilities on government. Perhaps thinking that the Supreme Court would also in this case go the same way, the Attorney-General elaborated a bit on the financial crunch. It was at this stage that Mr Justice Kirpal said, “Cut the flab somewhere else”. When the Attorney-General persisted somewhat mildly, Mr Justice Kirpal elaborated, “either you do it or we will tell you how to do it”. That was the end of the government’s demur on the inadequacy of State resources. Never was the argument repeated after that. Incidentally, the Attorney-General played a pivotal role in getting his bureaucrats to understand that they had to take this matter seriously. Without his assistance, day after day, many of the orders obtained may not have been possible.

In any case, the State cannot plead inadequacy of resources in cases where it is alleged that the State has failed to protect the fundamental rights of its citizens. In *Municipal Council, Ratlam Vs Vardichand* (1980 4 SCC 162) the Supreme Court held:

“The key question we have to answer is whether by affirmative action a court can compel a statutory body to carry out its duty to the community by constructing sanitation facilities at great cost and on a time-bound basis. At issue is the coming of age of that branch of public law bearing on community actions and the court’s power to force public bodies under public duties to implement specific plans in response to public grievances (163)...The statutory setting being thus plain, the municipality cannot extricate itself from its responsibility. Its plea is not that the facts are wrong but that the law is not right because the municipal funds being insufficient it cannot carry out the duties under Section 123 of the Act. “...The plea of the municipality that notwithstanding the public nuisance, financial inability validity exonerates it from statutory liability has no juridical basis. The Criminal Procedure Code operates against statutory bodies and others regardless of the cash in their coffers, even as human rights under Part III of the Constitution have to be respected by the State regardless of budgetary provision. Likewise, Section 123 of the Act has no saving clause when the municipal council is penniless. Otherwise, a profligate statutory body or pachydermic governmental agency may legally defy duties under the law by urging in self-defence a self-created bankruptcy or perverted expenditure budget. That cannot be (170). A responsible municipal council constituted for the precise purpose of preserving public health and providing better finances cannot run away from its principal duty by pleading financial inability. Decency and dignity are non-negotiable facets of human rights and are a first charge on local self-governing bodies...The nature of the judicial process is not purely adjudicatory nor is it functionally that of an umpire only. Affirmative action to make the remedy effective is of the essence of the right which otherwise becomes sterile...(171). The law will relentlessly be enforced and the plea of poor finance will be poor alibi when people in misery cry for justice (174).

Amongst plenty there is scarcity.

On July 23, 2001, the Supreme Court directed the petitioner to amend the petition and make all the states and union territories, parties to the petition. The Court also made the following order:

“In our opinion, what is of utmost importance is to see that food is provided to the aged, infirm, disabled, destitute women, destitute men who are in danger of starvation, pregnant and lactating women and destitute children, especially in cases where they or members of their family do not have sufficient funds to provide food for them. In case of famine, there may be shortage of food, but here the situation is that amongst plenty there is scarcity. Plenty of food is available, but distribution of the same amongst the very poor and the destitute is scarce and non-existent, leading to malnourishment, starvation and other related problems... By way of an

interim order, we direct the states to see that all the PDS shops, if closed, are re-opened and start functioning within one week from today and regular supplies made.”

On August 20, 2001, the Supreme Court made the following order:

“The anxiety of the Court is to see that the poor and the destitute and the weaker sections of the society do not suffer from hunger and starvation. The prevention of the same is one of the prime responsibilities of the government – whether central or the state. How this is to be ensured would be a matter of policy, which is best left to the government. All that the Court has to be satisfied and which it may have to ensure is that the food grains which are overflowing in the storage receptacles, especially of FCI godowns and which are in abundance, should not be wasted by dumping into the sea or eaten by the rats. Mere schemes without any implementation are of no use. What is important is that the food must reach the hungry.”

THE LEGAL TEAM

The admission of the petition enthused Kavita Srivastava of the PUCL and Jean Dreze and our team of lawyers enormously. Apart from Aparna Bhat, the Advocate on Record and one of the founder directors of the Human Rights Law Network, Delhi we also had Ramesh Kumar and, of course, the erudite pipe smoking Dr. Yug Chaudhry. We worked on the petition with fervour late into the night. As the case progressed Yug left Delhi to set up his practice in Bombay, Aparna and Ramesh established their independent office. A new group of young lawyers Anup Kumar Srivastava, Jai Singh, Vipin Mathew Benjamin, Pooja Sharma and Alban Toppo joined the team.

TARGETED PUBLIC DISTRIBUTION SYSTEM

On September 3, 2001, the learned Attorney-General told the Court that “sixteen states and union territories have not as yet identified the below poverty line (BPL) families.” The Court directed them to do so within two weeks.

On September 17, 2001, the Court found that the identification of BPL families was still not done. “We are not satisfied”, said the Court “that any such exercise in the right earnestness has been undertaken.” The Supreme Court granted them some more time to comply. On that day a direction was made to “all the state governments to forthwith lift the entire allotment of food grains from the central government under the various schemes and disburse the same in accordance with the scheme.” The Court also directed that “the food for work programme in the scarcity areas should also be implemented by the various states to the extent possible.”

The original petition, it may be remembered had pleadings only with respect to the state of Rajasthan. The relief sought related largely to the Famine Codes. With the expansion of the framework of the case to the national level, it was necessary to think afresh on the scope and ambit of the case. After struggling with various alternatives and after extensive discussions with groups and individuals active on the Right to Food, we decided to proceed on the basis of existing government schemes that provided for nutrition to be given to the poor and which schemes were being implemented very poorly. Thus, we pegged the case on an existing government programme that were not really legal entitlements and could be discontinued by the State at any time. Nevertheless, they provided a coherent and consistent way forward since they were well understood and the State was not inclined to disown them during the Court proceedings. Moreover, such an approach made for easy argument since it was nobody’s case, certainly not the government’s case, that these programmes were not to be implemented, or that excuses were to be tolerated for the programmes’ partial implementation. The

enormous financial and administrative implication for the central and the state governments did not occur to anyone at that time as counsel for the various governments did not really believe that the case had much of a future. They thought it would be, like most cases, a lot of hot air and publicity, but with no real implementation. The approach thus turned out to be a winner and put the government on a back foot.

On November 28, 2001, the Supreme Court made one of its most important Orders. The Bench of Justice BN Kirpal and Justice KG Balakrishnan pronounced this. The latter became the Chief Justice of India a few years later and was quoted in the newspapers on assuming office as saying that this Order was one of the most satisfying of his judicial career. The Order directed the Union and the states to fully comply with the targeted public distribution scheme (TPDS) by identifying all BPL families, issuing cards and commencing the distribution of 25 kgs of grain per family per month. The Delhi government was directed to ensure that the application forms for TPDS were available free as a grievance was made by the petitioner that the officers were charging the public for copies of the application form.

Dealing with a residual complaint that the ration shops were not remaining open and that persons would travel long distances only to find the ration shops non-operational, the Supreme Court directed all ration shops to “remain open throughout the month, during fixed hours, the details of which will be displayed on the notice board.”

The petition then began to focus on corruption in the public distribution system, the way in which licences were issued to ration shop owners and the dubious way in which vigilance committees were constituted as a result of which large scale pilferage took place in the public distribution system (PDS) resulting in the denial of grain to the poor.

The petitioner filed Interlocutory Application (IA) 41 of 2004 after a leading TV channel NDTV aired a clip showing trucks loading grain for the PDS from the Food Corporation of India godowns. The footage showed the trucks picking up the grain, but instead of going to the ration shops the trucks went to certain flourmills and deposited the sacks of grain there. The application relied on the report of Parivartan — a Delhi-based NGO — that had obtained copies of the registers and other records maintained by the owners of certain ration shops. After getting these records, Parivartan conducted a public hearing in Delhi where a panel of experts including police officers and government officials of the department of food and civil supplies and consumer affairs, Government of NCT of Delhi were present. The documents obtained from the ration shops clashed with those in the possession of beneficiaries. Though the ration cards did not have any entry showing that grains were given to the beneficiaries, the records of the ration shops showed that grains were distributed. This clearly established that a large quantity of grain was illegally shown as being distributed while actually this grain was diverted to the black market. But at the same time, the beneficiaries complained that the ration shop owners told them that grain was not available. Other records regarding payment by the beneficiaries for the grain allegedly given to them was also demonstrated to be fabricated. Signatures of the beneficiaries were forged on the receipt books available with the ration shop owners. Thus, a fictitious record was created to show that beneficiaries were actually paying for the grain supposed to be distributed. Thus, a well-settled and elaborate system was created in each ration shop for the falsification of records so that the grain could be sold in the open market. In many instances, it was found that the ration shops themselves kept the ration cards, instead of being handed over to the beneficiaries. In many cases, it was found that the ration shop owners had created duplicate ration

cards without the beneficiaries realising in order to siphon away grain. The social audits done by Parivartan and presented in the public hearing concluded that misappropriation was to the extent of 55 percent in the case of kerosene, 93 percent in the case of wheat and 96 percent in the case of rice. Parivartan also presented evidence before the panel showing that though repeated complaints were made to the officials in the department of food and civil supplies and consumer affairs, Government of NCT of Delhi regarding corruption, the officials either refused to act on the complaint or, when they did take action it was illusory in the sense that small fines of Rs 500 were imposed on the ration shop owners for acts of major fraud and they were let off unpunished. The pleading showed that there was collusion between the officials of food and civil supplies department of the Government of Delhi and the ration shop owners.

The evidence regarding the collusion between the police and the corrupt ration shop owners was equally damning. Even though criminal complaints were sought to be registered with the police regarding allegations of cheating and fraud, the police refused to register the first information report (FIR) telling the activists of Parivartan that the right to register a criminal complaint was the sole prerogative of the officials of the Delhi government and not the right of the public. This was openly stated by the deputy commissioner of police who was a member of the panel hearing of the depositions of the slum dwellers made during the public hearing. When he was shown a copy of the Essential Commodities Act and, particularly, the provisions regarding the filing of complaints wherein any member of the public was entitled to register a criminal complaint, the deputy commissioner had no answer. The panel hearing, therefore, exposed an unholy nexus between the police, the officials of the department of food and civil supplies and consumer affairs, Government of NCT of Delhi, the ration shop owners and the local Member of the Legislative Assembly (MLA). The latter's crucial involvement was demonstrated by documents showing that the MLA was the chairperson of the committee set up for licencing of the ration shops, and he was also the chairperson of the vigilance committee which was supposed to carry out surprise inspections and punish erring ration shop owners. Therefore, this politician appointed his person to run the ration shop and since the MLA was responsible for monitoring and punishment, nothing got done. Numerous instances were brought to the notice of the Court where complaints were made and no action taken.

The Essential Commodities Act, 1955 was enacted by the central government in order to ensure that essential commodities such as grain and kerosene oil were available to the poor at affordable prices. Section 3 of the Act empowers the central government to make orders for the maintenance of supplies and for securing the availability and distribution of essential commodities in the public distribution system. Accordingly, the Public Distribution System (Control) Order, 2001 was made providing for, *inter alia*, the identification of families living below the poverty line, (BPL) providing a ration card to families, for deciding the issue price for grains in the PDS, for licencing ration shops, for monitoring, search and seizure and for providing penalties for persons who breach the provisions of the Act. This Order authorised the *grams sabhas* to finalise the list of beneficiaries belonging to the BPL and *antyyodaya anna yojana* (AAY) categories and laid down that no eligible applicant would be denied a ration card. Ration cardholders would be entitled to draw essential commodities from the ration shops on a weekly basis. The order stipulated that the ration card would have to be provided within one month of the application being made. The Food Corporation of India was designated as the central government agency to store and ensure the physical delivery of food grains of fair and average quality to the state governments for distribution in the PDS. The state governments, in turn, were required to make arrangements for taking delivery from the FCI godowns and to ensure delivery to the ration shops. The state governments were responsible for monitoring the system. Reference

was made in the order to a Citizens' Charter issued by the central government which was binding on the state government.

The public hearing held by Parivartan was unique in the sense that, for the first time, below poverty line persons living in areas such as Ravidas Camp, RK Puram, Kalyanpuri, Welcome Colony and elsewhere were able to confront senior officials from the police and the Government of Delhi, and they were able to question these officials as to the action they had taken on the complaints made by the people. They repeatedly asked the officials how it was that their applications were left unattended for years and even if the applications were rejected, why it was that rejection orders were not made in writing and communicated to the applicants. They demanded to know why petty fines were imposed when ration shops were found engaging in serious fraud. They were surprised to hear the answers of the government officials when they said that they were unaware of the orders of the Supreme Court in the right to food case. They were taken aback to hear the additional commissioner, department of food and supplies and consumer affairs, Government of NCT of Delhi admitting that there was no procedure laid down for handling grievances. The members of the public attending the hearing suggested that an independent authority called the public grievance commission ought to be set up. Many persons complained that it was almost impossible for them to obtain copies of the records of the ration shops and that even under the Delhi's Right to Information Act they were asked exorbitant amounts for xeroxing of the public documents.

On November 18, 2004 the Supreme Court called upon the Union of India and the Delhi government to reply to IA number 41 of 2004. The Delhi government was required to state in its affidavit "as to when the vigilance committees... were set up ... and the details of the work undertaken by those committees." In response to this order, the commissioner in the office of department of food and supplies and consumer affairs, Government of NCT of Delhi filed an affidavit in January 2005 stating therein that circle vigilance committees were constituted in 69 circles in Delhi "under the chairmanship of the area MLA. The food supply officer of the circle is member-secretary of these committees" (p. 148). It was further stated in the affidavit that the committees had conducted 717 checkings. In the said raids the wheat, rice, kerosene oil and other essential commodities worth Rs 20,80,000 were seized. Further, major actions were taken against 404 fair price shops/ kerosene oil depots and in 42 cases FIRs were registered, licences were cancelled and security amount was forfeited" (p.149).

In response to the NDTV news of the diversion of the food grains, the commissioner agreed that food grains meant for ration shops were sent to Modi Flour Mills, Okhla, New Delhi and that an FIR was lodged against this flour mill and that "trial and prosecution, was to be done" (p.158). The commissioner also agreed with all the cases of violation as pointed out during the public hearing and promised the Supreme Court: "Appropriate necessary action has been taken against the erring PDS outlets" (p.158). The commissioner also said that the "authorisation of the concerned fair price shops has already been suspended" (p.159). Regarding transparency, he promised that inspection of records by beneficiaries could be done "free of cost" (p.161). A careful perusal of the affidavit of the commissioner revealed that not a single person had been prosecuted and punished. A few prosecutions were pending, it is true, but the *modus operandi* appeared to be to keep these prosecutions pending for a long time and then allow them to lapse, thus creating an impression that action was being taken. No disciplinary action was taken against a single official of the department. In few cases, licences were suspended and probably later on quietly restored. In very rare cases, licences were cancelled. Even here, activists suspected that licences were subsequently granted in the name of a relative of a ration shop dealer. Illusory fines were imposed in some cases. Despite the petition in the Supreme Court, the unholy nexus among officials and dealers and politicians continued.

On the contrary, the situation became more serious. Since the social activists of Parivartan had exposed the system in the public hearing and IA number 41 of 2004, the ration shop dealers were angered by the exposure. They conspired with the government officials and policemen to try and stop Parivartan from operating. They decided to physically intimidate the Parivartan activists. The ration shop owners were particularly upset because in the slums of Sunder Nagar, Seemapuri, Kalyanpuri, RK Puram, Nand Nagri, Harsh Vihar and Welcome Colony the slum dwellers were receiving their entire quota of subsidised grains and ten ration shop owners had their licences either suspended or cancelled pursuant to the complaints made by members of the public after they were told about their rights by the Parivartan activists.

There were attempts to manhandle activists even prior to the order of November 18, 2004. On September 23, 2003 two staff members of Parivartan were attacked by ration shop owners in the office of assistant commissioner, Rajendra Prasad, in north-east Delhi, while assisting illiterate women from slums in inspection of the records. Thirty ration shop owners assembled outside the office and assaulted the activists in the presence of the assistant commissioner who not only took no action but also refused to call the police. When the activists went to the Nand Nagari Police Station they were surprised to find 250 ration shop owners there and these persons surrounded the police station for over four hours demanding that the Parivartan activists be handed over to them to be burnt alive. Only when the deputy commissioner (revenue) of the north-east district made a personal intervention, were the activists able to escape in a police vehicle. After this assault, officials of the department together with police persons and ration shop owners began visiting homes of the persons who had made applications under the Delhi Right to Information Act, to inspect the records, and during these home visits the applicants were asked to withdraw their applications. Parivartan put this on record by letters to the chief minister and the chief secretary on September 30, 2003.

The next attack took place on December 27, 2003 when seven Parivartan activists, who were verifying the records of the ration dealers, were assaulted in the market place at Welcome Colony in Babarpur Constituency. The ration dealers' records that were obtained after inspection were snatched and burnt by the mob.

A third attack occurred on October 6, 2004 when a Parivartan activist who had gone to a kerosene shop to help some women get their entitlements of kerosene were grabbed by the ration shop keepers outside the shop in Sunder Nagar and was threatened in front of the public that she would be doused with kerosene and set on fire. The station house officer (SHO) Nand Nagari police station, Rai Singh, refused to register an FIR and the complaint had to be sent by post.

After the Court order dated November 18, 2004 another assault on Parivartan activists occurred on November 27, 2004 at Kalyanpuri, when Parivartan activists went together with the FSO to a ration shop to assist an illiterate woman inspect records. The shop owner called a gang of persons in the presence of the FSO, grabbed the Parivartan activist and took out a knife and threatened to kill her. The FSO of circle 38, Anil Kumar, put the activist in his car and took her away.

On December 13, 2004, a Parivartan activist named Santosh was attacked by two unidentified people in front of the office of the FSO in Circle 45 when she was assisting an illiterate woman getting certain alterations done in her ration card. An assailant cut her hair with his knife. A criminal complaint was made to the SHO, Nand Nagri Police Station but no action was taken. A number of complaints were made thereafter to senior police officers but no action was taken. This made the assailants bolder and

on December 30, 2004 when Santosh was on her way to the office an unidentified person attacked her with a knife and her throat was partially cut and she nearly died. Complaints were made to the police but no action was taken. Parivartan complained to the Supreme Court that “the SHO was uncooperative and disinterested” (p. 7 IA No. 45 of 2004). Parivartan therefore petitioned the Supreme Court through PUCL by filing IA number 45 of 2004. In the IA Parivartan complained that instead of taking action against the assailants, the police entertained complaints by MLAs who told him that Parivartan was “an unreliable organisation and that no action should be taken on their complaints” (p. 7). Parivartan therefore petitioned the Supreme Court for inquiry into the incidents for action to be taken and for protection for its members.

In the reply to the IA the deputy commissioner of police, north-east district, Delhi confirmed that “the allegations of fair price shop keepers indulging in black marketing the rations are to an extent true and that their corrupt practices are being protected by the concerned department officials cannot be ruled out” (p. 44). He also confirmed that “MLAs of the areas namely Veer Singh Dhangar and Baljor Singh, both from Congress Party” (p.46) had met the police to protest against the activities of Parivartan. The reply by the assistant commissioner, department of food and civil supplies and consumer affairs indicated that “vigilance committees had been set up under the chairmanship of the MLAs” (48).

It was in these circumstances that the petitioner filed IA number 55 of 2005 seeking reforms in the PDS and in particular seeking directions for the PDS system to be taken out of the hands of the private dealers and be handed over to the elected local bodies, the *gram panchayats*, the urban municipal bodies, women’s self-help groups, the large adimjati multipurpose co-operative societies (LAMPS) and the primary credit co-operative societies. The petitioner also sought directions for preference and reservation to be given for tribals, dalits, persons with disabilities and other disadvantaged sections. Directions were sought to have the commissions and margins revised so that running a PDS shop became profitable. Also asked for were working capital requirements for the running of the shops. Godowns and kerosene depots were asked for at every block and districts. Ration cards were sought for the homeless and those living in slums and migrant labourers. Directions were sought for a more equitable system where applications for ration cards are decided upon expeditiously by government and in a transparent manner. A direction was sought to have ration cards issued in the names of the husband and the wife. A reform of vigilance committees was sought where the beneficiaries and right to food activities could also play a role. A system was sought to be put in place where the police and officials of the department of food and civil supplies and consumer affairs would institute criminal prosecutions as well as departmental actions against wrong doers.

On July 12, 2006 the Court found, “there is practically no monitoring over the sums allotted for the PDS (which) is in the neighbourhood of Rs 30,000 crores annually.” Realising the magnitude of the problem the Supreme Court constituted a central vigilance committee (CVC) headed by Mr Justice DP Wadhwa including Dr NC Saxena, to “look into the maladies which are affecting the proper functioning of the system and also suggest remedial measures”. The Court said that it was giving this “unusual direction in view of the almost accepted fact that large-scale corruption is involved. The ultimate victim is the poor citizen who is deprived of his legitimate entitlement of food grains.”

Justice DP Wadhwa then submitted the first report of the commissioners to the Court. Mr NC Saxena, the second commissioner, also submitted his report concurring with Justice Wadhwa’s recommendations and adding a different line of reasoning. On January 10, 2008, the Court made an order describing the report as “comprehensive” and containing “detailed analysis.” The Court then

recorded that there was “unanimity at the Bar that the report deserves acceptance. Therefore, we direct acceptance of the report.” The Supreme Court then directed the commission to make similar reports for the entire country. In January 2009, the Justice Wadhwa Commission filed similar reports with respect to the PDS system in several other states of India.

ANTYODAYA ANNA YOJANA

Similarly, the Court directed full compliance with the *Antyodaya Anna Yojana* (AAY), which required government to identify the poorest of the poor, give them a special ration card and to distribute grain to these beneficiaries at rupees two a kilogram for wheat and rupees three a kilogram for rice. The governments were required to consider giving grain free to such families in this class of persons who, on account of penury, were unable to pay even this amount for grains.

On May 2, 2003 the Supreme Court made a landmark order expanding the list of beneficiaries for the AAY scheme, which provided for highly subsidised grain for the poorest of the poor. The Court directed government to include six classes of people in the AAY Scheme as follows:

“We direct the Government of India to place on AAY category the following groups of persons: (1) Aged, infirm, disabled, destitute men and women, pregnant and lactating women, destitute women; (2) widows and other single women with no regular support; (3) old persons (aged 60 or above) with no regular support and no assured means of subsistence; (4) households with a disabled adult and assured means of subsistence; and (5) households where due to old age, lack of physical or mental fitness, social customs, need to care for a disabled, or other reasons, no adult member is available to engage in gainful employment outside the house.”

Monitoring the Scheme on 17.11.04, the Supreme Court found many of the governments remiss, and directed them “to complete the process of identification of persons” by the end of 2004 and supply food grains to them immediately.

MID-DAY MEAL

The Supreme Court directed full compliance with the mid day meal scheme (MDMS) and directed that all the governments would provide every child in every government and government assisted primary schools with a prepared mid day meal with a minimum content of 300 calories and 12 grams of protein every day for a minimum of 200 days. Prior to this order, the MDMS had almost ground to halt. Hot cooked meals were being provided in very few states. In most places, dry ration were given and that too infrequently. Dealing with allegations that very inferior quality grain was being provided for the MDMS and TPDS, the Court directed that the states should ensure “provision of fair average quality grain.” Prior to this order, there were hundreds of instances of inedible, rotten grain being provided to the poor and there were numerous reports of grain being infested with insects.

On September 16, 2004 a complaint was made on behalf of the petitioner to the Court to the effect that the reports of the commissioner showed that the orders of the Court regarding the implementation of the MDMS have not been implemented. A complaint was further made that the central government proposed to transfer the scheme to the state governments for implementation. The Court made an order restraining the Union of India from transferring the MDMS to the state governments.

On November 17, 2004 the Supreme Court once again did a review of the scheme and found that “in many of the states either there is no implementation or it is insignificant. The Court noticed that the government had issued a letter dated October 6, 2004 augmenting central assistance by providing rupee one per child per day for cooking costs and further assistance for transport subsidy. In view of

this, the Court extended the deadline for full implementation of the scheme up to January 2005. The central government was directed to “manage, monitor and evaluate” the scheme so that the benefit “reaches those for whom it is meant.”

NATIONAL OLD AGE PENSION & ANNAPOORNA SCHEME

Dealing with the grievance of elderly persons who were destitute, the Supreme Court directed full implementation of the National Old Age Pension Scheme (NOAPS) and the Annapoorna Scheme. Persons above the age of 65 and not having a means of subsistence were to be paid a pension. Those who did not receive a pension were to receive 10 kgms of free grains per month under the Annapoorna Scheme.

In the order of the Supreme Court dated November 18, 2004, the Court dealt with the fifth report of August 2004, where it was pointed out that 6.9 million beneficiaries needed to be covered requiring an annual allocation of rupees 620 crores. However, instead of implementing the court orders the coverage was not only “limited but it is decreasing every year” falling from rupees 54 lakhs in 2001-2002 to rupees 38 lakhs in 2002-2003. Looking at the resources set aside by the state the Court concluded that they were “nowhere near the requirements and are sufficient to meet just about half the requirements” (110). The Court then noticed that a consensus was reached between the commissioner and the planning commission to increase allocations not only for pension but also the other social security schemes. Despite this consensus, the allocations were not increased. “Inadequate allocations by the Centre and the states have limited the coverage of this scheme. There is a need for the Government of India to double the allocations ... to “Rs 250 per pensioner per month at the very least” (111). The Court noted that several states had reported a “massive decline in pensioners.” Pensions were also paid “irregularly” (112). Thus pensions were not distributed every month as directed by the Supreme Court. In the state of Jharkhand pensioners were “denied their entitlement for a whole year” (112). The Court noted that “it was only after a visit by Dr Saxena to the state in March 2004 that the labour secretary realised the scheme has now become a part of the state plan” (112), albeit with 100 percent central government assistance. “Callousness and indifferences”, the Court lamented, “deprived lakhs of old people social security benefits (113).

The Court also noticed “some states were discontinuing schemes covered by the court orders without providing for any alternatives” (113). Referring to the state of Madhya Pradesh, which had withdrawn Annapoorna free grain benefits for old people from January 2003 on the promise that all the beneficiaries would be given pensions instead, the Court noted that this assurance was not kept and that in many areas “no effort ... made to replace Annapoorna” with pensions (113). Referring to its order of April 2004, which directed that no scheme covered by the orders of the court would be “discontinued or restricted in any way without the prior approval of this Court” (113), the Court held that Annapoorna could be discontinued only if “all individuals previously covered would now so be covered under pensions and this too only after the approval of the Court.”

All in all, the Court found that the allocations for all the national social assistance programmes were roughly at 50 percent. Though Rs 1209 crores per year was needed, the allocation was in the range of 680 crores a year. The Court directed that the pension scheme would not be discontinued or diverted until the Court took a final decision.

NATIONAL MATERNITY BENEFIT SCHEME

Turning its attention to the high mortality rate in India of women and children at child birth, the Court directed the enforcement of the national maternity benefit scheme (NMBS), which required a payment of Rs 500 to all BPL pregnant women, prior to child birth for each of the first two births.

During the course of the hearing of the case, the government sought to discontinue the NMBS on the excuse that it was replaced by a new scheme called the *Janani Suraksha Yojana* (JSY). The petitioner therefore filed IA number 54 of 2005 for orders restraining government from discontinuing NMBS and government filed IA number 37 of 2005 seeking permission to modify NMBS.

On February 1, 2007 the Court in its order noticed “that there have been some modification in the JSY Scheme which does not appear to have been made known to the beneficiaries”. On account of the opposition of the petitioner to the discontinuing of NMBS, the Government of India was compelled to hold a series of protracted discussion with the NGOs and with the office of the commissioner and, happily, good sense prevailed and the parties were able to arrive at a compromise, which was presented in Court.

On September 20, 2007, the Court turned its attention to the decision of the central government to modify the NMBS and to introduce a new scheme called JSY. The petitioners were opposed to the modification in the NMBS. As stated earlier, NMBS provided for Rs 500 to be given to every pregnant woman before her delivery so that she may get some extra-nutrition and her child will not be born malnourished. The JSY was an entirely different scheme providing for incentives for pregnant women to go to the hospitals for delivery rather than have their delivery at home. According to the petitioners, NMBS was a scheme for nutrition for the unborn child whereas JSY dealt with institutional delivery. These schemes operated in entirely separate fields and a woman could avail of both. The government proposed to do away with NMBS on the introduction of JSY by falsely stating that JSY was an improved version of NMBS.

Perusing the data provided by the commissioner on the coverage of eligible beneficiaries under NMBS, the Court found that the scheme “has virtually not taken off in many states. Delhi has given the benefit to only 20 women in 2006-07, while in Chandigarh the number of beneficiaries is zero”. In many states “less than even 10 percent of the eligible beneficiaries have been covered.”

The Court was also given data of the state-wise percentage of home deliveries, which showed that in many states the vast majority of women chose to deliver their babies at home. This is because of many reasons including the pathetic state of health institutions particularly in the north and the disrespect shown to women in these institutions, the long distances to hospitals and so on. Looking at the data provided the Court noted that many states had not utilised the JSY funds at all. Finally the Court directed all the respondents to continue with the NMBS and to ensure that all BPL pregnant women get the cash assistance 8-12 weeks prior to the delivery. The amount of Rs 500 per birth, which was earlier, restricted to children and only for women who were adults was now made “irrespective of number of the children and the age of the woman.” The Court urged the governments to “regularly advertise the revised scheme so that the intended beneficiaries can become aware of the scheme” and to ensure “that the money earmarked for the scheme is not utilised for any other purpose.” The Court warned that “stringent action” would be taken if there were “any diversion of the funds allocated for the scheme.”

NATIONAL FAMILY BENEFIT SCHEME

Finally dealing with families that become destitute on the death of the only bread earner, the Court directed the governments to fully implement the national family benefit scheme (NFBS) and to “pay a BPL family Rs 10,000 within four weeks whenever the primary breadwinner of the family dies.”

TRANSPARENCY AND PUBLICITY

In an innovative order, the Court also directed that a copy of the order “be translated in regional languages and in English” by governments and be “prominently displayed in all *gram panchayats*, government school buildings and fair price shops.” The Court further directed All India Radio and Doordarshan (the government controlled TV service) to publicise the various schemes. This order was passed as a grievance was made to the Court that its Orders are rarely transmitted to the public in the rural areas. Similar directions were reiterated in the Order dated November 20, 2007 with respect to the need to advertise the changes in the NMBS and JSY scheme so that the beneficiaries could know about the changes made.

SAMPOORNA GRAMEEN ROZGAR YOJANA

On May 8, 2002, when the petition came up for hearing once again, Justice Kirpal had become the Chief Justice of India. He directed the *gram panchayats* to frame employment generation proposals in accordance with the *Sampoorna Grameen Rozgar Yojana* (SGRY), a programme of the central government entitling poverty stricken persons to obtain 100 days of employment in a year on government programmes and in return be paid partly in grain and partly in cash. The programme envisaged the “creation of useful community assets that have the potential for generating sustained and gainful employment such as water and soil conservation, afforestation and agro-horticulture, silvipasture, minor irrigation and link roads.” The order further directed the governments to focus on “agricultural wage earners, non-agricultural unskilled wage earners, marginal farmers and, in particular, SC and ST persons whose wage income constitutes a reasonable proportion of their household income and to be given priority to them in employment, and within this sector shall give priority to women.” Since there were numerous allegations that the governments were employing contractors, instead of doing the work directly and these contractors were siphoning away funds, the Court prohibited the use of contractors in the SGRY programme. Responding to complaints that wages were not paid for long periods after the work was completed, the Court directed “wage payment on a weekly basis.” Dealing with complaints that the governments were not releasing the required resources in time, the Court directed the central government to “... make financial releases under the different employment generation schemes to each state on schedule.”

In 2004, a grievance was made to the Supreme Court by labourers who had worked on a worksite and had not been paid wages for several months. The commissioners too had intervened and directed payment of wages, but the administration remained adamant. A joint enquiry was conducted by the commissioners and the administration which shows that though a resolution was passed by the *gram sabha* on April 14, 2003 for the construction of a dam in Limbi village, and though the work commenced in May 2004 and was completed in June 2004, payment to the workers were not made. On November 17, 2004 the Court directed the state government to release the payment to the union of the workers namely, the *Jagrat Adivasi Dalit Sangathan* “to pay the same to the concerned labourers on obtaining receipts from them” (101).

Turning to the demand of the people for food-for-work, the Supreme Court referred to the report of the high level committee on long-term grain policy and, relying on the recommendation that the SGRY scheme should be doubled. The Supreme Court doubled the allocation of food grain and cash for the

state of Rajasthan for the drought period May-July 2003. The Court then made orders directing the ration shops to remain open in accordance with the regulation and directed government to cancel the licences of ration shops that failed to provide grain to BPL families at the stipulated rates or shops engage in black-marketing, siphoning away of grains, make false entries in the BPL cards or forcibly keep BPL cards with them.

THE GRAM SABHAS

The *gram sabhas* are the organs of local self-government at the level of the habitation. These are potentially the real institutions of people's rule. They are recognised as such in the Constitution of India. In order to ensure that the people of India at the grassroots have control over the food distribution schemes, the Supreme Court made a rather revolutionary direction as follows:

“The gram sabhas are entitled to conduct a social audit into all food/ employment schemes and to report all instances of misuse of funds to the respective implementing authorities, who shall on receipt of such complaints, investigate and take appropriate action in accordance with law.”

The *gram sabhas* were also empowered by the Court orders to monitor the implementation of the various schemes and have full access to information regarding the selection of beneficiaries and the disbursement of benefits.

As there was widespread corruption in the selection of persons for the BPL list, the Court directed “transparency in selection of beneficiaries” and asked the *gram panchayats* which are the organs of local self-governance at the village level, to “display a list of all beneficiaries under the various schemes” and to make this list available “to members of the public for inspection.”

Once again in the order dated February 1, 2007 when it was pointed out to the Court that the central and state governments did not have any monitoring system at all, the Court asked the Union of India to “indicate as to whether it would be in the interest of the beneficiaries if the funds are directly placed at the disposal of the *gram panchayats* so that without unnecessary delay beneficiaries can get immediate benefit of the schemes.”

GRIEVANCE RESOLUTION

As there did not exist any complaint recording and grievance resolution mechanism, the Court set up such a mechanism in the following manner. The Court directed that any complaint with respect to the implementation of the schemes is first to be made to the *zilla panchayat* and the chief executive officer/ collector was required to record the complaint in a register and acknowledge receipt of the complaint. Thereafter, the officials were required to ensure that the grievance was properly dealt with. The chief secretary, the highest-ranking official in the state was required to ensure that the Supreme Court orders were fully complied with.

THE COMMISSION

In an order having far reaching implications, the Court ordered that a commission of the Court be established with Dr NC Saxena, former planning secretary, Government of India, as its head, for “the purpose of looking into any grievance that may persist after the grievance resolution procedure has been exhausted”. On the commissioner recommending a course of action to ensure compliance with the Supreme Court's various orders the governments were required to “forthwith act upon such recommendation and report compliance.” The commissioners were also empowered by the Supreme Court to take the assistance of individuals and reliable organisations in the country. Officials were

“directed to fully cooperate with such persons/ organisations, to bring about effective monitoring and implementation of the orders of the Court.” As a result, the commissioner, Dr Saxena, was able to appoint reputed individuals and NGOs throughout the country to function as his assistants and advisers. These persons traveled through the country, collected information, did surveys and research work, conducted public hearings, met with officials and attempted to persuade them to carry out certain reforms; and in this way the orders of the Supreme Court permeated the country. What started as a top heavy initiative slowly became grassroots-based.

Since it appears that the role of the commissioner as originally envisaged was somewhat limited, petitioner suggested to the Court that the role be expanded and so by order dated October 29, 2002, the Supreme Court expanded the role of the commissioners “to include the monitoring of the implementation of this Court’s orders as well as the monitoring and reporting to this Court of the implementation by the respondents of the various welfare measures and schemes.” The Court directed the government officials to “provide to the commissioners full access to relevant records and provide relevant information.”

The appointment of a commissioner in writ jurisdiction was made possible because, in 1984, the scope of PILs were expanded to include the appointment of commissioners for the collection of data to support a PIL in circumstances where the petitioner was either too poor or illiterate to substantiate the petition by presenting data. In *Bandhua Mukti Morcha Vs Union of India* (1984 3 SCC 161) the Supreme Court said:

“We have on more occasions than one said that public interest litigation is not in the nature of adversary litigation but it is a challenge and an opportunity to the government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community. The government and its officers must welcome public interest litigation (182). This right to live with human dignity enshrined in Article 21... includes protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief (183). Provision conferring on the Supreme Court power to enforce the fundamental rights in the widest possible terms shows the anxiety of the Constitution-makers not to allow any procedural technicalities to stand in the way of enforcement of fundamental rights. But what procedure shall be followed by the Supreme Court in exercising the power to issue such direction, order or writ? That is a matter on which the Constitution is silent (187). It is only because we have been following the adversarial procedure for over a century owing to the introduction of the Anglo-Saxon system of jurisprudence under the British Rule that it has become a part of our conscious as well as sub-conscious thinking that every judicial proceeding must be cast in the mould of adversarial procedure and that justice cannot be done unless the adversarial procedure is adopted. But it may be noted that there is nothing sacrosanct about the adversarial procedure and in fact it is not followed in many other countries where the civil system of law prevails (188). There is a considerable body of juristic opinion in our country also which believes that strict adherence to the adversarial procedure can some times lead to injustice, particularly where the parties are not evenly balanced in social or economic strength. Where one of the parties to a litigation belongs to a poor and deprived section of the community and does not possess adequate social and material resources, he is bound to be at a disadvantage as against a strong and powerful opponent under the adversary system of justice, because of his difficulty in getting competent legal representation and more than anything else, his inability to produce relevant evidence before the court. Therefore, when the poor come before the court, particularly for

enforcement of their fundamental rights, it is necessary to depart from the adversarial procedure and to evolve a new procedure which will make it possible for the poor and the weak to bring the necessary material before the court (189). Now it is obvious that the poor and the disadvantaged cannot possibly produce relevant material before the court in support of their case and equally where an action is brought on their behalf by a citizen acting *pro bono publico*, it would be almost impossible for him to gather the relevant material and place it before the court. What is the Supreme Court to do in such a case? Would the Supreme Court not be failing in discharge of its constitutional duty of enforcing a fundamental right if it refuses to intervene because the petitioner belonging to the underprivileged segment of society or a public spirited citizen espousing his cause is unable to produce the relevant material before the court ...If the Supreme Court were to adopt a passive approach and decline to intervene...fundamental rights would remain merely a teasing illusion...It is for this reason that the Supreme Court has evolved the practice of appointing commissioners for the purpose of gathering facts and data in regard to a complaint of breach of fundamental right made on behalf of the weaker sections of the society...The Report of the commissioner would furnish *prima facie* evidence of the facts and data gathered by the commissioner and that is why the Supreme Court is careful to appoint a responsible person as commissioner to make an inquiry or investigation into the facts relating to the complaint. It is interesting to note that in the past the Supreme Court has appointed sometimes a district magistrate, sometimes a district Judge, sometimes a professor of law, sometimes a journalist, sometimes an officer of the court and sometimes an advocate practicing in the court, for the purpose of carrying out an inquiry or investigation and making report to the court because the commissioner appointed by the Court must be a responsible person who enjoys the confidence of the Court (190).

Though in the early stages of the case, the petitioner and the legal team relied upon the inputs of the individuals, after the appointment of Dr. Saxena as the commissioner and with the commissioner appointing numerous persons to advise and assist him, the collection of data and the presentation of evidence became more thorough and professional. Dr Saxena was not only a distinguished civil servant but also an erudite and patient teacher and a great leader. He coached the legal team for years until they attained a fair understanding of the principles and the factual matrix. Slowly the commissioner's office became the backbone of the right to food case. Eight extensive reports in several supplementary reports were filed in the Supreme Court and became the factual basis of the petition. So reliable were the reports, that the government counsels could rarely contest any of the figures presented to the Court. They became the last word and established factual pre-eminence, a factor very important in PIL and crucial for the success of a case. Prominent among the commissioners were Harsh Mander, a former civil servant and a prolific writer on matters relating to hunger. He was one of the most distinguished members of Dr Saxena's illustrious team. The Delhi office also included Biraj Patnaik, a rising star with an impressive command over facts and figures and Dipa Sinha and others without whom the case would have never progressed. The state commissioners and advisers are too numerous to mention individually but they perform an incredible role in their states, collecting information, doing public hearings, visiting crisis areas and meeting with government officials in a never ending attempt to get the government to see their point of view and take immediate action. The chart of the advisers/ assistants to the commissioners is available at the website of the Human Rights Law Network at www.hrln.org (go to 'issues' and then see 'right to food').

The Advisers to the commissioner made several interventions in the Supreme Court on behalf of the people from their states. The adviser from West Bengal, for example, Anuradha Talwar and the convener of the Right to Food and Work West Bengal Network, Sukumar Gaine, made an application to the Court

highlighting the conditions of the workers in the tea plantations in Jalpaigudi district. The Court commented that the report “reveals an alarming state of affairs” and called upon the state of West Bengal to respond and take action – having regard to the various incidents of malnutrition highlighted in the report.”

ACCOUNTABILITY

By order dated October 29, 2002 the Court specifically held the highest ranking officers of the states and the union territories responsible for failure to implement the orders of the Court thus: “... in case of persistent default in compliance with the orders of this Court concerned chief secretaries/ administrators of the states/ union territories shall be held responsible.” The Court further held that “if the commissioner reports and it is established to the satisfaction of the Court that starvation death has taken place, the Court may be justified in presuming that its orders have not been implemented and the chief secretaries/ administrators of the states/ union territories may be held responsible for the same.”

In the same order, the Court directed each state government and union territory to appoint a set of government officials as assistants to the commissioner to “render such assistance to the commissioners as the commissioners may require and help them in discharging the responsibility which has been cast upon them.” The respondents were also directed to appoint a nodal officer.

The Right to Food Campaign

It is necessary to make a slight digression at this stage to make a point about the inter relationship between the legal initiative and the social movements. It is true that the legal initiative started without any general consultation with the right to food and the food sovereignty groups in the country. It would have been much better had such a consultation taken place. But it is part of the history of the litigation that it began without much hope and in a situation where many of the NGOs and struggle organisations had no faith at all, and rightly so, in the legal system. That the case took off is one of the ironies of the situation and a happy one at that.

It is also important, at this stage, to acknowledge the role of the media, both print and television, in the success of the right to food case. In the weeks prior to the petition being filed, the newspapers and the television channels were full of reports of deaths by starvation. There were graphic images carried of tribal families who had died eating mango kernels, grass and other toxic and inedible plants, roots and seeds. There were also interviews done with ministers who when questioned about such deaths remarked that it was customary for the poor in India to eat such substances. There was public indignation in the air when the case was filed and after the case was admitted, the media continued to cover the proceedings on a day-to-day basis. It was this huge generation of positive public opinion that contributed, in the early stages of the case, to its success. Thus, even in the absence of a right to food movement as such, a combination of active media coverage and a fortunate placement of the stars contributed to the early success.

The moment the orders began to come in, it struck social activists that something unusual was afoot. The Supreme Court in the era of globalisation (1995 onwards) was not particularly friendly court for PIL. The revolutionary strides made by the Court in public interest law jurisdiction during the 1980s and early 1990s was, by 2001, in steady reverse gear. Social activists were already disillusioned by Court decisions on important public matters. The orders of the Court in this case took them, and the advocates in the case as well quite by surprise. As order after order was made, it became quite clear that something most unusual and positive was taking place.

The developments may have had something to do with the judges presiding over the case. It started with Justice BN Kirpal, who was a rather determined judge and who would take things forcibly to its logical conclusion come what may. He would use this strength to make several orders, which operated against the poor and working people, but that is another story. Here he was determined to bring about change. When he retired, the case was heard by Chief Justice YK Sabharwal, who was, compassionate and concerned. He was an equally perspicuous forceful judge, and determined and he took the case forward. When he retired, the case landed before a bench of Justice Dr Arijit Pasayat and Justice SH Kapadia who also took the case forward with considerable enthusiasm. Thus, the petitioner was fortunate to have a series of justices who were determined to take the case to its logical conclusion.

As the first few orders came in, there was a noticeable revival in the right to food campaign, almost as if it had received a shot in the arm. The groups that had put in enormous work over decades immediately became involved in the legal proceedings. Women's organisations, tribal groups, NGOs of all types, child right organisations, health right NGOs, economists, nutritionists, academics, lawyers and journalists got involved. It was magnificent to see the spread and depth of the movement. These organisations and individuals became the backbone of the case. They collected information, conducted surveys, did public hearings and submitted data and information, which was in turn, handed over to the Court. They guided the petitioner and the advocates as to the issues to be taken up and the demands to be made. They decided strategy and tactics. They monitored the court orders and immediately reported instances of non-compliance. They wrote articles in the newspapers and they held numerous meetings where governments came in for trenchant criticism. It is this campaign that is responsible for the success of the case.

Members of the campaign, all of them brilliant and committed, are numerous to be mentioned individually. They were the rock on which the case stood and they will endure even after the case is over. The chart is available at the website of the Human Rights Law Network at www.hrln.org (go to 'issues' and then see 'Right to Food').

SOME FAILURES

Sadly however, the movement was not able to go beyond this phase to a more political one, transiting from the right to food to food sovereignty. It was unable to integrate with the already existing tribal movements struggling against displacements and arguing for the rights of tribals to continue to reside in and take advantage of forest areas, notwithstanding the absence of title to land. It could not merge with existing farmers' movements at a critical period where land reforms from a capitalists points of view were taking place and farming was deliberately made un-remunerative and farmers were being pushed off the land by the World Bank suggested reforms. Similarly, the movement was unable to deal with the issue of genetically modified foods due to political differences within its ranks, as a result of which the farmers' movement against GM foods and the right to food movement remained separate.

True, the legal strategy was to peg the pleadings and the relief sought in the writ petition on the various programmes of the governments with a view to obtain court orders for their implementation, thereby converting a mere programme that could be rescinded at will into a legal entitlement which could not be changed without the governments going back to the court to obtain a modification. But the intention of the RTF campaign right from the beginning was never to be limited by schemes or by a legal strategy only. The case was supposed to be only a starting point. Thereafter, the campaign

intended to broaden out into all areas of discrimination and injustice regarding food. What this meant was that the campaign ought to have been concerned with displacement from land and retrogressive amendments in the Land Acquisition Act, so-called land reforms such as contract farming, the use of pesticides and chemicals and its alternative in organic farming, the minimum support price and the need to give small and medium farmers particularly a viable price for their products, the diversion of agricultural land into non-agricultural use, the agreement on agriculture and the demand of the movements that the WTO should get out of agriculture, the spread of genetically modified food through companies such as Monsanto, the privatisation of water, the displacement of tribals from their lands and the extensive growth of mining with its disastrous consequences for the environment. But this transition from a case based on schemes to a political movement aimed at combating the shift in the balance of power regarding land and resources, between capital and labour never took place.

The social movements in India are probably more extensive than any other country but they suffer from major defect. These movements are unable to come together despite their overall similarity in perspective and orientation, to form a political opposition to the State. Political activity is restricted to two national political parties and several regional parties all of whom have virtually the same agenda. They are all capitalistic and to such an extreme that even social democracy appears unpalatable to them. They are all in favour of globalisation understanding fully well the resulting pauperisation of the working people. Thus the working class have no one to vote for, as there is not even a small political party representing the working people.

Having said this, there is also a subterranean movement for a new political expression and though this manifests itself in many ways, it is at a very early stage. The RTF campaign could possibly have converted itself into a political movement for food sovereignty, especially since hunger and malnutrition continued to exacerbate during the entire period of the case in the Supreme Court. Sadly, this was not to be. Direct political mobilisation against the authorities did not take off in most areas. The massive spread of the right to food campaign in all the states was not converted into co-ordinated action. The discontent, frustration, misery and unhappiness at the grassroots remained untapped.

THE POVERTY LINE

Returning to the case, a huge difference of opinion emerged between the right to food movement and the Government of India on a policy matter relating to hunger. The criteria used by the Government of India for determining whether a family does or does not fall below the poverty line was arbitrary and most unsatisfactory. Many studies revealed that about half of all persons who were genuinely poor were not listed in the government data on BPL families and were either left out completely or shown as above the poverty line (APL). These reports also show that a large number of persons who are rather affluent are able to influence officials and have their names entered in the BPL list even though they owned large areas of agricultural land and have tractors and so on. The whole issue of identification of BPL families is therefore mired in corruption and controversy. This was brought to the attention of the Court and the Court directed the governments “to frame clear guidelines for proper identification of BPL families.”

The poverty line debate was a complicated one. According to the Government of India, the number of poor persons in India was approximately 37 percent. On the basis of the national sample survey organisation, the planning commission declared the official poverty estimate for 1999-2000 at 27 percent of the population. Kavita Srivastava of the PUCL Rajasthan was alarmed when she learned

that as a result of a pro-rata reduction for her state the number of persons entitled to be on the BPL list had been cut from 20.7 lakhs rural households to 11.89 lakhs. At that time, the government was conducting a BPL survey in the villages of Rajasthan and it was noted that the methodology and procedure was so faulty that about 30 percent of all poor families would be omitted from the BPL list. Social activists in Rajasthan countered this survey by doing an alternative study in the *Sehar Gram Panchayat* of Barmer district and the study found that many persons who were above the poverty line were shown in the BPL lists while the poor were excluded. Tens of thousands of scheduled castes and scheduled tribes families were excluded.

A careful study of the survey methodology and procedure found several astonishing defects. The average monthly income of the household was not taken as a scoring point. A tenant on a plot of land was treated on par with the actual owner of the land. Drinking water facility, which ought to be taken, as an indicator of the poverty was not a scoring point. That the family was scheduled caste or scheduled tribe did not matter. Points were granted in a most erratic fashion. For example, they were granted on the basis of a number of pieces of clothing the family had without reference to the quality of the clothing. A few articles of clothing albeit in miserable condition could rank on par with ownership of acres of land. Two points were awarded if a family had only one square meal a day which is half of the daily nutritional requirement; and the same number of points were awarded to a family having more than two acres of irrigated land. Sanitation was a misleading criterion. Defecation in the open was seen as negative and having a toilet inside the house was seen as positive; not realising that in many parts of the state open defecation is a practice even for the rich. Moreover, the government made houses for the poorest of the poor under the *Indira Awas Yojana* with the toilet inside which automatically excluded them from the BPL list. The ownership of consumer durables such as a vehicle or a tractor or a colour television should have led to automatic exclusion but this was not so. As a result, a family with a tractor and two pieces of clothing would rank on par with the landless labourers having several pieces of tattered clothing. Disentitling the poor from BPL status on account of the possession of a small radio which they could purchase for Rs 50 or for possessing a pressure cooker which some NGO had distributed free was yet another example of how brain-dead the entire survey was. Bonded labourers ought to have been automatically included but this was not so. Similarly, child labour families ought to have been automatically put on the BPL list. Instead indebtedness was made a major factor but it was unreliable because rich families are often highly indebted to the banks. Migrant, casual and seasonal workers ought to have been straight away put on the BPL list. Moreover, the surveys were conducted in the usual way from up downwards by the teacher or the *patwari* (the revenue official) both of them susceptible to village level pressures particularly from the rich.

The debate on the poverty line was however, fractured. The economic and political weekly came out with a special issue on the poverty line which was a report of a conference funded by the World Bank and in which all the contributors agreed that poverty in India had declined from 37 percent and the only difference among the economists was the extent of the decline. Some of the economists at the centre of the right to food movement also, unfortunately, joined in the contribution. Having garnered such intellectual ammunition on the proposition that globalisation, privatisation and structural adjustment had actually succeeded in India and had resulted in an absolute decline in the numbers of the poor, government moved the Supreme Court to obtain sanctions for a drastic reduction in its food and nutritional programmes. The battle lines were thus drawn. It may be relevant at this point to note that the planning commission in two ways set the poverty line in 1979. The commission set a money standard and also set a food intake standard of 2400 k calories per person per day. When the planning commission updated the money standard in the year 2000, it set the poverty line at

approximately Rs 15 per person per day and it is this obnoxious standards that carried right through the period of globalisation and of “rising India” and “shining India”. Rs 15 would barely buy a bottle of mineral water let alone food, education, housing, clothing, and transportation. This is what an average employee at Delhi would spend at a bare minimum for bus fare from home to office and back.

It was much later that an economist from JNU, Prof Utsa Patnaik, came out with her book “The Republic of Hunger” (Three Essays Collective, March 2007) and other economists also wrote on the issue at the same time, making a scathing criticism of those neo-liberals who were so brash as to suggest that poverty was on the decline in India.

Prof Patnaik concluded that during the years 1998 to 2003, per capita food grains absorption had fallen sharply to levels “not been seen for the last half century” (115). Between 1990 and 2007 the annual absorption of food grains per head came down “from 177 kg to 155 kg...levels last seen in the initial years of World War II” (115). She concluded that large sections of rural India “have been already reduced to the nutritional status of Sub-Saharan Africa” (122). Inspecting national sample survey (NSS) data on calorie intake corresponding to food consumed, she concluded that by the year 2000, 70 percent “of the rural population was below the norm of 2004 calories per day”, meaning that “seven-tenths of the rural population was in poverty in 1999-2000.”

How then did the government arrive at a calculation of poverty at 36 percent of the population instead of 70 percent? This was done on the basis of a calculation made by the planning commission regarding population in terms of per capita income which table is set out below:

Table 1: State-Specific Poverty Lines in 1999-2000
(Rs per capita per month)

SN	State	Rural	Urban
1.	Andhra Pradesh	262.94	457.40
2.	Assam	365.43	343.99
3.	Bihar	333.07	379.78
4.	Gujarat	318.94	474.41
5.	Haryana	362.81	420.20
6.	Himachal Pradesh	367.45	420.20
7.	Karnataka	309.59	511.44
8.	Kerala	374.79	477.06
9.	Madhya Pradesh	311.34	481.65
10.	Maharashtra	318.63	539.71
11.	Orissa	323.92	473.12
12.	Punjab	362.68	388.15
13.	Rajasthan	344.03	465.92
14.	Tamil Nadu	307.64	475.60
15.	Uttar Pradesh	336.88	416.29
16.	West Bengal	350.17	409.22
17.	Delhi	362.68	505.45
	All India #	327.56	454.11

Even a casual look at the table will reveal how ridiculous the poverty line estimates were. Going from Rs 12 in the rural areas to Rs 17 at Delhi, this amount was not even enough to buy a bottle of mineral

water. Keep in mind that the poverty line income covers expenditures such as food, clothing, housing, education, travel, medical expenses and all other incidental expenses that are required to keep body and soul together. Yet the planning commission refused to recognise that the poverty level estimates were obsolete and utterly meaningless. The commission chose to ignore hunger in the country and the revision of the poverty line because that would require them to accept that during the period of globalisation, privatisation and structural adjustment, poverty deepened and became more widespread in India so as to cover 70 percent of the population. They deliberately kept the poverty statistics low by artificially depressing the poverty line and thus misled the entire world into believing that globalisation was working in India.

In the right to food case, we were forced to look at this issue as government claimed that the poverty line had declined from 36 percent to 26 percent or thereabouts and accordingly propose to remove millions of people from the poverty list. This would have resulted in a huge tragedy for the poor. The Government of India was so depraved that while hunger was increasing, it sought to curtail the public distribution system. What they didn't bargain for was the Supreme Court intervention and the order made on May 6, 2003 directing that "the Government of India will not insist that state governments remove any person from the existing BPL list" (59). This order basically put a spanner in the works so to speak and the government was faced with a dilemma of either entering into a dialogue with the petitioner and the right to food campaign or prepared for a clash in the Court with an uncertain outcome and a lot of bad publicity. Mercifully, the government chose the first option and there were a series of sometimes heated meetings with the government officials on the curtailment of the BPL list. Eventually, the government agreed to maintain *status quo* and the consent terms were filed in court and they read as follows:

"Food grain allocations by the central government to beneficiaries under TPDS will be continued to be made at the present to states on the basis of the planning commission estimates of 1993-94 poverty rations, which is at 36 percent applied to the population projections of the Registrar-General of India as on March 1, 2000 or on the basis of families identified and issued ration cards by the state government whichever is less."

Getting back to the case, on hearing that the Government of India plan to remove 50 million people from the BPL list and the state of Rajasthan propose to remove over one million people from list in view of their stand that poverty had reduced in India, counsel moved the Supreme Court and urgently mentioned the matter for urgent orders on May 5, 2003 and the Supreme Court directed the Government of India and the state governments not to insist on removing any person from the BPL list until further orders.

ARTICLE 21: THE RIGHT TO LIFE INCLUDES THE RIGHT TO FOOD

On May 2, 2003 the Supreme Court made another major order when it found the approach of the government to the case "distressing." Holding that the right to food would be an integral part of Article 21 of the Constitution – the right to life – the Supreme Court held as follows:

"Article 21 of the Constitution of India protects for every citizen a right to live with human dignity. Would the very existence of life of those families are below poverty line not come under danger for want of appropriate schemes and implementation thereof, to provide requisite aid to such families? Reference can also be made to Article 47 which *inter alia* provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties."

MONITORING BY THE SUPREME COURT

Turning then to the implementation of the previous orders of the Court, the Supreme Court observed, “we are told that despite the fact that one-and-a-half years have passed, some of the states have not even made a beginning.” The Court issued specified directions for compliance and gave specific deadlines.

This approach of keeping a petition pending in the Court and requiring affidavits to be filed showing compliance, with the Court essentially monitoring the implementation of the orders is another unique Indian innovation. It became necessary to introduce this approach since disobedience of court orders are quite frequent and it is impossible for a litigant or even a public interest litigant to once again go back to court for enforcement.

This shortcut was explained by the Supreme Court in *Union of India Vs Sushil Kumar Modi* (1997- 4 SCC 770) where the Supreme Court held as under:

“It has to be borne in mind that the purpose of these proceedings is essentially to ensure performance of the statutory duty by the CBI, and the other government agencies in accordance with law for the proper implementation of the rule of law... The duty of the Court in such proceedings is, therefore, to ensure that the CBI, and other government agencies do their duty and do so strictly in conformity with law... The nature of these proceedings may be described as that of ‘continuing mandamus’ to require performance of its duty (774)...”

On April 20, 2004 the Supreme Court was once again “anguished” by the lackadaisical approach shown by the respondents. Recalling that the Court had on October 29, 2002 made it “clear that in case of persistent default in compliance of the orders of this Court, the concerned chief secretaries/ administrators of the states/ union territories shall be held responsible.” Nevertheless, “some of the states had not even made a beginning. In the order dated May 2, 2003, “this Court observed the manner in which the directions had been flouted in some states.” Overall the Court found that “there are other states and union territories as well in respect whereof the aforesaid reports of the commissioners have commented upon. Some of the states/ union territories have not made even a beginning despite lapse of so many years, some have only made a partial beginning; some have made a token beginning and only few of the states have fully implemented the order in respect of cooked mid-day meals that was passed on November 28, 2001.” Reading the compliance reports regarding the MDMS, the Court was shown a newspaper clipping of a speech made by the prime minister promising to extend the MDMS up to the tenth standard during his address to the nation on August 15, 2003. The government responded by saying that “once the mid-day meal scheme at primary level was consolidated, the question of extension of the scheme up to tenth standard could be taken up in a phased manner.” The Court then made a series of directions restraining the respondents from collecting any money from the children or their parents for the mid day meal. Preference was to be given to dalits, scheduled castes and scheduled tribes in the appointment of cooks and helpers. The government was to provide for kitchen sheds and the conversion costs of turning food grains into cooked mid-day meals. In drought-affected areas, the mid-day meal was to be supplied even during the summer vacation. The Government of India was to inform the Court on affidavit as to when it would be possible to extend the mid-day meal scheme up to the tenth standard in compliance with the announcement made by the prime minister. The doubling of food grains and cash in the SGRY programme ordered on May 2, 2003 was continued. Workers were to be paid the minimum wages. Labour displacement machinery was to be discontinued. The public was granted

access to all documents including muster rolls in the employment programmes at nominal costs. The grant of AAY cards to primitive tribes was ordered to be accelerated. These directions were given as numerous complaints were received of the state governments collecting money from students and their parents for the mid-day meal. Globalisation in the developing world is so brutal that while the rich become richer and the State is proud to declare a ten percent increase in GDP every year, nevertheless the State fights tooth and nail to avoid paying rupees two per child for a meal. The direction relating to cooks and helpers were made because it was pointed out to the Supreme Court that scheduled castes and scheduled tribes persons were not being employed as cooks and helpers and that the dominant castes in the villages were refusing to allow their children to eat the food prepared by them. The direction relating to supply of meals during the summer vacation was made because the Court was shown documents indicating that the children had nothing to eat when the school closed for the summer vacation. The order regarding the minimum wages was made because complaints were received from the right to food campaign members of non-payment of minimum wages and of the employment of contractors who were siphoning away the resources. The direction regarding transparency was made as the people were refused inspection of documents and over charged huge amounts for photocopying.

The order dated April 27, 2004 was made because a complaint was made to the Court that while the petition was being heard, the government proposed to discontinue some of the programmes that were turned into entitlements by the orders of the Court without informing the Court that the government proposed to do so. After recording that “various schemes for the poorer sections have been the subject matter of the orders passed by this Court from time to time” the Supreme Court observed, “it seems that some states have discontinued some of the schemes.” The Court, therefore, directed that “till the matter is fully heard no scheme covered by the orders made by this Court... shall be discontinued or restricted in any way without the prior approval of this Court. In other words, it means that till further orders, the schemes would continue to operate and benefit all those who are covered by the schemes.”

On September 16, 2004 documents were submitted to the Supreme Court setting out the details of hunger related deaths among primitive tribes in Baran district of Rajasthan. In August 2004 itself, 26 persons had died of hunger, most of them children. The central government directed the state of Rajasthan to explain “the cause of death of so many children within a span of few days in one particular district of the state.”

INTEGRATED CHILD DEVELOPMENT SCHEME

Dealing with malnutrition among pregnant women, lactating mothers and adolescent girls, the Supreme Court ordered the full implementation of the Integrated Child Development Services (ICDS) scheme. This required supplementary nutrition which was defined as “300 calories and 10 grams of protein” to be given to each child in the age group 0 – 6 years. Additionally, each adolescent girl was to get “500 calories and 25 grams of protein.” Each pregnant woman and nursing mother was to get “500 calories and 25 grams of protein.” Every malnourished child was to get “600 calories and 20 grams of protein.” This order was to have enormous repercussions for the government.

By order dated April 27, 2004, the Supreme Court responded to a complaint made by the petitioner that the original order dated November 28, 2001 was not being implemented at all. After hearing the

parties and perusing the documents filed by the petitioner including the commissioner's reports on ICDS Court said:

“It seems that most of those who are covered by the said order are not getting benefits under the said scheme... it seems evident that there is a large number of malnourished children between the age group of 0 – 6 years. These figures are based on the survey conducted under the national family benefit scheme. The position is quite alarming. These young children are the future of the nation. Further, it appears that except Kerala and Tamil Nadu, where the benefit under the scheme is said to be reaching to about 50 percent of the children, in the rest of the country the average seems to be below 25 percent. The position in the states of Bihar, Uttar Pradesh, Jharkhand and Uttaranchal (now Uttarakhand) seems to be quite alarming. According to the survey, for the period 2002-2003, the access to supplementary nutrition for the children in Bihar reaches to about 12.6 percent of those who are otherwise covered by the scheme.”

On the next date of hearing, a complaint was made to the Court that though the ICDS is supposed to cover about 14 lakh hamlets, the performance was dismal and the coverage was only six lakh. The Court made an order dated April 29, 2004 as under:

“It is evident that the ICDS is perhaps the largest of all the food supplementation programmes in the world... It was initiated in 1975 with the following objectives... (i) to improve the health and nutrition status of children 0 – 6 years... (ii) to provide conditions necessary for pre-school children's psychological and social development... (iii) to provide pregnant and lactating women with food supplements... and (iv) to enhance the mother's ability to provide proper child care through health and nutrition education... It appears that a lot more deserves to be done to ensure that nutritious food reaches to those who are undernourished or malnourished... The food is supplied to children through *Aanganwadi* centres (AWC). In all, there are six lakh centers. The norms of the Government of India provide for one centre for the population of 1000 (700 in case of tribal areas). According to the petitioner, going by the said norms there should be 14 lakh AWCs... We direct the Government of India to file within three months, an affidavit stating the period within which it proposes to increase the number of AWCs so as to cover the 14 lakh habitations. We notice that the norm for supply of nutritious food worth rupee one for every child was fixed in the year 1991. The Government of India should consider the revision of norm of rupee one.”

Following up with its investigation into the functioning of the ICDS, the Supreme Court made an elaborate order on October 7, 2004 which is as follows:

“It is not in serious dispute ... that there should be approximately AWCs. Admittedly, nearly six lakh centres have been sanctioned. Many of the sanctioned centres are also not operational... The problem seems to be more acute in states like Bihar, Uttar Pradesh and Jharkhand. It deserves to be noticed that the directions ... were issued as far back as November 28, 2001. The order dated April 27, 2004 notices that most of those covered by the order dated November 28, 2001 are not getting the benefits under ICDS... The result was that a large number of children between the age group of 0-6 years were malnourished. That order also noticed that the position was alarming... We are shocked at the attitude of the central government which is in respect of giving nutritious food to all children... The fifth report (of the commissioner's) presents a gloomy picture... Instances have been given where for months supplies were not made to the children... In the state of Jharkhand, the sanctioned AWCs were not working from May to December 2003. No satisfactory reply is forthcoming from that state... According to the report, on-an-average 42 paise as against the norm of rupee one was being allocated per

beneficiary per day by the state of Jharkhand. The position in Bihar and Uttar Pradesh is also no better... The report also mentions that some AWCs are operating from private houses including those of grain dealers which... is not a healthy way of working as it is likely to increase the chances of pilferage of grain. We are happy to note that... state of Uttar Pradesh has made efforts to shift AWCs to private schools. It is a good example for other states to follow... The problem of using contractors for procurement has also been mentioned in the report suggesting that it should be done... at the government level. We issue the following directions:

“Efforts shall be made that all SC/ST hamlets/ habitations in the country have *Anganwadi* centres as early as possible... Contractors shall not be used for supply of nutrition in *Anganwadis* and preferably ICDS funds shall be spent by making use of village communities, self help groups and *mahila mandals* for buying of grains and preparation of meals...all governments...shall put on their website full data for the ICDS including where AWCs are operational, the number of beneficiaries category-wise the funds allocated and used ... BPL shall not be used as an eligibility criteria for ICDS ... all sanctioned projects shall be operationalised ...utensils shall be provided...vacancies shall be filled forthwith ... the entire state and central allocations shall be utilised. Under no circumstances (should it) be diverted or returned to the Centre and, if returned, a detailed explanation for non-utilisation shall be filed in this Court ...earnest effort to cover the slums under ICDS shall be made ... all amounts allocated shall be sanctioned in time so that there is no disruption whatsoever in the feeding of children (88-96).

On December 13, 2006 and immediately thereafter, the Supreme Court made a series of stunning orders on the ICDS. Referring to the millennium development goals (MDGs) and specifically to the nutrition MDGs, the Court noticed that the prevalence of the underweight children under five years of age and the proportion of population below a minimum level of dietary energy consumption, was to be halved between 1990 and 2015. The Court then concluded, “it seems unlikely” that these goals would be met. A rapid up-scaling of health, nutrition, education and infrastructure, interventions is needed if the MDGs to be met.” Referring to the sixth commissioners’ report dated November 21, 2005 the Court noted, “as many as 1201 lakhs or 70 percent of the children entitled to the ICDS are currently left out of its net.”

Turning its attention to adolescent girls, the Court found that out of 844 lakhs according to the Census of 2001, only a mere 2.4 lakhs or 0.3 percent adolescent girls were covered. Many states such as Bihar, Goa, Jharkhand and Orissa “have pointedly stated that adolescent girls are not being covered under the ICDS”. “Thus”, the Court concluded “an entire section of beneficiaries remain completely ignored in the implementation of the Scheme”. Similarly, pregnant women and nursing mothers constitute about four percent of the total population and of this section, less than 20 percent were covered i.e. there were only 81.05 lakhs beneficiaries.

The Court referred to its earlier orders dated November 28, 2001, April 29, 2004 and October 7, 2004 where the Supreme Court had expressed its concern “that very little progress had been made towards the implementation of these orders.” Though these orders required “universalisation” of ICDS by operating 14 lakhs AWCs, the Court noted that “the data available indicates till now only 9,52,764 centres have been sanctioned...out of which 1.88 lakhs centres have not yet become operational.” Taking into account the norms which require a full fledged *Aanganwadi* for a population of 300 -1000 persons (300 – 700 persons in tribal and dalit areas) and a Mini *Aanganwadi* for less than 300

persons, the Court concluded that all the required *Aanganwadis* ought to be made operational as quickly as possible.

Then the Court recorded the revised rates for the beneficiaries at rupees two per child per day for food, Rs 2.70 per day for severely malnourished children and Rs 2.30 per day for pregnant women, nursing mothers and adolescent girls. It is perhaps necessary to pause at this stage to let these figures sink in. A country, which prides itself as being an Asian Tiger with one of the highest growth rates in the world is willing to allocate only 1/20th of a dollar per day for a severely malnourished child. This is the reality of a modern day, globalised, capitalistic India!

Even at these low rates, the commissioner's report found the allocations "low, and the utilisation of allocated funds has also been poor". During 2005 – 06 the utilisation was only 57.7 percent of the releases made by the Government of India. "Huge amounts of money is being left unspent and rightful beneficiaries are being denied." The Court then found that there was a 60 percent shortfall in the supplementary nutrition programme (SNP) in the allocations made by the Centre. All in all, there emerged quite a miserable picture with many states providing less than 60 percent of the services. Assam provided only 13.5 percent and Manipur zero percent services. Most states had utilisation levels less than 60 percent of the allocations. These states included Assam, Madhya Pradesh, Bihar, Haryana, West Bengal and Punjab. It is interesting to note that the state of West Bengal, which is governed by the Communist Party of India (Marxist or CPM) generally performed much worse than the other capitalist state governments! The ideology of Communism which is oriented towards the working people has clearly not permeated in this state despite the "Communist" government and the poor are treated probably worse than other capitalist states.

The Court then made a series of stunning directions to the Government of India and to all the states and union territories. The first direction to the respondents was to "operationalise a minimum of 14 lakhs AWCs in a phased and even manner starting forthwith and ending December 2008." The second direction to the Government of India was to "ensure that population norms for opening of AWCs was not revised upwards under any circumstances." This direction was given because the Government of India stated its intention of diluting the norms so as to make an AWC service a large population. The third direction created a new entitlement for rural communities and slum dwellers called the "*Aanganwadi* on demand" where an *Aanganwadi* would be set up where there were at least 40 children under six, within three months of the demand being made. All the benefits of the ICDS system including supplementary nutrition, growth monitoring, nutrition, health education, immunisation, referral and pre-school education was to be made available to all children under the age of six, all pregnant women and lactating mothers and all adolescent girls. In accordance with the norms, it was directed that rupees two per child per day would be allocated and spent for supplementary nutrition with the central government contributing rupees one per child per day. A similar direction for severely malnourished children at Rs 2.70 and Rs 1.35 per child per day respectively was made. Likewise, Rs 2.30 and Rs 1.15 for pregnant women, nursing mothers and adolescent girls. The Court directed the personal appearance of the chief secretaries of the defaulting states to explain why the Court orders were not obeyed. Affidavits of the respondents showing compliance with the Court orders were also directed.

On July 9, 2007, when it was shown to the Court that the progress was very poor, the Court directed that "the backlog have to be cleared immediately." The Court further "made clear that if there is any non-observance of the time period fixed, it would be seriously viewed."

On July 25, 2007, once again a complaint was made that the governments had been most lax. After hearing the parties, the Court said that the pace of implementation was “a sad reflection on the sincerity and seriousness of various state governments ... it is shocking to note that ... the percentage of functional centres is very low.” Then, taking note of lapses, the Supreme Court issued notices of contempt to the chief secretaries of several states directing them to explain on affidavits the reason for non-compliance and to show cause as to why “exemplary action” should not be taken against them. The chief secretaries were to indicate in the affidavits “the names of the other officers who are responsible for not complying with the court’s orders.” Because of this, very stern action taken by the Court, on August 30, 2007 when the case was heard again, many of the states had complied substantially with the orders so that no further action was deemed necessary.

On April 22, 2009 an affidavit dated March 2, 2009 was presented in the Supreme Court on behalf of the ministry of women and child development agreeing to increase the allocations under the ICDS scheme. It must be said to the credit of the United Progressive Alliance (UPA) government at the Centre that these increases were a somewhat welcome break from the pitiable amounts allocated in the past. It was acknowledged in the affidavit that the norms fixed in 1975 “were not adequately meeting the gap between the recommended dietary allowance (RDA) and average dietary intake (ADI) which meant that the desired impact in the incidents of malnutrition was not taking place.”

There was, however, a catch in the affidavit in that the ministry attempted to bring in contractors by the back door once again. It was craftily drafted. Attempting to separate take home rations (THR) from the other inputs of supplementary nutrition, where contractors were specifically banned, the affidavit attempted to open the doors for contractors for THR and other “snacks.” The affidavit stated that “THR could be given in the form of micronutrient fortified food and / or energy-dense food ... state governments/ union territories may arrange to provide a morning snack in the form of ... micronutrient fortified foods ... for severely under-weighted children in the age group of 3-6 years additional 300 calories of energy and 8-10 grams 12 grams of proteins should be given in the form of micronutrient fortified food and / or energy dense food as THR.” After filing this affidavit, the ministry petitioned the Court for an order directing the implementation of the new suggestions. The commissioners who addressed the letter to the Supreme Court dated April 2, 2009 immediately opposed this. While welcoming the enhancement of the financial norms for the supplementary nutrition programme and the enhanced calorie and protein supplementation norms, the commissioners wrote “however, we are in strong disagreement with the manner in which the ministry of women and child development is seeking to allow a backdoor entry of contractors and middlemen... Such an attempt to introduce contractors by the back door in the guise of supplying micro-nutrient fortified food was repeatedly rejected by this Hon’ble Court when several state governments filed affidavits seeking to promote the contractor lobby for the provisioning of fortified foods, snack and other ready to eat food in ICDS. This contractor lobby seeks to capture what it perceives to be potential central government annual budget of Rs 5,000 crore in the supplementary nutrition programme.” The commissioners then referred to the October 7, 2004 order of the Supreme Court which declared “the contractors shall not be used for supply of nutrition in *Anganwadis* and preferably ICDS funds shall be spent by making use of village communities, self-help groups and *Mahila Mandals* for buying of grains and preparation of meals.” This was reiterated in the December 13, 2006 order. The commissioners also pointed out that the local village organisations were providing “combinations of rice, pulses, oil, eggs, peanuts, green gram, milk, jaggery, soya bean, vegetables, lentil and other locally grown and available foods which were rich in micronutrients.” The commissioners argued that the local foods including “milk, jaggery, lentils, spinach, fruits, and drum stick leaves provide

essential micronutrients like iron, vitamin A, calcium, vitamin C, thiamin riboflavin, folic acid, beta carotene and hundreds of other essential minor micro-nutrients and anti-oxidants.” The commissioners were of the opinion that the ministry was seeking “to open the door ... for contractors providing micro-nutrient fortified food in the guise of “take home rations” (THR) and a “morning snack.” They were of the opinion that “such a move would effectively reverse the approach taken by the Supreme Court for at least the last five years to encourage local production and supply of hot, cooked meals and take home rations.”

After this protest, the Supreme Court made its order on April 22, 2009 doubling the budgets for supplementary nutrition and increasing other benefits. As adolescent girls were nowhere mentioned in the affidavit and as the Court was informed that the government proposed to introduce a more substantial scheme called the *Kishori Shakti Yojana* (KSY) soon, the Court directed the government to continue providing the benefits to adolescent girls under ICDS until KSY is introduced.

The most important part of the order was the direction to the government to ensure that the orders dated December 7, 2004 and December 13, 2006 *inter alia*, prohibiting contractors would be obeyed. By this order, therefore, the Supreme Court once again prevented the introduction of the contractors in the food security programmes of the government. As a result, I suppose, the Global Alliance for Improved Nutrition (GAIN) with its public – private partnership (a euphemism for privatisation) must be somewhat upset this unholy coming together of global food giants Groupe Danone, Unilever and Cargill seem to be lobbying quite actively in the corridors of the ministry of women and child development to capture a lucrative contract for the distribution of micro-nutrient food in the government programmes. Making money out of misery.

The case goes on.

With the victory of the United Progressive Alliance (UPA) at the Centre, the move towards drafting a Right to Food Act picked up particularly after the new government announced in June 2009 that it proposed to enact a statute within 100 days. At a meeting of the Right to Food Campaign held after this announcement a very poor draft was circulated which compromised on not only food sovereignty issues but also on the achievements of the PUCL case in the Supreme Court. There was opposition to this draft and it was replaced by successive drafts that made substantial improvements. Then a meeting was held of the Right to Food Campaign in July 2009 at which strident criticism was made of the limited vision of the Campaign. Many questioned how it was that the statute drafted could claim to deal with the Right to Food when all it covered were few, albeit important, entitlements. Participants at the meeting felt that it was necessary for the Campaign to widen its perspective and to move into food sovereignty issues covering critical areas relating to hunger such as land reform, forest rights, water privatisation, genetically modified food, biodiversity and traditional knowledge. It was stressed that government policies in the era of globalisation created hunger and then schemes were put in place as a palliative to meet the crisis that develops as a result of these policies. This was the position in July 2009 at the time of going to the press.

July 2009

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**Orders/Judgment of the
Supreme Court
of India**

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**SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS
WRIT PETITION (CIVIL) NO. 196 OF 2001**

PEOPLE'S UNION FOR CIVIL LIBERTIES

.....PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

.....RESPONDENT(S)

23.7.2001 This petition is called for hearing today

CORAM: HON'BLE MR. JUSTICE B. N. KRIPAL
 HON'BLE DR. JUSTICE K. G. BALAKRISHNAN

For Petitioner(s) Mr. Colin Gonsalves, Adv.
 Mr. Jawahar Raja, Adv.
 Ms. Aparna Bhat, Adv.

For Respondent(s) Mr. Soli Sorabjee, Attorney General
 Ms. Meenakshi Arora, Adv.
 B. V. Balaram Das, Adv.
 UPON hearing the court made the following

ORDER

Counsel for the Petitioner is permitted to file a fresh application for interim relief. A copy of the same be given to the counsel for the Union of India as well as to the counsel for the States and for the Food Corporation of India.

Learned Attorney General states that this should not be regarded as an adversarial litigation and it is a matter of concern for all.

In our opinion, what is of utmost importance is to see that food is provided to the aged, infirm, disabled, destitute women, destitute men who are in danger of starvation, pregnant and lactating women and destitute children, especially in cases where they or members of their family do not have sufficient funds to provide food for them. In case of famine, there may be shortage of food, but here the situation is that amongst plenty there is scarcity. Plenty of food is available, but distribution of the same amongst the very poor and the destitute is scarce and no-existent leading to malnourishment, starvation and other related non problems.

Reply affidavits be filed within two weeks by the States and the Union of India as well as the Food Corporation of India.

In the meantime, we are sure that the responsible Governments will act for the benefit of their people. By way of an interim order, we direct the States to see that all the PDS shops, if closed, are re-opened and start functioning within one week from today and regular supplies made.

Leave is granted to the Petitioner to implead other States also as parties to this petition. On such an application being filed today, notice to issue to them.

List the matter for further consideration on 20th August, 2001.

**SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS
WRIT PETITION (CIVIL) NO. 196 OF 2001**

PEOPLE'S UNION FOR CIVIL LIBERTIES

.....PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

.....RESPONDENT(S)

20.8.2001 This petition is called for hearing today

CORAM: HON'BLE MR. JUSTICE B. N. KRIPAL
 HON'BLE DR. JUSTICE N. SANTOSH HEGDE
 HON'BLE DR. JUSTICE BRIJESH KUMAR

For Petitioner(s) Mr. Colin Gonsalves, Adv.
 Dr. Yug Choudhary, Mr. Jawahar Raja,
 Mr. P. Ramesh Kumar
 Ms. Aparna Bhat, Adv.

For Respondent(s) Mr. Soli Sorabjee, Attorney General
 Ms. Meenakshi Arora, Adv.
 Mr. Manish Singhvi, Adv.
 Mr. B. V. Balaram Das, Adv.

UPON hearing the court made the following

ORDER

The anxiety of the Court is to see that the poor and the destitute and the weaker sections of the society do not suffer from hunger and starvation. The prevention of the same is one of the prime responsibilities of the Government – whether Central or the State. How this is to be ensured would be a matter of policy which is best left to the Government. All that the Court has to be satisfied and which it may have to ensure is that the foodgrains which are overflowing in the storage receptacles, especially of FCI godowns, and which are in abundance, should not be wasted by dumping into the sea or eaten by rats. Mere schemes without any implementation are of no use. What is important is that the food must reach the hungry.

The Attorney General states that the case may be adjourned by a short date for considering what interim directions can or should be issued by this Court. A brief affidavit in this behalf may be filed by the Union of India. Other States who have not filed affidavits should also file the same within 10 days.

To come up on 3rd September, 2001.

**SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS
WRIT PETITION (CIVIL) NO. 196 OF 2001**

PEOPLE'S UNION FOR CIVIL LIBERTIES

.....PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

.....RESPONDENT(S)

17.9.2001 This petition is called for hearing today

CORAM: HON'BLE MR. JUSTICE B. N. KRIPAL
 HON'BLE DR. JUSTICE ASHOK BHAN

For Petitioner(s) Mr. Colin Gonsalves, Adv.
 Dr. Yug Choudhary, Mr. Jawahar Raja,
 Mr. P. Ramesh Kumar
 Ms. Aparna Bhat, Adv.

For Respondent(s) Mr. Soli Sorabjee, Attorney General
 Ms. Meenakshi Arora, Adv.
 Mr. B. V. Balaram Das, Adv.

UPON hearing the court made the following

ORDER

With reference to this Court's direction dated 3rd September, 2001 requiring 16 States & Union Territories who, according to the learned Attorney General, had not identified the below poverty line families under the Antyodaya Anna Yojana, to identify, we are not satisfied that any such exercise in the right earnestness has been undertaken. Some of the States mention that the exercise is underway. Considering the seriousness of the matter, one further opportunity is granted to these 16 States and Union Territories to comply with the Central Government's directions within three weeks and to inform the Central Government about the number of below poverty line families under the Antyodaya Anna Yojana which they have identified. Copies of the said communication by the said 16 States/ Union Territories should also be forwarded to the Attorney General who will inform the Court on the next date of hearing whether compliance has been made or not.

In I. A. No. 8/2001 at pages 66-68, certain schemes of the Central Government are mentioned Integrated Child Development which are required to be implemented by the State Governments. These schemes are: Employment Assurance Scheme which may have been replaced by a Sampurna Gramin Yojana, Mid-day Meal Scheme, Integrated Child Development Service, National Benefit Maternity Scheme for BPL pregnant women, National Old Age Pension Scheme for destitute persons of over 65 years, Annapoorna Scheme, Antyodaya Anna Yojana, National Family Benefit Scheme and Public Distribution Scheme for BPL and APL families. The Chief Secretaries of all the States and the Union Territories are hereby directed to report to the Cabinet Secretary, with copy to the learned Attorney General, within three weeks from today with regard to the implementation of all or any of these

Schemes with or without any modification and if all or any of the Schemes have not been implemented then the reasons for the same.

The Central Government shall collate all the facts and thereafter take necessary action in order to ensure the implementation of the said Schemes. A Status Report with regard thereto may be filed in Court within five weeks. Before giving the Status Report, the Central Government will also ascertain with regard to the actual implementation of the various Schemes. In the meantime, we direct all the State Governments to forthwith lift the entire allotment of food-grains from the Central Government under the various Schemes and disburse the same in accordance with the Schemes.

The Food for Work Programme in the scarcity areas should also be implemented by the various States to the extent possible.

To come up on 5th November, 2001.

**THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. 196 OF 2001**

PEOPLE'S UNION FOR CIVIL LIBERTIES

.... PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

.... RESPONDENT(S)

ORDER

After hearing learned counsel for the parties we issue, as an interim measure, the following directions:

1. TARGETED PUBLIC DISTRIBUTION SCHEME (TPDS)

- i) It is the case of the Union of India that there has been full compliance with regard to the allotment of foodgrain in relation to the TPDS. However, if any of the States gives a specific instance of non-compliance, the Union of India will do the needful within the framework of the Scheme.
- ii) The States are directed to complete the identification of BPL families, issuing of cards and commencement of distribution of 25 kgs. grain per family per month latest by 1st January, 2002.
- iii) The Delhi Govt. will ensure that TPDS application forms are freely available and are given and received free of charge and there is an effective mechanism in place to ensure speedy and effective redressal of grievances.

2. ANTYODAYA ANNA YOJANA

- i) It is the case of the Union of India that there has been full compliance with regard to the allotment of foodgrain in relation to Antyodaya Anna Yojana. However, if any of the States gives a specific instance of non-compliance, the Union of India will do the needful within the framework of the Scheme.
- ii) We direct the States and the Union Territories to complete identification of beneficiaries, issuing of card and distribution of grain under this Scheme latest by 1st January, 2002.
- iii) It appears that some Antyodaya beneficiaries may be unable to lift grain because of penury. In such cases, the Centre, the State and the Union Territories are requested to consider giving the quota free after satisfying itself in this behalf.

3. MID-DAY MEAL SCHEME (MDMS)

- i) It is the case of the Union of India that there has been full compliance with regard to the Mid-Day Meal Scheme (MDMS). However, if any of the States gives a specific instance of non-compliance, the Union of India will do the needful within the framework of the Scheme.

- ii) We direct the State Governments/Union Territories to implement the Mid-Day Meal Scheme by providing every child in every Government and Government assisted Primary Schools with a prepared mid- day meal with a minimum content of 300 calories and 8-12 grams of protein each day of school for a minimum of 200 days. Those Governments providing dry rations instead of cooked meals must within three months start providing cooked meals in all Government and Government aided Primary Schools in half the Districts of the State (in order of poverty) and must within a further period of three months extend the provisions of cooked meals to the remaining parts of the State.
- iii) We direct the Union of India and the FCI to ensure provision of fair average quality grain for the Scheme on time. The States/Union Territories and the FCI are directed to join inspection of foodgrains. If the foodgrain is found, on joint inspection, no to be of fair average quality, it will be replaced by the FCI prior to lifting.

4. NATIONAL OLD AGE PENSION SCHEME (NOAPS)

- (i) It is the case of the Union of India that there has been full compliance with regard to the National Old Age Pension Scheme. However, if any of the States gives a specific instance of non-compliance, the Union of India will do the needful within the framework of the Scheme.
- (ii) The States are directed to identify the beneficiaries and to start making payments latest by 1st January, 2002.
- (iii) We direct the State Governments/Union Territories to make payments promptly by the 7th of each month.

5. ANNAPOORNA SCHEME

The States/Union Territories are directed to identify the beneficiaries and distribute the grain latest by 1st January, 2002.

6. INTEGRATED CHILD DEVELOPMENT SERVICES (ICDS)

- (i) We direct the State Govts./Union Territories to implement the Integrated Child Development Services (ICDS) in full and to ensure that every ICDS disbursing centre in the country shall provide as under:
 - (a) Each child up to 6 years of age to get 300 calories and 8-10 grams of protein;
 - (b) Each adolescent girl to get 500 calories and 20-25 grams of protein;
 - (c) Each pregnant woman and each nursing mother to get 500 calories and 20-25 grams of protein;
 - (d) Each malnourished child to get 600 calories and 16-20 grams of protein;
 - (e) Have a disbursement centre in every settlement.
- (ii) It is the case of the Union of India that there has been full compliance of its obligations, if any, under the Scheme. However, if any of the States gives a specific instance of non-compliance, the Union of India will do the needful within the framework of the Scheme.

7. NATIONAL MATERNITY BENEFIT SCHEME (NMBS)

- (i) We direct the State Govts./Union Territories to implement the National Maternity Benefit Scheme (NMBS) by paying all BPL pregnant women Rs.500/- through the sarpanch, 8-12 weeks prior to delivery for each of the first two births.
- (ii) It is the case of the Union of India that there has been full compliance of its obligations under the Scheme. However, if any of the States gives a specific instance of non-compliance, the Union of India will do the needful within the framework of the Scheme.

8. NATIONAL FAMILY BENEFIT SCHEME

- (i) We direct the State Govts./Union Territories to implement the National Family Benefit Scheme and pay BPL families Rs.10,000/- within four weeks through a local sarpanch, whenever the primary bread winner of the family dies.
9. We direct that a copy of this order be translated in regional languages and in English by the respective States/Union Territories and prominently displayed in all Gram Panchayats, Government School Buildings and Fair Price Shops.
10. In order to ensure transparency in selection of beneficiaries and their access to these Schemes, the Gram Panchayats will also display a list of all beneficiaries under the various Schemes. Copies of the Scheme and the list of beneficiaries shall be made available by the Gram Panchayats to members of Public for inspection.
11. We direct Doordarshan and AIR to adequately publicise various Schemes and this order.
12. We direct the Chief Secretaries of each of the State and Union Territories to ensure compliance of this order. They will report compliance by filing affidavits in this Court within 8 weeks from today with copies to the Attorney General and Counsel for the Petitioner.
13. We direct liberty to the Union of India to file affidavit pursuant to the order of this Court date 21st November, 2001.

List the matter for further orders on 11th February, 2002. In the meanwhile, liberty is granted to the parties to apply for further direction, if any.

Sd/-
B. N. KIRPAL J.

Sd/-
K. G. BALAKRISHNAN J.

New Delhi
November 28, 2001

**THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. 196 OF 2001**

PEOPLE'S UNION FOR CIVIL LIBERTIES

..... PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

..... RESPONDENT(S)

ORDER

After hearing learned counsel for the parties we issue the following directions:

- (a) The Gram Panchayats shall frame employment generation proposals in accordance with the Sampoorna Gramin Rozgar Yojana (SGRY) guidelines for creation of useful community assets that have the potential for generating sustained and gainful employment such as water and soil conservation, afforestation and agro-horticulture, salvipasture, minor irrigation and link roads. These proposals shall be approved and sanctioned by the Gram Panchayats and the work started expeditiously.
- (b) The respondents shall focus the SGRY programme towards agricultural wage earners, non-agricultural unskilled wage earners, marginal farmers and, in particular, SC and ST persons whose wage income constitutes a reasonable proportion of their household income and to give priority to them in employment, and within this sector shall give priority to women.
- (c) The respondents shall make the wage payment on a weekly basis.
- (d) The respondents shall prohibit the use of contractors in the SGRY programme.
- (e) The Central Government shall make financial releases under the different employment generation schemes to each State on schedule, provided that the State Governments fulfil the conditions as prescribed by the SGRY. The State Governments are directed to fulfil these conditions and implement the SGRY expeditiously. The State Government will furnish utilisation certificate and it is only on the furnishing of the same that further amounts shall be released. The funds provided shall only be utilised in respect of SGRY programme.
- (f) The Gram Sabhas are entitled to conduct a social audit into all Food/Employment schemes and to report all instances of misuse of funds to the respective implementing authorities, who shall on receipt of such complaints, investigate and taken appropriate action in accordance with law.
- (g) On a complaint being made to the Chief Executive Officer of the Zilla Panchayat (CEO)/Collector regarding non-compliance of the orders of this Court the Concerned CEO/Collector shall record the salient features of the complaint in a register maintained for this purpose, acknowledge receipt of the complaint and forthwith secure compliance with this Court's order.
- (h) The CEO/Collector of all the Districts in the States and territories shall scrutinise the action taken by all the implementing agencies within their jurisdiction to ensure compliance with this court's orders and report to the Chief Secretary.

RIGHT TO FOOD

- (i) The responsibility for implementation of the order of this Court shall be that of the CEO/Collector. The Chief Secretary will ensure compliance with the order of this Court.
- (j) Dr. N. C. Saxena, former Planning Secretary, Government of India, and Mr. S. R. Sankaran, former Secretary, Rural Development, Government of India, shall function as Commissioners of this Court for the purpose of looking into any grievance that may persist after the above-mentioned grievance resolution procedure has been exhausted.
- (k) On the Commissioner's recommending a course of action to ensure compliance with this Court's order, the State Government/Union Territory administrations, shall forthwith act upon such recommendation and report compliance.
- (l) The Commissioners shall be at liberty to take the assistance of individuals and reliable organisations in the State and Union Territories. All officials are directed to fully cooperate with such persons/organisations, to bring about effective monitoring and implementation of the order of this Court.
- (m) The Gram Sabhas are empowered to monitor the implementation of the various schemes and have access to relevant information relating to, inter alia, section of beneficiaries and the disbursement of benefits. The Gram Sabhas can raise their grievance(s) in the manner set out above and the redressal of the grievance(s) shall be done accordingly.
- (n) It has been stated by the Petitioner that the identification of BPL families is not being done properly and that the criteria for the identification of the BPL families are neither clear nor uniform. The Central and the State Governments are directed to frame clear guidelines for proper identification of BPL families.
- (o) The respondents shall ensure that the ration shops remain open throughout the month, during fixed hours, the details of which will be displayed on the notice board.

To come up for further directions after 12 weeks.

Sd/-
CJI

Sd/-
ARIJIT PASAYAT J.

Sd/-
K. SEMA J.
New Delhi
May 8, 2002

**SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS
Writ Petition (Civil) No. 196 / 2001**

PEOPLE'S UNION FOR CIVIL LIBERTIES

....PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

...RESPONDENT(S)

02.09.2002

This petition is called for hearing today.

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE K.G. BALAKRISHNAN
HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Petitioner(s):

Mr. Colin Gonsalves, Adv.
Dr. Yug Chaudhary, Ms. Seema Kakkad
Mr. P. Ramesh Kumar & Ms. Aparna Bhat Advs.

For Respondent(s)
UOI

Ms. Meenakshi Arora, Adv.
Mr. Manish Singhvi, Adv.
Mr. B. V. Balaram Das, Adv.

UPON hearing counsel the Court made the following

ORDER

The Union of India will give response to the affidavit of Shri. Jagdev Singh indicating the area in the camps of the migrants which require relief. Ms. Meenakshi Arora says that a detailed affidavit has been filed giving the report with regard to the camps which have been visited. If any areas of camps remain supplementary report will be filed within three weeks. List after four weeks. In the meantime, we expect at any rate relief package to be given to the migrant refugees.

(S.L. GOYAL)

COURT MASTER

**SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS
WRIT PETITION (CIVIL) NO. 196 OF 2001**

PEOPLE'S UNION FOR CIVIL LIBERTIES

.....PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

.....RESPONDENT(S)

29.10.2002 This petition is called for hearing today

CORAM: HON'BLE MR. JUSTICE B. N. KRIPAL
 HON'BLE DR. JUSTICE Y. K. SABHARWAL
 HON'BLE DR. JUSTICE ARIJIT PASAYAT

For Petitioner(s) Mr. Colin Gonsalves, Adv.
 Ms. Sweta Kakkad, Mr. P. Ramesh Kumar
 Ms. Aparna Bhat, Adv.

For Respondent(s) Mr. Soli Sorabjee, Attorney General
 Ms. Meenakshi Arora, Adv.
 Mr. Manish Singhvi, Adv.
 Mr. B. V. Balaram Das, Adv.

UPON hearing the court made the following

ORDER

On 8th May, 2002, detailed directions were given by this Court with regard to the implementation of various schemes which had been floated for giving relief to the poor, impoverished and the hungry. In the said order Dr. N. C. Saxena and Mr. S. R. Sankaran were appointed as Commissioners of the Court, inter alia, for the purpose of looking into any grievance that may persist after the grievance resolution procedure set out in the said order has been exhausted.

Pursuant to the said order Dr. N. C. Saxena has filed the first Report dated 12th October, 2002. In the said Report, there is a reference with regard to the food requirement in the State of Rajasthan. We need not go into this aspect but what requires to be considered is the directions which are sought for by the Commissioners in the said Report.

We have heard the learned Attorney General, Mr. Colin Gonsalves and Dr. A. M. Singhvi and in furtherance and in addition to our aforesaid order of 8th May, 2002, we issue the following directions:

The Chief Secretaries/Administrators of the States/Union Territories are directed to respond promptly to the correspondences addressed to them by the Commissioners and provide full information as required. In case of persistent default in compliance with the orders of this Court, concerned Chief Secretaries/Administrators of the States/Union Territories shall be held responsible.

The Chief Secretaries/Administrators are given one last chance to translate and permanently display the order dated 28th November, 2001 and 8th May, 2002 of this Court, on all the Gram Panchayats, school buildings and fair price shops and give wide publicity on All India Radio and Doordarshan. This should be complied with within eight weeks from today.

It is clarified that the scope of the work of the Commissioners appointed by this Court is to include the monitoring of the implementation of this Court's orders as well as the monitoring and reporting to this Court of the implementation by the respondents of the various welfare measures and schemes.

The respective State Governments shall appoint Government officials as Assistants to the Commissioners within eight weeks from today. The appointment shall be made by the Chief Secretaries/Administrators of the States/Union Territories in consultation with Dr. N. C. Saxena. The Assistants so appointed will render such assistance to the Commission as well as the Commissioners would remain in constant touch with the said Nodal Officers for the purpose of ensuring the due implementation of the Schemes.

The Nodal Officers so appointed shall provide to the Commissioners full access to relevant records and provide relevant information.

Whenever the States/Union Territories have a meeting in relation to food scarcity it will be appropriate that the Commissioners and in their absence the Assistants are notified to participate in the same.

It is the duty of each State/Union Territory to prevent deaths due to starvation or malnutrition. If the Commissioner reports and it is established to the satisfaction of the Court that starvation death has taken place, the Court may be justified in presuming that its orders have not been implemented and the Chief Secretaries/Administrators of the States/ Union Territories may be held responsible for the same.

We reaffirm our earlier order dated 8th May, 2002 and direct the parties to comply with the same, and, in particular the Central Government shall formulate the scheme to extend the benefits of the Antyodaya Anna Yojana to the destitute section of the population.

Adequate funds shall be made available to the Commissioners by the Union of India to enable them to perform the functions. To await the next Report of the Commissioners, and to come up for further orders after four months before a Bench of which Hon'ble Mr. Justice Y. K. Sabharwal is a Member.

(S.L. GOYAL)

Kalyani
Court Master

**SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS
WRIT PETITION (CIVIL) NO. 196 OF 2001**

PEOPLE'S UNION FOR CIVIL LIBERTIES

.....PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

.....RESPONDENT(S)

2.5.2003 This petition is called for hearing today

CORAM: HON'BLE MR. JUSTICE Y. K. SABHARWAL
HON'BLE DR. JUSTICE H. K. SEMA

For Petitioner(s) Mr. Colin Gonsalves, Adv.
Mr. P. Ramesh Kumar
Ms. Aparna Bhat, Adv.

For Respondent(s) Mr. Mukul Rohatgi, ASG,
Mr. Manish Singhvi, Adv.
Ms. Meenakshi Arora, Adv.
Mr. Manish Singhvi, Adv.
Mr. B. V. Balaram Das, Adv.

UPON hearing the court made the following

ORDER

In this petition that was filed little more than two years back various issues have been framed many of which may have a direct and important relevance to the very existence of poor people; their right to life and the right of food of those who can ill-afford to provide to their families two meals a day. Their misfortune becomes further grave during times of famines and drought. The petitioner has sought directions for enforcement of Famine Code. The petitioner seeks immediate release of surplus foodgrains lying in the stocks of Union of India for drought affected areas. Directions are also sought requiring the Government to frame fresh schemes of Public Distribution for Scientific and Reasonable Distribution of foodgrains. In order that any meaningful and immediate relief is given by the Central Government and the State Government without any delay, various applications have been filed by the petitioner. Considering the importance of the matter particularly in relation to those who are Below Poverty Line (BPL) an order was made by this Hon'ble Court on 3rd March, 2003 requiring the respondents to file replies to the applications and place on record the requisite materials, while adjourning the case to 8th April, 2003. In respect of the directions that the Central Government shall formulate the scheme to extend the benefits of the Antyodaya Anna Yojana (AAY) to destitute section of the population, learned Attorney General stated on the last date of hearing which was on 3rd March, 2003 that for the budget for the year 2003-2004 a provision has been made for it. Despite the order of this Court the document has not been placed on record. The approach of Government is more distressing since this matter which was to come up on 8th April, 2002, has come up today after nearly four weeks of the scheduled date but neither the documents have been filed nor

other aspects required to be dealt with in the last order have been adverted to. In I. A. 25 one of the grievance that has been made is that names of various persons have been removed from BPL arbitrarily. In I. A. 26 it has been highlighted that the allocation made for supply of grain in lieu of the labour of BPL family has been recommended to be reduced from 10 kgs. per day per household to 5 kgs. and for 10 days in every month till June, 2003. In terms of the last order the specific instructions were required to be obtained on the relevant schemes mentioned in I. A.26 including in the matter of reduction of supply of the grain and the number of days. In I. A.26 directions sought against Union of India are to release 20 million tonnes foodgrains, at the very minimum, free of cost every year for the Food-for-Work Programmes besides other reliefs. Response from Government was sought within three weeks.

Declining request for filing of replies we have heard learned counsel since it is necessary to consider issuing certain directions without any further delay with a view to provide some ad hoc interim relief to a class which deserves a sympathetic approach. We have heard Mr. Colin Gonsalves, learned counsel for the petitioner, Mr. Mukul Rohtagi, learned Additional Solicitor General for Union of India, besides Mr. B. B. Singh, for State of Bihar, Mr. Ashok Srivastava, for State of U. P. and Ms. Indra Sawhney, for Food Corporation of India.

This Court in various orders passed in the last two years has expressed its deep concern and it has been observed, in one of the orders, that what is of utmost importance is to see that food is provided to the aged, infirm, disabled, destitute women, destitute men who are in danger of starvation, pregnant and lactating women and destitute children, especially in cases where they or members of their family do not have sufficient funds to provide food for them. In case of famine, there may be shortage of food, but here the situation is that amongst plenty there is scarcity. Plenty of food is available, but distribution of the same amongst the very poor and the destitute is scarce and non-existent leading to malnutrition, starvation and other related problems. The anxiety of the Court is to see that the poor and destitute and the weaker sections of the society do not suffer from hunger and starvation. The prevention of the same is one of the prime responsibilities of the Government – whether Central or the State. Mere schemes without any implementation are of no use. What is important is that the food must reach the hungry.

Article 21 of the Constitution of India protects for every citizen a right to live with human dignity. Would the very existence of life of those families which are below poverty line not come under danger for want of appropriate schemes and implementation thereof, to provide requisite aid to such families? Reference can also be made to Article 47 which, inter alia, provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.

In the light of the aforesaid, we are of the view that for the time being for the months of May, June and July, 2003, it is necessary to issue certain directions so that some temporary relief is available to those, who deserve it the most.

Our attention has been drawn to the Famine Code (Annexure Petitioners/Appellants herein-VIII). That Famine Code, we are informed, is the one formulated by State of Rajasthan and similar Codes have been formulated by other States. A perusal of this Famine Code shows that first three chapters deal with the steps to be taken as preventive measure before the famine and drought and Chapter IV onward deal with declaration of distress and commencement of relief, setting out in detail the reliefs and the officers responsible thereof. One of the reliefs claimed in the petition is for enforcement of

the Famine Code. Learned Additional Solicitor General submitted that the Famine Codes were formulated long time back and many of the aspects have been dealt with under various schemes that have been formulated later like Sampoorna Gramin Rozgar Yojana (SGRY). This should not present any difficulty in implementing the Famine Code for the time being. Under the circumstances, we direct the implementation of the Famine Code for the period May, June and July, 2003 as and when and where situation may call for it, subject to the condition that if in subsequent schemes the relief to be provided and preventive measures to be undertaken, during famine and drought, are better than the one stipulated by the Famine Code, the same may be implemented instead of Famine Code.

The next aspect pertains to Food-for-Work. We have been taken through Employment Assurance Scheme of the Government of India. Though the same stands merged into SGRY, but it has been submitted by learned counsel for the petitioner that the reliefs under SGRY, instead of improvement, have since been reduced. SGRY provides for an outlay of only Rs. 5000 crores and 5 million tonnes of free grain. It was pointed out that as far as the guarantee of employment is concerned, in the Employment Assurance Scheme, it was 100 days, whereas according to SGRY, it is 15 days and rather 10 days according to States and at the most 20 days which is according to Union of India. Our attention has also been drawn to the Report of the High Level Committee on Long-Term Grain Policy, July, 2002. A detailed reference to the Report has been made in I. A.25. That Committee was constituted by Department of Food and Public Distribution, Ministry of Consumer Affairs and Food and Public Distribution, Union of India. In the summary and recommendation the Report, inter alia, states that an important social and security measure in the context is provision for employment on public works. While a food component can and could be part of such employment generation in the short run or in periods of local food shortages in the long run, employment generation should be distinct from the food delivery system. This should not, however, undermine the importance of employment and income generation in eliminating hunger and malnutrition. The Report further states that no long run policy can be effective unless present imbalances, specifically, the large excess holding of public stocks. The Report has outlined a two year Plan of Action which includes immediate steps to lower procurement inflows on the one hand, and to raise outflows, on the other hand, by several means including a large Food-for-Work programme, a revitalised universal PDS and other grain-based welfare schemes. It has also recommended a major food-based employment programme for the short run. In the ultimate, the recommendation of the said committee is that the present SGRY scheme should be expanded and *at least doubled* (emphasis supplied). It says that this implies doubling grain allocation from 5 to 10 million tonnes, and also an increase in the cash allocation to States by at least 5000 crores.

The prayer of the petitioner, in fact, is for allocation of 20 million tonnes though, according to it, the requirement is of 40 million tonnes. The High Level Committee was appointed by the Government of India. It gave its Report in July, 2002. Ten months have passed. We do not know what consideration the report has received if at all it has been considered by the Government. We may also note that the Report has further mentioned that currently, about half of the food subsidy is being spent on holding stocks in excess of the buffer stock levels necessary for food security. As these stocks are reduced to normal levels, very large fiscal resources of around Rs.10,000 crores annual will become available.

While directing the Government of India to place on record by 8th August, 2003, the consideration bestowed on the Report of the Committee and the decision, if any, we direct that on pro rata basis, the recommendation that the present SGRY scheme should be expanded, at least doubled, be implemented, both in regard to allocation of foodgrain as also cash, for the months of May, June and July. The State Government shall lift those allocations and ensure that the same reach those for whom it is

meant. In case, however, after considering the response of Union of India, we hold that the allocations do not deserve to be doubled as recommended, the question of adjustment being made for the future supplies on the basis of the allocations in terms of SGRY can be considered.

Further, it is necessary to issue immediate directions to evolve a system whereby eligible BPL families, which may not be on BPL list, are so included as also regarding the ration shops and other outlets remaining open and giving deliveries of foodgrains to those, who are on the list and hold the requisite cards. For the present, we are not going into the question whether only 41% of the poorest households are on BPL list. We may note that in May last year an order was passed that the respondents shall ensure that the ration shops remain open throughout the month during fixed hours and the details of which shall be displayed in the notice board.

To facilitate the supply of the grain, we issue the following directions:

- (1) Licencees, who
 - (a) do not keep their shops open throughout the month during the stipulated period,
 - (b) fail to provide grain to BPL families strictly at BPL rates and no higher,
 - (c) keep the cards of BPL households with them,
 - (d) make false entries in the BPL cards,
 - (e) engage in black-marketing or siphoning away of grains to the open market and hand over such ration shops to such other person/ organisations, shall make themselves liable for cancellation of their licenses. The concerned authorities/functionaries would not show any laxity on the subject.
- (2) Permit the BPL household to buy the ration in instalments.
- (3) Wide publicity shall be given so as to make BPL families aware of their entitlement of foodgrains.

What was observed in the order dated 23rd July, 2001 in regard to the making available of food to aged, infirm, disabled etc. has already been noticed hereinabove. According to the figures supplied by the petitioner, approximately 1.5 crore persons are eligible to get Antyodaya Anna Yojana (AAY) Card. We direct the Government of India to place on AAY category the following groups of persons:

- (1) Aged, infirm, disabled, destitute men and women, pregnant and lactating women, destitute women;
- (2) widows and other single women with no regular support;
- (3) old persons (aged 60 or above) with no regular support and no assured means of subsistence;
- (4) households with a disabled adult and assured means of subsistence;
- (5) households where due to old age, lack of physical or mental fitness, social customs, need to care for a disabled, or other reasons, no adult member is available to engage in gainful employment outside the house;
- (6) primitive tribes

What we have stated above in regard to BPL Cardholders for effective supply of grains to them, would equally apply for those, who are on AAY list.

Regarding Mid-Day Meal, on 28th November, 2001, this Court directed the State Government/ Union Territories to implement the Mid-Day Meal Scheme (MDMS) by providing every child in every Government and Government assisted Primary School with a prepared mid-day meal with a minimum content of 300 calories and 8-12 grams of protein each day of school for a minimum of 200 days. It was further directed that those Governments which provide dry rations instead of cooked meals, within three months start providing cooked meals in all Govt. and Govt. aided Primary Schools in half the Districts of the State (in order of poverty) and must within a further period of three months extend the provision of cooked meals to the remaining parts of the State. Some States in implementation of the said direction are supplying cooked mid-day meal to the students. We are, however, told that despite the fact that 1½ years has passed, some of the States have not even made a beginning. Particular reference has been made to States of Bihar, Jharkhand and Uttar Pradesh. It is not in dispute that in these three States even a beginning has not been made whereas some of the other States are fully implementing directions for supply of cooked Mid-Day Meal. Counsel for Uttar Pradesh and Jharkhand could not give any satisfactory reason for non-implementation. No reply or affidavit was filed by the said State. In so far as the State of Bihar is concerned, Mr. B. B. Singh has drawn our attention to the affidavit filed by Secretary and Relief Commissioner, Relief and Rehabilitation Department, Government of Bihar, inter alia stating that the State Government proposes to implement this scheme in few blocks on a pilot basis through panchayat, pending settlement of the issue regarding funding of conversion cost and to establish the capacity of the panchayat raj institution to supply hygienic cooked meals to all eligible students on a regular basis, without compromising teaching activities. The affidavit could not be more vague than what it is. When they propose to start, in how many districts they propose to start, what scheme has been formulated and every other conceivable detail is missing from the affidavit. We are told that there are 38 districts in the State of Bihar. For the present, we direct the said State to implement the cooked Mid-Day Meal Scheme in terms of the directions of this Court in at least 10 Districts, which may be most poor according to the State's perception.

We also direct the State of Uttar Pradesh, Jharkhand and other States to make a meaningful beginning of the cooked Mid-Day Meal Scheme in at least 25% of the District, which may be most poor.

By order dated 8th May, 2002, Dr. N. C. Saxena, former Planning Secretary, Government of India and Mr. S. R. Sankaran, former Secretary, Rural Department, Government of India were appointed to function as Commissioners of this Court for the purpose of looking into any grievance that may persist after the grievance resolution procedure has been exhausted. In subsequent orders, directions have been issued to the Government to fully cooperate with the learned Commissioners. Mr. Sankaran has said to have written a letter to the Government expressing personal difficulty in functioning as Commissioner on account of ill-health. Mr. Gonsalves states that he has recovered and now is in a position to so function. We would, therefore, request Mr. Sankaran to start functioning as Commissioner with Dr. Saxena in terms of the orders already passed.

The copies of the order shall be sent to the Chief Secretaries of all States/Union Territories. The State Governments/Union Territories are directed to file affidavits showing the compliance and extent thereof. The affidavits may be filed on or before 8th August, 2003. Union of India may also file its affidavit(s) by the same date. For further consideration the matter shall be placed on 19th August, 2003.

Sd/.....J

(Y. K. SABHARWAL)

Sd/.....J

(H. K. SEMA)

New Delhi,
May 2, 2003.

**SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS
WRIT PETITION (CIVIL) NO. 196 OF 2001**

PEOPLE'S UNION FOR CIVIL LIBERTIES

.....PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

.....RESPONDENT(S)

05.05.03 The Petition was mentioned today.

CORAM: HON'BLE MR. JUSTICE Y. K. SABHARWAL
 HON'BLE DR. JUSTICE H. K. SEMA

For Petitioner(s) Mr. Colin Gonsalves, Adv. (mentioned by)
 Ms. Aparna Bhat, Adv.

For Respondent(s) Mr. B. V. Balaram Das, Adv. (N. P.)

UPON hearing the court made the following

ORDER

The matter has been mentioned by Mr. Colin Gonsalves, learned counsel for the petitioner. He has also produced copy of the letter dated 3rd May, 2003 written to the learned Attorney General for India in addition to the orders passed on 2nd May, 2003. None is present for the Union of India. Having heard learned counsel for the petitioner, we direct that till the next date of hearing the Government of India will not insist the State Government to remove any person from the existing Below Poverty Line (BPL) list.

(P. D. Balodi)
Court Master

(V. P. Tyagi)
Court Master

**SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS
WRIT PETITION (CIVIL) NO. 196 OF 2001**

PEOPLE'S UNION FOR CIVIL LIBERTIES

.....PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

.....RESPONDENT(S)

(With appln(s). for interim Relief and interim directions & permission to submit additional documents and office report)

(With appln. for permission to file addl. documents)

(FOR FURTHER CONSIDERATION)

16.01.2004

This Petition was called on for hearing today.

CORAM : HON^{BLE} MR. JUSTICE Y.K. SABHARWAL
HON^{BLE} DR. JUSTICE AR. LAKSHMANAN

For Petitioner(s) Mr. Colin Gonsalves, Adv.
Ms. Aparna Bhat, Adv.
Mr. P. Ramesh Kumar, Adv.
Ms. Seema Kumra, Adv.

For Respondent (s) UOI: Mr. K.N. Raval, S.G.
Mr. Raju Ramachandran, Adv.
Ms. Meenakshi Arora, Adv.
Mr. K.C. Kaushik, Adv.
Mr. R.K. Rathore, Adv.
Mr. D.S. Mahra, Adv.

UPON hearing counsel the Court made the following

ORDER

On request of learned Solicitor General, the case is adjourned. In the meanwhile, reply to the I.A. filed by Union of India may be filed. I.A.No.31

We have perused the Report annexed to I.A. No.31 of 2003. The Report seems to be as a result of visit of Sukumar Gain, Convenor, Right to Food & Work West Bengal Network and Anuradha Talwar, Advisor to the Commissioners appointed by this Court, to Tea Plantations in Jalpaiguri District between 12th December, 2003 to 14th December, 2003. The Report reveals alarming state of affairs. The State of West Bengal shall respond to the Report and, in the meanwhile, take such action as it may consider appropriate having regard to the various aspects and incidents of malnutritions and other problems highlighted in the Report. The response be filed within 10 days.

RIGHT TO FOOD

In the meanwhile, the Commissioners are also requested to give their suggestions on the aspects highlighted in the Report, particularly, on directions 1 to 7 sought for in the Report.

List after two weeks.

(S. Thapar)
PS to Registrar

(V.P. Tyagi)
Court Master

**SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS
WRIT PETITION (CIVIL) NO. 196/2001**

PEOPLE'S UNION FOR CIVIL LIBERTIES

.....PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

.....RESPONDENT(S)

(With appln(s). for interim relief and directions and permission to submit addl. documents and office report)

(FOR FURTHER CONSIDERATION)

20.04.2004 This Petition was called on for hearing today.

CORAM: HON'BLE MR. JUSTICE Y. K. SABHARWAL
 HON'BLE MR. JUSTICE B. N. AGRAWAL

For Petitioner(s) Mr. Colin Gonsalves, Sr. Adv.
 Mr. P. Ramesh Kumar, Adv.
 Ms. Aparna Bhat, Adv.

For UOI: Mr. Raju Ramachandran, Sr. Adv.
 Ms. Meenakshi Arora, Adv.
 Ms. Varuna Bhandari Gugnani, Adv.
 Mr. D. S. Mahra, Adv.

ORDER

MID-DAY MEAL SCHEME:

We have heard Mr. Colin Gonsalves, learned senior counsel appearing for the petitioner, Mr. Raju Ramachandran, learned Additional Solicitor General appearing for Union of India, Mr. M. L. Verma, learned senior counsel appearing for intervenor – Health India, and learned counsel representing various States. We have also perused the special report of the Committee dated 28th November, 2003 and report dated 28th January, 2004 and other relevant material on record. In one of the orders earlier passed, this Court had observed about the impact of this public interest litigation on the very existence of large sections of poor people, their right to life and right to food to those who can ill-afford to provide to their families two meals a day and their misfortune becoming further grave during famine and drought.

On 28th November, 2001, this Court directed the State Governments/Union Territories to implement Mid-Day Meal Scheme by providing every child in every government and government aided primary school with a prepared mid-day meal with a minimum content of 300 calories and 8-12 grams of protein each day of school for a minimum of 200 days. The said order further directed that those governments which provide dry rations instead of cooked meals, within three months, should start providing cooked meals in all government and government aided primary schools in half of the districts of the State (in order of poverty) and must, within further period of three months, extend the provision of cooked meals to the remaining parts of the State.

By an order dated 29th October, 2002, it was made clear that in case of persistent default in compliance of the orders of this Court, the concerned Chief Secretaries/Administrators of the States/Union Territories shall be held responsible. It was brought to the notice of the Court that despite orders having been passed, some of the States had not even made a beginning. In the order dated 2nd May, 2003, this Court observed the manner in which the directions were being flouted in some of the States. In that order, specific reference was made to the States of Bihar, Jharkhand and Uttar Pradesh. The type of the affidavit that was filed has also been commented upon since it was not stated in the affidavit as to when the State of Bihar proposed to start the supply of mid-day meal, in how many districts they proposed to start it and what scheme had been formulated. The order noticed that every conceivable detail had been missing. Ultimately, the State of Bihar was directed to make a beginning by supplying cooked mid-day meal and implement the said scheme in at least ten districts which might be most poor according to the State's perception. Similarly, the States of Uttar Pradesh, Jharkhand and other States were also directed to make a meaningful beginning of the scheme in at least 25% of the districts which might be most poor.

After the orders were made on 2nd May, 2003, various reports have been filed in regard to the implementation of the directions for supply of the cooked mid-day meal in schools in terms of directions contained in the order dated 28th November, 2001.

We have perused the affidavits and heard learned counsel representing the States of Bihar, Uttar Pradesh, Maharashtra, Delhi, West Bengal, Himachal Pradesh, Uttaranchal, Jharkhand, Madhya Pradesh and Haryana. There are other States and Union Territories as well in respect whereof the aforesaid Reports of the Commissioners have commented upon. Some of the States/Union Territories have not made even a beginning despite lapse of so many years; some have only made a partial beginning; some have made a token beginning and only few of the States have fully implemented the order in respect of cooked mid-day meals that was passed on 28th November, 2001.

Some of the States which claim that they have made a beginning and are partially implementing the scheme have also not given the full and complete details so that this Court could know the extent of the implementation. Most of the affidavits only set out the number of schools and the students where the scheme was being implemented. What was required to be done was to simply state as to how many schools in a particular State/Union Territory would be covered under the directions for supply of cooked mid-day meal, how many students in the said school would be eligible for the benefit and then give the number of the schools and the students who are being supplied cooked meals. The affidavits provide only a part of information without specifying the number of eligible schools and students.

Be that as it may, Table-1 to the second Report of the Commissioners sets out broadly the States which have implemented it fully or partially or have not responded to the queries of the Commissioners. We may, however, note that after the said Report, there has been some improvement by a token beginning having been made by some of the States. The Report of the Commissioners, on the basis of their earlier experience, states that nutritious mid-day meal at schools can be a highly effective way of protecting children from hunger and can also boost school attendance among girls. It also notices some of the areas where such meals are supplied even during the school vacations, especially in drought affected areas. None can question the desirability of extension of this facility even during vacations in drought affected areas where children are deprived of even one meal a day .

It is a matter of anguish that despite lapse of nearly three and a half years, the order dated 28th November, 2001 has not been fully implemented by all the States and Union Territories. As already

stated earlier, many of the States have given only half-baked information and figures. Further, we wish to make it clear that the fact that some of the States were permitted to at least make a start in some of the districts in terms of the order dated 2nd May, 2003 does not mean that this Court has modified or varied the earlier order dated 28th November, 2001. It is a constitutional duty of every State and Union Territory to implement in letter and spirit the directions contained in the order dated 28th November, 2001. We may also note that the suggestions given by Health India would be considered at an appropriate stage.

The petitioner has also made a reference to the announcement made by the Prime Minister extending the Mid-Day Meal Scheme upto 10th Standard during his address to the Nation on 15th August, 2003. The suggestion is that extension should be made operational at the earliest. In reply, it has been contended that once the mid-day meal scheme at primary level is consolidated, the question of extension of the scheme upto 10th Standard can be taken up in a phased manner. In this connection, it has been pointed out that the views of various States have been asked in regard to the cost and logistic requirements for the extension of the scheme upto 10th Standard.

Further, the petitioner, referring to the recommendations of the Abhijit Sen Committee appointed by Government of India regarding sharing of conversion cost of implementing the cooked Mid-Day Meal Scheme, suggests that the Government should implement that scheme. The Government is stated to be presently discussing the modalities with the concerned Ministries and Planning Commission to provide assistance for meeting with a part of conversion costs towards effective implementation of the said scheme.

Having regard to the aforesaid, in respect of cooked Mid-Day Meal Scheme, we issue the following directions:

1. All such States and Union Territories who have not fully complied with the order dated 28th November, 2001 shall comply with the said directions fully in respect of the entire State/Union Territory, preferably, on the re-opening of the primary schools after a long vacation of 2004 and, in any case, not later than 1st September, 2004.
2. All Chief Secretaries/Administrators are directed to file compliance report in regard to directions No.1 on or before 15th September, 2004.
3. The conversion costs for a cooked meal, under no circumstances, shall be recovered from the children or their parents.
4. In appointment of cooks and helpers, preference shall be given to Dalits, Scheduled Castes and Scheduled Tribes.
5. The Central Government shall make provisions for construction of kitchen sheds and shall also allocate funds to meet with the conversion costs of food-grains into cooked mid-day meals. It shall also periodically monitor the low take off of the foodgrains.
6. In respect of the State of Uttaranchal, it has been represented that the scheme is being implemented in all the schools. It would be open to the Commissioners to inspect and bring it to the notice of the Court, if it is otherwise.
7. In drought affected areas, mid-day meal shall be supplied even during summer vacations.
8. An affidavit shall be filed by the Government of India, within three months, stating as to when it is possible to extend the scheme upto 10th Standard in compliance with the announcement made by the Prime Minister. The affidavit shall also state the time frame within which the Government proposes to implement the recommendations of the Abhijit Sen Committee in respect whereof the modalities have been discussed with the concerned Ministries and Planning Commission.

RIGHT TO FOOD

9. Attempts shall be made for better infrastructure, improved facilities (safe drinking water etc.), closer monitoring (regular inspection etc.) and other quality safeguards as also the improvement of the contents of the meal so as to provide nutritious meal to the children of the primary schools.

The issue as to the implementation of this scheme will be considered in the month of September, 2004.

SGR YOJANA—EMPLOYMENT GUARANTEE:

In respect of this Scheme, the following directions are issued:

1. The directions for doubling the foodgrains as also cash in terms of the order dated 2nd May, 2003 shall be applicable this year also.
2. The State Governments/Union Territories are directed to pay minimum wages to the workers under the scheme and shall stop use of labour displacement machines.
3. Access to all public documents including muster rolls shall be allowed to such persons who seek such access and the cost of supplying documents shall not be more than the costs of providing copies of the documents.
4. The allocation of funds and foodgrains shall be timely made by the Central Government to the State Governments.
5. The State Governments are directed to utilise the entire allocation, as aforesaid, so that the allotted funds and foodgrains neither lapse nor result in reduction in subsequent years.
6. In case, some of the State Governments, as a result of financial constraints, wish to pay 100% wages in shape of foodgrains and not partly foodgrains and partly cash, it would be open to them to approach the Central Government. On examination of each case, the Central Government may permit payment of 100% wages in the shape of foodgrains.

ANTYODAYA ANNA YOJANA:

In regard to this scheme, the following directions are issued:

1. The Government of India shall issue, within two months, guidelines so that the existing condition of possession of a BPL card for inclusion in AAY category is dispensed with.
2. The State Governments should be directed by the Central Government to accelerate the issue of Antyodaya cards especially to primitive tribes. The guidelines issued to State Governments shall be implemented in letter and spirit.

List the Writ Petition on 27th April, 2004 for consideration of other Schemes.

New Delhi,
April 20, 2004

.....J. (Y. K. SABHARWAL)

.....J. (B. N. AGRAWAL)

**SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS
WRIT PETITION (CIVIL) NO. 196/2001**

PEOPLE'S UNION FOR CIVIL LIBERTIES

.....PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

.....RESPONDENT(S)

(With appln(s). for interim relief and directions and permission to submit addl. documents and office report)

(FOR FURTHER CONSIDERATION)

Date : 27/04/2004 This Petition was called on for hearing today.

CORAM: HON'BLE MR. JUSTICE Y. K. SABHARWAL
HON'BLE MR. JUSTICE B. N. AGRAWAL

For Petitione(s) Mr. Colin Gonsalves, Sr. Adv.
Mr. P. Ramesh Kumar, Adv.
Ms. Priya Kiran, Adv.
Ms. Aparna Bhat, Adv.

For UOI: Mr. Raju Ramachandran, ASG.
Ms. Meenakshi Arora, Adv.
Ms. Varuna Bhandari Gugnani, Adv.
for Mr. D. S. Mahra, Adv. &
Mr. B. V. B. Das, Adv.

UPON hearing the Court made the following

ORDER

NATIONAL SOCIAL ASSISTANCE PROGRAMME (NSAP):

We have further heard for some time Mr. Colin Gonsalves, learned senior counsel, and Mr. Raju Ramachandran, learned Additional Solicitor General. The various schemes for the poorer sections of the citizens of this country have been the subject matter of the orders passed by this Court from time to time. It seems that some States have discontinued some of the schemes. As an interim measure, till the matter is fully heard in detail, we direct that no scheme covered by the orders made by this Court including the National Old Age Pension Scheme, National Family Benefit Scheme, in particular Annapoorna, and National Maternity Benefit Scheme shall be discontinued or restricted in any way without the prior approval of this Court. In other words, it means that till further orders, the schemes would continue to operate and benefit all those who are covered by the schemes. We hope that the Government of India and the State Governments would simplify the procedure so that high proportion of eligible persons remain to be covered by the schemes. A copy of this order shall be sent to the Chief Secretaries of every State Government/Union Territory. The Union of India, through the concerned Ministry, shall also issue directives to the State Governments/Union Territories to comply with this order.

INTEGRATED CHILD DEVELOPMENT SCHEME (ICDS):

In respect of Integrated Child Development Scheme, directions were issued on 28th November, 2001. It seems that most of those who are covered by the said order are not getting benefit under the said scheme. We have heard the submissions of Mr. Gonsalves and perused the report submitted by the Commissioners and the directions sought. From the facts and figures that have been furnished to us, it seems evident that there is a large number of malnourished children between the age group of 0 to 6 years. These figures are based on the survey conducted under the National Family Benefit Health Scheme. The position is quite alarming. These young children are the future of the nation. Further, it appears that except Kerala and Tamil Nadu where the benefit under the scheme is said to be reaching to about 50 percent of the children, in the rest of the country the average seems to be below 25 percent. The position in the States of Bihar, Uttar Pradesh, Jharkhand and Uttaranchal seems to be quite alarming. According to the survey for the period 2002-2003 the access to supplementary nutrition for the children in Bihar reaches about 12.6 percent of those who are otherwise covered by the scheme. Mr. Raju Ramachandran, learned ASG prays for a short adjournment to discuss the matter with the concerned officials and make submissions on the directions that may be issued to ensure the compliance of the Order dated 28th November, 2001.

As prayed, the case is adjourned to 29th April, 2004.

BELOW POVERTY LINE SCHEME (BPL)

The case may be put up for hearing on a non-miscellaneous day after re-opening of the Court after summer vacation.

(N. Annapurna)
Court Master

(S. Thapar)
PS to Registrar

(V. P. Tyagi)
Court Master

**SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS
WRIT PETITION (CIVIL) NO. 196/2001**

PEOPLE'S UNION FOR CIVIL LIBERTIES

.....PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

.....RESPONDENT(S)

(With appln(s). for interim relief and interim directions and permission to submit addl. documents and office report)

(FOR FURTHER CONSIDERATION)

Date : 29/04/2004 This Petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE Y. K. SABHARWAL
HON'BLE MR. JUSTICE B. N. AGRAWAL

For Petitioner(s) Mr. Colin Gonsalves, Sr. Adv.
Mr. P. Ramesh Kumar, Adv.
Ms. SEEMA Kumar, Adv.
Ms. Aparna Bhat, Adv.

For UOI: Mr. Raju Ramachandran, ASG.
Ms. Meenakshi Arora, Adv.
Mr. K. C. Kaushik, Adv.
Ms. Varuna Bhandari Gugnani, Adv.
for Mr. B. V. B. Das, Adv.

UPON hearing the Court made the following

ORDER

With the assistance of learned counsel, we have perused various documents including Report No. 1 of 2000 prepared by CAG and a working paper on Health, Nutrition and Family Welfare Programme Review of Progress during the Ninth Plan Period by Planning Commission, Government of India (February, 2001). It is evident that the Integrated Child Development Scheme (ICDS) is perhaps the largest of all the food supplementation programmes in the world, and was initiated in the year 1975 with the following objectives as per the aforesaid document prepared by the Planning Commission.

- i) To improve the health and nutrition status of children 0-6 years by providing supplementary food and by coordinating with state health departments to ensure delivery of required health inputs;
- ii) To provide conditions necessary for pre-school children's psychological and social development through early stimulation and education;

RIGHT TO FOOD

- iii) To provide pregnant and lactating women with food supplements;
- iv) To enhance the mother's ability to provide proper child care through health and nutrition education;
- v) To achieve effective coordination of policy and implementation among the various departments to promote child development.

From the facts and figures given in the documents it appears that despite the fact that for the development of children, in particular, malnourished and under nourished children, the scheme is elaborate and intends to cover all the children under the age group of 0-6 years but it appears that a lot more deserves to be done in the field to ensure that nutritious food reaches to those who are under nourished or malnourished or others covered under the scheme.

The food is supplied to children through Aanganwadi Centres (AWCS). In all, there are 6 lakh centres. The norms of Government of India provide for one centre for a population of 1000 (700 in case of tribal area). According to the petitioner, going by the said norms there should be 14 lac AWCS. It appears that according to the calculation of Government of India the AWCS would be 12 lakhs. We direct the Government of India to file within 3 months an affidavit stating the period within which it proposes to increase the number of AWCS so as to cover the 14 lakh habitations. We notice that the norm for supply of nutritious food worth rupee one for every child was fixed in the year 1991. The Government of India should consider the revision of the norm of rupee one and incorporate their suggestion in the affidavit.

In respect of sanctioned AWCS, we direct that the same shall be made fully operational by 30th June, 2004. We further direct that the sanctioned AWCS shall supply nutritious food/supplement to the children, adolescent girls and to pregnant and lactating women under the scheme for 300 days in a year.

We direct the Chief Secretaries to file reports showing that for the period from 1st April, 2003 till 31st March, 2004 from the sanctioned AWCS how many children, adolescent girls and pregnant and lactating women were supplied nutritious food/supplement and for how many days during the said period. The report shall be filed by 31st July, 2004. List the matter in the month of August, 2004.

The question regarding Below Poverty Line Scheme will also be taken up on that day instead of July, 2004.

Not to be treated as part heard.

(S. Thapar)
PS to Registrar

(N. Annapurna)
Court Master

(V. P. Tyagi)
Court Master

**SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS**

Writ Petition (Civil) No.196 of 2001

PEOPLE'S UNION FOR CIVIL LIBERTIES

....PETITIONER (S)

VERSUS

UNION OF INDIA & ORS

....RESPONDENT (S)

17.08.2004 This Petition was called on for hearing today.

CORAM:

HON'BLE MR. JUSTICE B.N. AGRAWAL
HON'BLE MR. JUSTICE H.K. SEMA

For Petitioner (s) Mr. Colin Gonsalves, Sr. Adv.
Ms. Aparna Bhat, Adv.
Mr. P. Ramesh Kumar, Adv.

For Respondent (s)
Union of India Mr. B.V. Balaram Das, Adv. and ors.

UPON hearing counsel the Court made the following

ORDER

Four weeks' time is granted by way of last chance to the States of Andhra Pradesh, Assam, Bihar, Gujarat, Himachal Pradesh, Jharkhand, Mizoram, Orissa, Sikkim and Union Territories of Daman & Diu and Lakshadweep to file report of the respective Chief Secretaries on affidavit, failing which the Chief Secretary of the defaulting State shall be required to remain present in-person in Court on the next date of hearing.

So far as the States of Chhattisgarh, Meghalaya and Nagaland are concerned, though counsel have entered appearance on their behalf, but neither report/affidavit of the Chief Secretaries have been filed nor the States are represented through any counsel. Report of the Chief Secretaries on affidavit must be filed within the aforesaid time, otherwise the Chief Secretary of the defaulting State shall remain present in-person in Court on the next date of hearing.

I.A. No. 37:

Issue notice to the petitioner.
Place this petition on 16th September, 2004.

[Alka Dudeja]
Court Master

[Om Prakash]
Court Master

**SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS**

Writ Petition (Civil) No. 196 / 2001

PEOPLE'S UNION FOR CIVIL LIBERTIES

....PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

....RESPONDENT(S)

16/09/2004

This petition was called on for hearing today.

CORAM:

HON'BLE MR. JUSTICE Y.K. SABHARWAL
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI
HON'BLE MR. JUSTICE TARUN CHATTERJEE

Mr. P. Ramesh Kumar, Adv.

Ms. Aparna Bhat, Adv.

For UOI (Ministry of Mr. Mohan Parasaran, ASQ

Health and H.R.D.) Mr. Hemant Sharma, Adv.

Mrs. Suresh Sharma, Adv.

UPON hearing counsel the Court made the following

ORDER

Mr. Colin Gonsalves, learned Senior Counsel appearing for the petitioner has handed over to us Fifth Report of the Commissioners of August 2004. According to learned counsel, in some of the States there is hardly any implementation of the Mid Day Meal Scheme and other schemes as extensively stated in the Report. It is further submitted that urgent directions are required to be issued on the basis of the recommendation made in the report so that the Schemes can be meaningfully implemented and the benefits of the Scheme reaches the downtrodden for whom the Schemes have been made from time to time by the Central Government. Copy of the Report shall be supplied to such Counsel appearing for the State Governments who may approach Ms. Aparna Bhat, learned counsel within three days. It would be open to the Central Government and/or to the State of the Report on or before 1st October, 2004. We direct the following State

1. Uttar Pradesh
2. Bihar
3. Jharkhand
4. Chhattisgarh
5. Madhya Pradesh
6. Delhi
7. West Bengal
8. Assam
9. Manipur
10. Rajasthan

We also expect the Union of India to respond within the stipulated time. List the matter for consideration of the Report and hearing on 7th October, 2004. Till further orders, the Union of India shall not transfer the Mid-day Meal Scheme to the State Governments. The order shall not be construed to mean that we have restrained the Central Government from transferring funds or grains to the State Government from transferring funds or grains to the State Governments or restrained the implementation of the Schemes by the State Government.

Further, Mr. Gonsalves has brought to our notice a Note which, according to the petitioner has been prepared by its Rajasthan Branch and sets out the details of hunger related deaths and a situation of nutritional emergency amidst primitive tribes in Baran District of Rajasthan. According to the said note in the month of August, 2004, 26 deaths took place in Baran district of Rajasthan as a result of malnutrition and hunger. As per the note, mostly children died on that account. Reference is also made in the Note to a special package for tribals announced by State Government on 15th September, 2004 which prominently appeared in major newspapers like Hindustan Times, Dainik Bhaskar, Rajasthan Patrika, etc. The said announcement includes:-

100 days “employment assurance scheme” for one person from every Sahatiya household in Shahbad and Kishanganj block of Baran district for which the Government has allocated 21.30 crores and 4,000 quintals of grain to Baran. Also 100 days “employment assurance scheme” for one person of every household of the Kathori tribals of Kotra and Jhadol blocks of Udaipur. According to the announcement this scheme is already being implemented.

15,000 families of Sahariyas will be taken under Antyodaya Anna Yojana and be provided according to the scheme 35 kgs of grain at the rate of Rs. 2 per kilogram every month. For which an amount of Rs. 2 crore and 90 lacs has been budgeted by the State Government.

1200 Sahariya families will be given economic support for housing facilities.”

We have requested learned Counsel appearing for the State of Rajasthan ties dealing specifically as to the State Government’s version of the cause of death of so many children within a span of few days in one particular district of the State. If the special package as claimed has been announced in the newspapers for the tribals, it ought to be implemented forthwith without any further delay. The affidavit directed to be filed shall also set out the mode and manner of implementation of the said package. This affidavit shall also be filed by 1st October, 2004 so that the matter can be taken up on 7th October, 2004.

(SUKHBIR PAUL KAUR)
Court Master

(V.P. TYAGI)
Court Master

**SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS
WRIT PETITION (CIVIL) NO. 196/2001**

PEOPLE'S UNION FOR CIVIL LIBERTIES

.....PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

.....RESPONDENT(S)

(With appln(s). for interim relief and interim directions, permission to submit addl. documents and for permission to modify the National Maternity Benefit Scheme and Office Report)
(FOR FURTHER CONSIDERATION)

With I.A.No.40-41/2004 (For extension of time and interim directions.)

07.10.2004 This Petition was called on for hearing today.

CORAM: HON'BLE MR. JUSTICE Y.K. SABHARWAL
 HON'BLE MR. JUSTICE TARUN CHATTERJEE

UPON hearing counsel the Court made the following

ORDER

We have gone through the 5th (August, 2004) Report of the Commissioners S/Shri Dr. N.C. Saxena and N.R. Sankaran. First of all, we wish to place on record our compliments and appreciation for the enormous work done by the learned Commissioners and presenting the Report under consideration.

The Report is in three parts. First part is divided into 14 sections covering different schemes. Under Section 1, Integrated Child Development Services (ICDS) has been considered. Part II sets out summary of findings and Part III sets out recommendations. We would first consider the aspect of ICDS. In order to fully appreciate the problem, it would be useful to notice the background briefly.

ICDS, as noticed in the Order dated 29.4.2004 is perhaps the largest of all the food and supplementation programmes in the world that was initiated in the year 1975 with the following objections as per the document prepared by Planning Commission:

1. To improve the health and nutrition status of children 0-6 years by providing supplementary food and by coordinating with state health departments to ensure delivery of required health inputs;
2. To provide conditions necessary for pre-school children's psychological and social development through early stimulation and education;
3. To provide pregnant and lactating women with food supplements;

4. To enhance the mother's ability to provide proper child care through health and nutrition education;
5. To achieve effective coordination of policy and implementation among the various departments to promote child development.

The scheme intends to cover all the children under age group of 0-6 years. The food is supplied to the children through Aanganwadi Centres (For short, 'AWCS'). The norms of Government of India provide for one Centre for a population of one thousand (700 in case of tribal area). It is not in serious dispute, as contended by Mr. Mohan Parasaran, learned Additional Solicitor General that according to norms, there should be approximately 14 lakhs ACWS. Admittedly, nearly 6 lakh Centres have been sanctioned. Many of the sanctioned Centres are also not operational as is evident from the Report under consideration. The problem seems to be more acute in States like Bihar, Uttar Pradesh and Jharkhand. It deserves to be noticed that the directions in respect of ICDS were issued as far back in 28.11.2001. The order dated 27.4.2004 notices that most of those covered by the Order dated 28.11.2001 are not getting the benefit under ICDS. That observation was made on the basis of figures which were provided under National Family Benefit Health Scheme on conducting survey. The result was that a large number of children between the age group of 0-6 years were malnourished. That Order also noticed that the position was alarming in the aforesaid three States as well as the State of Uttaranchal. By Order dated 29.4.2004, the Government of India was directed to file within three months an affidavit stating the period within which it proposed to sanction the remaining number of AWCS. The Government of India was also directed to consider the revision of norms of supply of nutritious food worth rupee one to every child in the Centres as norm of rupee one was fixed way back in the year 1991 and incorporate its suggestion in the affidavit.

It is most unfortunate that instead of three months, nearly six months have expired, the Government of India has still not filed the affidavit and instead an oral application has been made by learned Additional Solicitor General for grant of further time to file an affidavit in terms of the Order dated 29.4.2004. We are shocked at the attitude of the Central Government which is in respect of giving nutritious food to all children though in practice it concerns those unfortunate section of the society who can ill-afford to provide nutritious food to the children of the aforesaid age group. In absence of the affidavit, we could have straightway issued directions for the sanction of the remaining AWCS and for increase of norm of rupee one to rupees two but having regard to the totality of the circumstances, we grant one final opportunity to the Central Government to file affidavit within a period of two weeks whereafter we would consider these two aspects, namely, (i) sanction of 14 lakh AWCS; (ii) increase of norm of rupee one to rupees two.

We make it clear that if the affidavit is not filed, this Court will be left with no option but to issue directions for implementation of the two aspects.

Now, we would deal with the aspect of sanctioned AWCS and their working. In the Order dated 29.4.2004, it was directed that the sanctioned AWCS shall be made fully operational by 30th June, 2004. Further direction issued was that the sanctioned AWCS shall supply nutritious food/supplement to the children, adolescent girls and to pregnant and lactating women under the scheme for 300 days in a year. The Report presents a glooming picture both in regard to the operation of the sanctioned AWCS in some of the States like Uttar Pradesh, Bihar and Jharkhand and the position in those which are operational. Instances have been given in the Report where for months the supplies were not made to the children. For example, in the State of Jharkhand, the sanctioned AWCS were not working from May to December, 2003. No satisfactory reply is forthcoming from that State. Further, there are

material discrepancies in two affidavits filed by the said State one in September and the one handed over in the Court today. In the September affidavit, it was deposed on oath that 16689 AWCS were operational. In the affidavit filed today, the figure of operational AWCS is stated to be 7429. According to the Report, on an average, 42 paisa as against the norm of rupee one was being allocated per beneficiary per day by the State of Jharkhand. The position in Bihar and Uttar Pradesh is also no better. Out of 394 sanctioned ICDS projects, only 249 were operational in the State of Bihar. As per the affidavit dated 30th September, 2004, all the projects were being made operational from 4th October, 2004. Whether that has happened or not, Mr. B.B. Singh, learned counsel appearing for the State is unable to state for want of instructions. Be that as it made, if all have not been made operational since 4th October, 2004 has already passed and gone we direct that the same shall be made operational in period not later than one week from today.

In the State of Uttar Pradesh, though percentage of non-functional/non-operational AWCS is more as per the Report but according to the State, admittedly 24 percent are not operational. In the affidavit, it has been claimed that the remaining will be operational by 30th November, 2004. We direct the State Government to make operational all sanctioned AWCS by 30th November, 2004. After that, we would not entertain any application for extension of time.

The Report also mentions that some of AWCS are operating from private houses including those of grain dealers which it is suggested is not a healthy way of working as it is likely to increase the chances of pilferage of the grain etc. We are happy to note that as stated in the affidavit of State of Uttar Pradesh, it has made efforts to shift AWCS to primary schools. It is a good example for other States to follow. The Report also mentions about the attempt to centralise the procurements in some of the States, which has many fallouts. It has been explained in one of the affidavit that the procurements is at district level and not at the State level. Further, the problem of using contractors for procurement has also been mentioned in the Report suggesting that it should be done by agencies and officers at the Government level. These are only by way of illustrations as to facts and figures given in Section 1 of the Report relating to Integrated Child Development Services.

Having heard Mr. Colin Gonsalves, learned Senior Counsel appearing for the petitioner and learned Additional Solicitor General appearing for the Central Government and learned counsel appearing for the State Governments in particular, the States of Bihar, Jharkhand and Uttar Pradesh, for present, we issue following directions :-

1. The aspect of sanctioning 14 lakhs AWCS and increase of norm of rupee one to rupees 2 per child per day would be considered by this Court after two weeks.
2. The efforts shall be made that all SC/ST hamlets/habitations in the country have Aanganwadi Centres as early as possible.
3. The contractors shall not be used for supply of nutrition in Aanganwadis and preferably ICDS funds shall be spent by making use of village communities, self-help groups and Mahila Mandals for buying of grains and preparation of meals.
4. All State Governments/Union Territories shall put on their website full data for the ICDS schemes including where AWCS are operational, the number of beneficiaries category-wise, the funds allocated and used and other related matters.

5. All State Governments/Union Territories shall use the Pradhanmantri Gramodaya Yojana fund (PMGY) in addition to the state allocation and not as a substitute for state funding.
6. As far as possible, the children under PMGY shall be provided with good food at the Centre itself.
7. All the State Governments/Union Territories shall allocate funds for ICDS on the basis of norm of one rupee per child per day, 100 beneficiaries per AWC and 300 days feeding in a year, i.e., on the same basis on which the Centre make the allocation.
8. BPL shall not be used as an eligibility criteria for ICDS.
9. All sanctioned projects shall be operationalised and provided food as per these norms and wherever utensils have not been provided, the same shall be provided (Instance of Jharkhand State has been noticed in the Report where utensils have not been provided). The vacancies for the operational ICDS shall be filled forthwith. (Instance of Uttar Pradesh where vacancies have not been filled up is quite alarming though in the affidavit it has been stated that a drive has been initiated to fill up the vacancies).
10. All the State Governments/Union Territories shall utilise the entire State and Central allocation under ICDS/PMGY and under no circumstances, the same shall be diverted and preferably also not returned to the Centre and, if returned, a detailed explanation for non-utilisation shall be filed in this Court.
11. All State/Union Territories shall make earnest effort to cover the slums under ICDS.
12. The Central Government and the States/Union Territories shall ensure that all amounts allocated are sanctioned in time so that there is no disruption whatsoever in the feeding of children.

Our attention has been drawn to what is stated at page 20 in box 2 regarding failure of authorities to take appropriate action despite Commissioner's intervention in the case of Madhya Pradesh pertaining to the area mentioned therein and the non-payment to the work force. We direct the State Government to either make payment of wages to the labourers or file an affidavit giving detailed explanation within two weeks.

List the matter after two weeks.

(Satish K. Yadav)
Court Master

(V.P. Tyagi)
Court Master

**SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS
WRIT PETITION (CIVIL) NO. 196/2001**

PEOPLE'S UNION FOR CIVIL LIBERTIES

.....PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

.....RESPONDENT(S)

(With appln(s). for interim relief and interim directions and directions and permission to place addl. Documents on record and clarification/modification of Court's order and intervention and c/delay and modification and exemption from filing O.T. and extension of time and office report)
(FOR FURTHER CONSIDERATION)

17.11.2004 This Petition was called on for hearing today.

CORAM: Hon'ble Mr. Justice Y.K. Sabharwal
 Hon'ble Mr. Justice S.H. Kapadia

Upon hearing counsel the Court made the following

ORDER

SAMPOORNA GRAMEEN ROZGAR YOJANA

The Order dated 7th October 2004 notices as to what is stated at page 20 in box 2 regarding failure of authorities to take appropriate action despite Commissioners' intervention in the case of Madhya Pradesh in respect of payment of wages to the labourers. The State of Madhya Pradesh was directed to file an affidavit giving explanation. Our attention has been drawn to letter dated 22nd September 2004 written by the Commissioners appointed by this Court to the Chief Secretary of the State requesting for arranging payment of Rs. 88,996/- (Rupees eighty eight thousand, nine hundred and ninety six only) for a work done at Limbi. The said letter makes a grievance of about non-payment of wages and also refers to Joint Enquiry Report. We have also perused that Report. It appears from the material on record that a resolution was passed by Gram Sabha on 14th April 2003 for construction of the dam in question in Limbi village. Further, it appears that the work of construction commenced on 22nd May 2004 and it was completed on 2nd June 2004. The inauguration was done by Baib Tehsildar. It further appears from the material on record that even post evaluation estimate shows that the work was of over eighty thousand rupees. In the Report dated 10th September 2004, the following summary recommendations have been made:

1. The Collector Badwani must ensure that the process of social audit is taken seriously by all Gram Panchayats in the district. All records must be made available at meetings of the Gram Sabha, which must be regularly held. Copies of records must be made available to any citizen on demand. Strict action must be initiated on any dereliction of duty in this respect.
2. The Collector Badwani must fully co-operate with any individual/organisation seeking to enforce transparency and accountability in governance.

3. A payment of a total of Rs. 88,995.78 be immediately made to labourers who worked at the earthen dam site in Bedwani Bhalia (near Iohania s/o. Hira's field) in village Limbi, block Pati, tehsil Badwani, district Badwani as per the record of work done.
4. The payments must be made in a transparent manner at village Limbi in full public view in the presence of an officer of rank not less than Tehsildar.
5. The Collector should report to the Commissioners of the Supreme Court of India that the payment has been made not later than 20th September 2004. Non-compliance with this would necessitate bringing the issue to the notice of the Hon'ble Supreme Court."

We have also perused the reply dated 8th October 2004 sent by the Collector to the Commissioners' letter dated 22nd September 2004. That reply has been annexed with the affidavit of the State Government which commences from page 4003 of Volume 1 (I). The factum of the construction of the Dam is not in dispute. The cost of the work is also not in dispute. Some technical disputes have, however, been raised' such as lapse of the resolution passed by the gram Panchayat, Authority of the Naib Tehsildar and the like.

To decide the large question and to issue appropriate directions on the aforesaid summary recommendation, we have asked learned Additional Solicitor General whether the Central Government has taken any decision and issued orders for the effective implementation of various schemes. Here we are concerned with Sampoorna Grameen Rozgar Yojana (SGRY). The schemes are to be properly implemented, amounts properly released and spent. We have also asked the learned counsel as to how the scheme in question is working in other States, in particular, Andhra Pradesh so that keeping entire background into consideration, appropriate directions can be issued. Mr. Parasarna learned ASG prays for time to obtain instructions and place on record the appropriate material in the form of an affidavit. Let that be done within three weeks.

Pending consideration of the aforesaid larger question, we see no reason as to why the payment of Rs. 88,996/- to the labourers should be further delayed, particularly when the construction of the Dam and its appropriate cost is not in dispute. In this view, without prejudice to the rights and contentions of the parties and without it being treated as a precedent, we direct State of Madhya Pradesh to release to Jagrat Adiwasi Dalit Sanghathan the aforesaid amount, for the said Sanghathan in turn to pay the same to the concerned labourers on obtaining receipts from them. The receipts so obtained shall be given by the Sanghathan to the appropriate officer of the State Government. The State Government is granted two weeks time to make payment to the Sanghathan and within two weeks thereafter Sanghathan will provide the receipts to the State Government.

Mid-Day Meal Scheme

In the order dated 28th November 2001, directions were issued for supply of prepared mid-day meal in implementation of Mid-day Meal Scheme by directing that cooked meal in all Government and Government aided primary schools shall be supplied within three months and in the remaining schools within three months thereafter. That order should have been implemented by May, 2002. In the order dated 20th April 2004, noticing that despite lapse of nearly 3-1/2 years, the order dated 28th November 2001 was not being fully implemented in all States and Union Territories and, expressing anguish, further directions for supply of cooked mid-day meal were issued directing that those

States which have not implemented the order of 28th November 2004 shall implement it immediately and, in any case, not later than 1st September 2004. The reports filed by the Commissioners show that in many of the States either there is no implementation or it is insignificant. For example, there is no implementation in the States of Manipur, Nagaland, U.P. and Assam, as per the 5th Report of the Commissioners filed in August 2004. There has been some progress thereafter inasmuch as there was partial implementation in the States of U.P. and Assam. In the State of Himachal Pradesh, till August, 2004, the coverage was only 3.1%, in Assam, there is partial implementation of 18% whereas in Jharkhand, it is 15% and in Bihar 24%. One of the difficulty put forth in providing cooked meal is the cost involved therein. Now, the Government of India, in terms of its letter dated 6th October, 2004 sent to Chief Secretaries of all States and Union Territories of Andaman & Nicobar, Pondicherry and Delhi, Advisor to Administrator of UT of Chandigarh of UT Daman and Dadra Nagar Haveli and Lakshadweep, informed all concerned that the Central Government has taken a decision to augment central assistance under Mid-Day Meal Scheme by providing at the rate of Rs. 1/- per child per school day to meet cooking cost as from 1st September 2004. The letter also refers to further assistance such as increasing transport subsidy. In this view, at present, without going into the past non-implementation, we see no reason why Mid-Day Meal Scheme, read with the directions issued in the order dated 28th November 2001 for supply of cooked meal, shall not be implemented forthwith in letter and spirit.

The letter dated 6th October 2004 further postulates that actual release of Central assistance to States for meeting cooking cost would take place soon after the Central Government's First Supplementary Budget is passed by the Parliament in the winter session and necessary Appropriation act comes into force. It further states that once this happens, the assistance to meet cooking cost will be provided retrospectively with effect from 1st September 2004.

The aforesaid letter further stipulates that detailed guidelines of the revised Mid-Day Meal Programme will be issued in the next few weeks which will, inter alia, also lay down the procedure for claiming central assistance to meet cooking cost. It further requests the State Governments and Union Territories that in the light of the firm commitment conveyed under the letter, the governments shall immediately take all necessary steps, using available resources to universalise the cooked meal programme in all schools and EGS and AIE centers for children studying in classes I-V.

In view of the aforesaid, we direct that every child eligible for cooked meal under Mid-day Meal Scheme in all States and Union Territories, shall be provided with the said meal immediately and, in any case, not later than the month of January 2005. Affidavits shall be filed by the Chief Secretaries by 16th December 2004 placing on record necessary steps taken to implement this order. Further affidavits shall be filed by 2nd week of January 2005 detailing the full implementation of direction of supply of cooked meal to all eligible children.

The responsibility to monitor the implementation of the scheme essentially lies with the Central Government, as it is the Central Government, which is providing assistance. The letter dated 6th October 2004 gives some indication that revised guidelines are being prepared for the purpose of management monitoring and evaluation of the programme. We direct the Central Government to file, within four weeks, an affidavit stating how it progress to manage, monitor or evaluate the Mid-

day Meal Scheme so that the benefit under the scheme reaches those for whom it is meant. We make it clear that it would not be open to the State Governments' Union Territories to delay the implementation of the Scheme beyond January 2005 on the ground that the necessary assistance has not been released by the Central Government. The Scheme should be implemented forthwith and cooking costs can be claimed from the Central Government in terms of letter dated 6th October 2004, which, in fact, requires those governments to use available resources and recover it later from the Central Government.

ANTYODAYA ANNA YOJANA

This scheme is meant for the poorest of the poor. A person entitled to the benefit under this scheme is issued a red card. The holder of red card entitles him/her to obtain grain and rice from the dealer of Public Distributor System (PDS) at a highly subsidised rate which at present is rupees two per kilogram for wheat and rupees three per kilogram for rice.

First of all it is of utmost importance that those who have already been issued red card shall straightway be supplied the rice and grain as per their entitlement. It is also important that those falling under this category should be immediately identified. The special attention is required to be given to Primitive Travel Groups, which we are told, are in large in Maharashtra, West Bengal, Jharkhand and Madhya Pradesh, which are still to be identified in large numbers, card issued and grains supplied. We direct all the State Governments to complete the process of identification of persons falling under this scheme and issue them the red card by the end of the year so that immediately thereafter supply of food grains to them may commence.

For supply of the food grains to red cardholders, we are told, that no commission is being paid to the dealer. Mr. Parasaran, learned ASG states that guidelines are being framed in that regard. The Central Government shall file an affidavit within eight weeks placing on record those guidelines. The object is that the red cardholders should not be made to pay, directly or indirectly, any amount other than what they are liable to pay for the supply taken.

To be taken up on 18th November 2004

(N. Annapurna)
Court Master

(S. Thapar)
PS to Registrar

(V.P. Tyagi)
Court Master

**SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS
WRIT PETITION (CIVIL) NO. 196/2001**

PEOPLE'S UNION FOR CIVIL LIBERTIES

.....PETITIONER(S)

VERSUS

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.....RESPONDENT(S)

(With appln(s). for interim relief and interim directions and directions and permission to place addl. Documents on record and clarification/modification of Court's order and intervention and c/delay and modification and exemption from filing O.T. and extension of time and office report)
(FOR FURTHER CONSIDERATION)

18.11.2004 This Petition was called on for hearing today.

CORAM : Hon'ble Mr. Justice Y.K. Sabharwal
 Hon'ble Mr. Justice S.H. Kapadia

Upon hearing counsel the Court made the following

ORDER

I.A. No. 41 of 2004 : PUBLIC DISTRIBUTION SYSTEM

Notice for the present is issued to Union of India and Delhi Government. Learned counsel representing them accept notice. Reply affidavits shall be filed within four weeks, as prayed by learned counsel. The Delhi Government shall also state in its affidavit as to when the Vigilance Committees stipulated under Public Distribution System (Control) Order 2001 were set up, there are how many such Committees and the details of work undertaken by those Committees in last one year. The petitioner may file rejoinder within two weeks after filing of the reply affidavits.

List this I.A. after six weeks.

The aspect of Targeted Public Distribution System dealt with in the 5th Report of the Commissioners shall be considered along with I.A. No. 41 of 2004.

On the issue of the non-coverage under various schemes and the details about working of the Public Distribution System, we are told, that these aspects are being examined by Mr. Abhijit Sengupta, Member of Planning Commission and Dr. Swaminathan, Chair Person of Farmers Commission. We direct the Central Government to indicate in its affidavit the scope of the work being undertaken by Mr. Abhijit Sengupta and Dr. Swaminathan or by any other Committee as, in our view, that information would facilitate issue of directions in respect of improvements to be made in the distribution system.

SOCIAL SECURITY FOR AGED DESTITUTE – ANNAPOORNA AND PENSIONS :

The social assistance aspect is covered under Section 5 of the 5th Report of the Commissioners, dated August 2004. In that section, details about inadequate allocations under National Old Aged

Pension Scheme (NOAPS), inadequate allocations of funds, withdrawal of Annapoorna scheme by some States, offtake under Annapoorna scheme and inadequate coverage of the aged destitute have been set out in paragraphs 5.1 to 5.5, from pages 3421 to 3427 of Volume 1-H of the paper book, and the same read as under :

“Section 5 Social Security for the Aged Destitute – Annapoorna and Pensions.

SECTION 5 SOCIAL SECURITY FOR THE AGED DESTITUTE - ANNAPOORNA AND PENSIONS

5.1 Inadequate Allocations under NOAPS

In 1998, the ‘numerical ceiling’ and corresponding ‘qualifying financial entitlement’ under national old age pensions, was worked out based on poverty estimates of 1993-94. The estimations show that a potential 69 lakh beneficiaries need to be covered, requiring an annual allocation of Rs 620 crores for the national old age pensions scheme alone. However, not only is the coverage limited but it is decreasing every year. The number of pensioners receiving assistance under the NOAPS fell from 54 lakh pensioners in 2001-02, to 38 lakhs in the year 2002-03, with Maharashtra, Bihar, West Bengal and Uttaranchal accounting for a large part of this decline.

As can be seen from Table 14 resources set aside presently by the centre are no where near the requirements and are sufficient to meet just about half the requirements. The total allocation for all the three schemes for 2003-04 was only Rs 680 crores, as against a requirement of 1209 crores.

Year	Total Allocation (Rs crores)	Total Requirement per year (Rs crores)	Requirement as per Centre's Estimation (Rs crores)		
			NOAPS	NFBS	Annapoorna
2003-04	680	1209	620	572	17
2002-03	680				
2001-02	732				
Note: Qualifying Financial Entitlement has been computed by the MoRD according to the numerical ceilings estimated by them. Combined allocations for the three schemes was started in 2002-03					
Source: Guidelines for NSAP and Annapoorna, Ministry of Rural Development					

Given the effectiveness of the scheme, a consensus was reached between the Commissioner and the Planning Commission that efforts would be made to increase allocations under the NOAPS. However this has still not been done despite assurances that it would come into effect from the current year itself. As can be seen in Table 15, inadequate allocations by the centre and the states has limited the coverage of this scheme. In states of Bihar, Gujarat, Karnataka, Maharashtra and Uttar Pradesh, the shortfall in coverage according to the governments own calculations is more than two lakh pensioners. There is a need for the GoI to double the allocation in accordance with the centre's own formula from the current year itself. States should also be given the assurance of full releases along with suggestions to improve absorptive capacity.

Table 15: Limited Coverage under the National and State Old Age Pension Scheme (2003-04)

Select States	No of pensioners reported\$	Numerical Ceiling of Pensioners**	Shortfall in number of pensioners covered
Arunachal Pradesh	715	9200	8485
Assam	423	133200	132777
Bihar	419287	1107700	645946
Goa	3763	4500	737
Gujarat	1673	221600	219927
Haryana\$	50372	86300	35928
Himachal Pradesh	22700	38100	15400
Jammu & Kashmir	31404	51100	19696
Karnataka	44829	340200	295371
Kerala	152475	224900	72425
Madhya Pradesh	389679	599000	67979
Maharashtra	29447	669800	640353
Nagaland	3555	13000	9445
Punjab	45265	62300	17035
Rajasthan\$	101460	237500	136040
Tamilnadu	314362	430300	115938
Uttar Pradesh\$	944758	1255200	306702
West Bengal	183333	478400	295067
Total (India)	4,151,635	6,881,000	2,729,365

Note: ** The numerical ceilings and shortfalls are for undivided Bihar, MP and UP,

\$ Beneficiaries reported is as per 2001-02, the rest are the number covered in 02-03

Source: Department of Rural Development, MoRD

Further, the estimated requirements for pensions have been computed by the centre, using the norm of Rs 75/- per beneficiary per month. While many states have contributed to this central assistance, the national average paid to beneficiaries, still stands at a paltry Rs 120 per month. However the total amount paid (central plus state contribution) in most states is much lower. As can be seen in Appendix Table 23, states like Andhra Pradesh, Manipur and Assam do not contribute a single rupee to the central fund. In Orissa, West Bengal, Jharkhand, Bihar and Karnataka, pensioners still receive a total of only Rs 100 per month, despite a contribution from the state fund. There is a need to increase the central allocation to atleast Rs 200 per pensioner per month, along with an increase in states share to atleast Rs 50, taking the total to a respectable Rs 250 per pensioner per month at the very least.

To conclude the centre needs to increase allocations taking into account both the number computed to be eligible and an increase in the amount transferred per beneficiary per month, to reflect current needs. Further an increase in allocations by the centre should not lead to corresponding decline in the number identified or in the amount allocated by the states from their own funds.

5.2 Inadequate Utilisation of Funds by States:

Not only do some states add less to the central pool but are also unable to ensure cent percent utilisation of central funds. As expenditure goes down, so do allocations, which becomes a vicious circle. This could in large part explain the massive decline in pensioners reported in states West Bengal, Maharashtra, Uttaranchal, Bihar, Meghalaya and Karnataka as seen in [Table 16](#).

Table 16: Decline in beneficiaries reported under NOAPS for India and Select States

Select States	Beneficiaries Reported (in lakhs)	
	2002-03	2001-02
All India	38	54
West Bengal	1.8	3.3
Bihar	4.1	6.3
Maharashtra	0.29	3.9
Karnataka	0.44	1.8
Uttaranchal	0.04	0.45
Meghalaya	0.26	0.3

Source: Guidelines and Returns filed for NSAP and Annapoorna, Ministry of Rural Development

Pensions are also paid irregularly, only as and when funds reach the districts. This also means that pensions are not distributed every month, as directed by the Supreme Court. Pensions for the FY 2003-2004 had not been disbursed in Bihar till after August 2003 because of a delay in the issue of financial sanctions. The Empowered Committee sanctioned pensions on 14th May, but Cabinet approval could be obtained only on 15th July, after a delay of two months. The Government Order for issue of pensions was vetted by Finance Department on the 4th August and order was issued on the 8th August with the state share being released finally on the 12th August. State Government of Bihar has submitted that they could not release 10.56 crores to the districts in 2002-03 as the allotment from GoI was received only on the 29th March. This argument is however not valid as the State could have disbursed funds (as it was already approved by the Planning Commission early in the year) out of its Plan and later claimed reimbursement from GoI.

The situation in Jharkhand over the last financial year was even more distressing. As of March 2004, the Jharkhand government had still not issued financial sanctions for the FY 2003-2004. Thus pensioners in Jharkhand have been denied their entitlement for a whole year! It was only after a visit by Dr Saxena to the state in March this year, did the Labour Secretary realise the scheme had been changed and had now become a part of the state plan. Callousness and indifference on the part of state government officials has deprived lakhs of poor old people from social security benefits, which is inexcusable.

5.3 Status on Withdrawal of Annapoorna

In 2002 the central guidelines were amended in 2002, giving states the flexibility to choose between Annapoorna and pensions. As result Annapoorna was withdrawn in some states including Madhya Pradesh, Assam, Gujarat, Tamil Nadu, Delhi and Karnataka. Earlier reports of the Commissioners had highlighted the fact that some states were discontinuing schemes covered by the Court's orders, without providing for any alternative. Particular mention was made about the case of Madhya Pradesh, whom after issuing orders replacing Annapoorna with pensions, had failed to do so for over a year. While the state had withdrawn Annapoorna from 31st January 2003 with the assurance that all ex-beneficiaries would be given pensions instead, this process had not been initiated till March 2004, more than a year later. Moreover the process of identification was started only in Dhar District, after a visit by the Commissioners representatives and several letters were written. Even within Dhar, replacement is being done only for 'bona-fide' beneficiaries, leaving many without any

support. The Commissioners have received complaints of eligible individuals being denied pensions due to selective identification. In the above-mentioned district, out of 2928 Annapoorna beneficiaries, only 1499 have been '*identified*' for grant of pension. While the case of Madhya Pradesh has been highlighted, the situation is much the same elsewhere. In a recent survey conducted in Bongaigaon, Goalpara, Dhubri and Kokrajhar districts of Assam, no effort has been made to replace Annapoorna, which was withdrawn in November 2001.

Meanwhile the scheme is yet to be reinstated as per the Courts orders of April 2004 which directed, "that no scheme covered by the orders made by this Court including the National Old Age Pension Scheme, National Family Benefit Scheme, in particular Annapoorna, and National Maternity Benefit Scheme shall be discontinued or restricted in any way without the prior approval of this Court. In other words, it means that till further orders, the schemes would continue to operate and benefit all those who are covered by the schemes".

Strictly speaking the Annapoorna scheme was envisaged for those "eligible for pensions, but not receiving it." Since the pension scheme both national and state is one that appears to be working with relative efficiency, the idea of converting Annapoorna to pensions might be worth examining. However if states wish to discontinue Annapoorna it must be done on the assurance that all individuals previously covered would now be so under pensions and this too only after the approval of the Court. This should be reflected in a substantial increase in the number of pension holders, which is not the case as of now. The number, as already pointed out, of those actually receiving pensions has declined in the last three years.

5.4 Offtake under Annapoorna:

As can be seen in [Table 17](#), offtake of grain as a percentage of allotment was 97%. However against this impressive national figure, lifting in Maharashtra, West Bengal, Bihar and Arunachal Pradesh was an average 42% and negligible in Delhi and Meghalaya. The reason attributed is a delay in allocations by the centre. According to the GoWB, the scheme remained inoperative between April-June 2003, as no allocation was made by the GoI for that period. Allocation was received thereafter for the months of July and August only. The other reasons for poor offtake reflect in most part problems of incomplete identification of beneficiaries (West Bengal), coordination and unnecessary procedural requirements described in the section on TPDS above.

Table 17: Allocation and Offtake under Annapoorna (2003-2004)

State/ UT's	Allocation (‘000 tonnes)	Offtake (‘000 tonnes)	% Offtake
Arunachal Pradesh	1	0	28
Bihar	20	10	69
Delhi	0	0	0
J&K	1	0	0
Maharashtra	4	1	20
Meghalaya	1	0	0
West Bengal	10	4	50
Total (India)	123	90	97

Source: Monthly Foodgrain Bulletin, March 2004, MoFCA

5.5 Inadequate Coverage of the Aged:

As a consequence of low allocations under the NOAPS and withdrawal of Annapoorna, the number identified for coverage under both welfare schemes is extremely limited. As on August 2003, the states of Uttaranchal, Gujarat, Punjab, Assam, Manipur, Jharkhand and Nagaland had not been released any money under NSAP and Annapoorna for the year 2003-04. This meant that identified persons received no assistance under these programmes for the first five months of the financial year. The status atleast in the case of Jharkhand remained unchanged for most of 2003-2004, denying many the benefits of pensions for a whole year.

As far as actual coverage of the aged destitute is concerned, the number is much below that initially targeted by the ministry. For an estimated eligible population of 82 lakh beneficiaries under NOAPS and Annapoorna, the total number identified under either one of the two is about 73 lakhs. This too because some states like Madhya Pradesh and Tamil Nadu have identified a significant number for which allocations are made from the state budget without any central support. As can be seen in **Table 18**, the aged in Gujarat, Maharashtra, Assam, Uttar Pradesh, West Bengal, Jharkhand and Bihar are poorly covered under these schemes.

Table 18: State wise Coverage of the Aged under Annapoorna and Pensions

State	Numerical Ceiling under NOAPS and Annapoorna	Beneficiaries Reported Annapoorna (03-04)	Beneficiaries Reported Pensions both NOAPS and State pension schemes (03-04)	Total number Covered under both	% Coverage
Assam	159840	0	423	423	0
Bihar*	1329240	166601	492000	658601	50
Goa	5400	0	3763	3763	70
Gujarat	265920	65051	1673	66724	25
Haryana	103560	0	50372	50372	49
Himachal Pradesh	45720	5484	22700	28184	62
J&K	61320	0	31404	31404	51
Karnataka	408240	0	340000	340000	83
Kerala	269880	44500	152475	196975	73
Maharashtra	803760	20000	29447	49447	6
Nagaland	15600	0	3555	3555	23
Punjab	74760	0	45265	45265	61
Uttar Pradesh*	1506240	0	944758	944758	63
West Bengal	574080	65000	316698	381698	66
Total (India Average)	8,267,824	655,730	6,673,646	7,329,376	89

Note: * Numerical ceilings are for undivided states

Source: Annapoorna and NOAPS Guidelines and returns filed by states with the Ministry of Rural Development, GoI, correspondence with states

The NOAPS is a part of National Social Assistance Programme (NSAP) that came into effect from 15th August, 1995. It is a centrally sponsored programme under which 100% Central assistance is extended to the States/UTs to provide benefits in accordance with the norms, guidelines and conditions laid down by the Central Government. This Scheme was reviewed by the Planning Commission in

consultation with the Ministry of Rural Development and, as a result thereof, it was decided to transfer the NSAP and Annapoorna Scheme to the State Plan from the Financial Year 2002-2003. The guidelines regarding transfer, inter alia, state that the transfer will provide the requisite flexibility to the States/UTs in the choice and the implementation of the Schemes. It further provides that the funds for the operation of the Scheme will be released as Additional Central Assistance (ACA) to the States/UTs. by the Ministry of Finance. As regards this transfer, some doubt had cropped up during the hearing whether the Additional Central Assistance of NSAP continues to be 100% by the Centre or stands reduced. Mr. Mohan Parasaran, learned Additional Solicitor General, on instructions from the concerned Department, has informed us that 100% Central Assistance to the States/UTs under NSAP is continuing.

To understand the nature of the problem, it is to be kept in view that under Annapoorna Scheme, the beneficiary is entitled to 10 Kgs. of foodgrains per month free of cost and under NOAPS, the beneficiary is entitled to Rs. 75/- per moth as pension. The beneficiaries are entitled either to grains under Annapoorna Scheme or to cash pension under NOAPS. Further, under yet another independent Scheme, namely, National Family Benefit Scheme, on death of a breadearner with no visible source of income, the dependant family is entitled to a one time amount of Rs. 10,000/-

We have perused the affidavit filed on behalf of the Ministry of Rural Development, dated 4th November 2004 in regard to Annapoorna and NSAP. Relevant part of that affidavit reads as under :

Annapoorna and NSAP

That as regards findings of Commissioners regarding Annapoorna Scheme and National Social Assistance Programme, it is submitted that the Annapoorna Scheme and the National Social Assistance Programme (NSAP) consisting of the National Old Age Pension Scheme (NOAPS) and the National Family Benefit Scheme (NFBS) were transferred to the State Plan with effect from the year 2002-2003. After the transfer of the Schemes, the total Additional Central Assistance (ACA) to be provided to the States/UTs for the NSAP and Annapoorna Schemes is decided by the Planning Commission. The funds for the operation of the Schemes are released as ACA to the States/UTs by the Ministry of finance/Ministry of Home Affairs. After the transfer of these Schemes the States/UTs have requisite flexibility in the choice and implementation of the scheme. The schemes, targets and coverage are determined by the State Govts. And the allocation made by the Planning Commission are aimed to supplementing the efforts of the State Govts. in this regard. Since the schemes have been transferred to States it is duty of respective States to see to it that the orders passed by the Hon'ble Court are implemented and beneficiaries are given their dues.”

We have also perused the guidelines that were issued when the aforesaid Schemes were transferred in terms of what is stated in the aforesaid affidavit filed on behalf of the Ministry of Rural Development. The allocation of funds, release of funds and monitoring have been dealt with in paragraphs (2), (6) and (8) of the said guidelines. The said paragraphs read as under :

Allocation of Funds

The total ACA to be provided to the States/UTs for the NSAP and Annapoorna Scheme would be decided by the Planning Commission; the Statewise allocation of ACA would be made by the Ministry of Rural Development and Planning Commission. The ACA provided to the States/UTs under NSAP and Annapoorna could be utilised by the States/UTs on Welfare Schemes of Old Age Pension,

Family Benefit of free foodgrains to the aged by taking up one or two or all of the three or in any other combination in accordance with their own priorities and needs.

Release of Funds

The release of the Additional Central Assistance (ACA) to the States/UTs will be made automatically by the Ministry of Finance in equal instalments on a monthly basis until December of the Financial year. However, the release of ACA for the last quarter of the financial year i.e. for the three months of January, February and March would depend upon the reporting of satisfactory progress of implementation of the Schemes and utilisation of funds by the States/UTs. At least 50% of the ACA funds released must be utilised by the States and UTs by 31st December of the financial year so that the ACA for the remaining three months of that financial year, i.e. January, February and March could be released. Before release of funds for the last Quarter, the States/UTs shall also furnish Utilisation Certificate for the funds released during the previous financial year to the Ministry of Rural Development. The utilisation position as on this cut-off date must be reported by the States/UTs by 15th January to the Ministry of Rural Development, who after examination of these reports, will make suitable recommendation to the Ministry of Finance regarding the release of ACA for the three months of the last Quarter.

Monitoring

The States/UTs will have the flexibility to implement the Schemes through any State Government Department. They will, however, designate a Nodal Secretary at the State Level to report the progress of implementation by coordinating with different departments concerned with the implementation of the Schemes. The progress of implementation of the Schemes is to be reported through Quarterly Reports in a given monitoring format by 15th of the month of the following Quarter. Non-reporting of the physical and financial progress reports will be construed as lack of progress and, therefore, may result in the non-release of ACA for the last Quarter of the financial year. Since the ACA allocations for the Schemes lapse at the end of the financial year, these instalments cannot be released during the next financial year, even if a State Government reports progress subsequent to the cut-off dates, fixed as above.”

Further, it appears that in some of the States, the Annapoorna Scheme has been withdrawn. The effect of withdrawal of the Scheme is that the aged destitute would not get the supply of foodgrains which they were getting earlier. The necessary corollary is that they should get the pension under NOAPS. But we do not know whether the shifting of such beneficiaries to pension under NOAPS is automatic or not. The State Governments in their affidavit shall state as to what is the actual state of affair on the withdrawal of the Annapoorna Scheme. It goes without saying that the beneficiaries shall continue to get the benefit under one or the other scheme, namely Annapoorna or NOAPS.

From the details aforementioned and from the Report of the Commissioners, it seems that in the last three years, i.e. 2001-2002, 2002-2003 and 2003-2004, the total allocation has been about 50%. The total requirement a per figures given in Table 14 was in the sum of Rs. 1209 Crores per year whereas the allocation was in the range of Rs. 680 Crores per year. It further appears that less allocation was, prima facie, as a result of under utilisation by various States as on the cut-off date. In this view, before we issue further directions, it is necessary to direct all the State Governments/UTs to file

RIGHT TO FOOD

affidavits giving details with dates in respect of receipt of Additional Central Assistance from the Central Government under NOAPS and also the details including dates of its utilisation in the aforesaid past three years. These affidavits shall be filed within a period of four weeks.

In regard to utilisation of funds, it appears that there is considerable amount of confusion in the name of flexibility which is mentioned in the guidelines aforesaid. Till the matter is clarified in regard to utilisation, we direct that the amounts paid by the Central Government to the State Government as Additional Central Assistance under NOAPS shall not be diverted for any other scheme. However, we wish to make it clear that the beneficiaries under the said scheme would continue to be paid the benefits being paid by the State Government. Further, the State Government would continue to pay to them, the other additional benefits which the State Government may be giving to them. No benefit would be withdrawn as a result of this order till further orders, by any of the State Governments/UTs.

Post this matter in the month of January, 2005 on a non-miscellaneous day.

(N. Annapurna)
Court Master

(S. Thapar)
PS to Registrar

(V.P. Tyagi)
Court Master

**SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS
WRIT PETITION (CIVIL) NO. 196/2001**

PEOPLE'S UNION FOR CIVIL LIBERTIES

.....PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

.....RESPONDENT(S)

(With appln(s). for interim Relief & interim directions & extension of time & directions & intervention & modification of Court's Order dated 7.10.04 & office report) (For further consideration)

09.05.2005 This Petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE Y.K. SABHARWAL
HON'BLE MR. JUSTICE S.H. KAPADIA

For Petitioner (s) Mr. Colin Gonsalves, Sr. Adv. M/s Aparna Bhat,
P. Ramesh Kumar, Anup Kumar Srivastava, Adv.

For Respondent (s) Mr. Mohan Parasaran, ASG
M/s Hemant Sharma, Sunita Sharma,
Ms. Sushma Suri, Advs., Mr. NN Goswamy, Sr. Adv.

UPON hearing counsel the Court made the following

ORDER

IA Nos.37 & 54.

By IA 37, permission is sought to modify The National Maternity Benefit Scheme (NMBC) and to introduce a new scheme namely Janani Suraksha Yojana (JSY). Whereas in IA 54, the prayer is that the Scheme should not be modified by reducing, abridging or qualifying in any way the social assistance entitlements created under the original scheme of NMBS for expecting BPL mothers, including cash entitlement of Rs.500/- provided therein. We have requested learned Additional Solicitor General to place on record further material in the form of affidavit to effectively implement the new Scheme sought to be introduced. The further material shall include the approximate distance of Public Health Centre from the residential complexes and the facility of transportation etc. The Commissioner shall also examine the matter in depth and file a report. The response to the application may be filed within eight weeks. Meanwhile, the existing National Maternity Benefit Scheme will continue.

On oral application of Mr. Gonsalves, for the present, we permit Mr. Harsh Mander to continue to assist the Commissioner- Dr. Saxena.

In 5th Report of August, 2004 of the Commissioners it has been reported that on ground level, Public Distribution System is not working well, many poor people living BPL have not been issued the BPL ration cards. Orders of this Court are not being implemented and to support details have been given

at page 3411 along with recommendations up to page 3421. The recommendation is that the Chief Secretaries shall put in place a mechanism to ensure suitable action against the officials who hesitate in taking action against the guilty; the State Government shall set up Committees to frame detailed procedure and time frames for dealing with various types of grievances and complaints received from the public; an independent Public Service Commission be constituted to listen to the grievances and provide redressal in a time bound manner and the said body should be vested with necessary powers and finances to carry out its functions and to ensure implementation of Court's orders. Some of the States mentioned are Rajasthan, M.P., Orissa, Delhi, Bihar, West Bengal, Chhattisgarh and Assam. The State Governments have not responded to the report. A grievance has also been made by Mr. Gonsalves that despite letters from the Commissioner pointing out the violations of the Court's Orders appropriate actions are not taken. Learned counsel suggests that the licenses of the violators shall be cancelled and work of Public Distribution System be assigned to Panchayat or other bodies. Before we consider these aspects, we deem it appropriate to give a last opportunity to the State Governments to respond to the report, particularly those States whose names have been mentioned in the report, to file their response within eight weeks.

IA No.45.

Issue notice only to Delhi State. Mr. Ashok Bhan, learned counsel, accepts notice. Reply may be filed within eight weeks.

IA No.48.

Response to this application may be filed within eight weeks.

No.50.

The prayer of the nature made in the application cannot be entertained. If the applicant is aggrieved for non issue of BPL Card, she may have recourse to appropriate remedy. IA is dismissed.

Rest of the matters are adjourned.

[Naresh Kumar]
Court Master

[VPTyagi]
Court Master

**SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS
WRIT PETITION (CIVIL) NO(s). 196 OF 2001**

PEOPLE'S UNION FOR CIVIL LIBERTIES

...PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

....RESPONDENT(S)

(With appln(s). for interim relief and interim directions and extension of time, directions and permission to place additional documents on record and modification of Court's order dated 07.10.2004 and office report)

(For further consideration)

WITH

S.L.P.(C) NO. 17906 of 2003 - (With appln(s). for c/delay in filing

SLP and permission to place addl. documents on record and exemption from filing O.T. and office report)

14.02.2006 These Petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ASHOK BHAN
 HON'BLE MR. JUSTICE S.H. KAPADIA

In WP(C)196 Mr. Colin Gonsalves, Sr. Adv.
 Ms. Aparna Bhat, Adv.
 Mr. P. Ramesh Kumar, Adv.
 Mr. Anup Kumar Srivastava, Adv.
 Ms. Pooja Choudhary, Adv.

In SLP(C)17906 Mr. Rajesh Tyagi, Adv.
 Dr. Aparana Bhardwaj, Adv.
 for Mr. Praveen Jain, Adv.

For Respondent(s)/appearing parties :

For UOI Mr. Mohan Parasaran, ASG
 Ms. Sunita Sharma, Adv.
 Ms. Sushma Suri, Adv.
 Mr. D.S. Mahra, Adv. and ors.

UPON hearing counsel the Court made the following

ORDER

Counsel for the parties state that a settlement has been arrived at between the petitioner and Ministry of Rural Development and the Ministry of Consumer Affairs, Food and Public Distribution, Government of India.

The terms of which are as follows:

"1. Food grain allocations by the Central Government to beneficiaries under TPDS will be continued to be made at the present to States on the basis of Planning commission estimates of 1993-94 poverty rations, which is at 36% applied to the population projections of the Registrar General of India as on 1.3.2000 or on the basis of families identified and issued ration cards by the State Government whichever is less.

2. The survey methodology for the next BPL census will be designed by the Ministry of Rural Development in consultation with the Supreme Court Commissioners in the right to food matter Case No. 196/2001 along with other sections of the society latest by the beginning of the XI Five Year Plan.

3. Provisions will be made to allow new names to be added and ineligible names deleted from the BPL List 2002 on a continuous basis during the period that the list will be applicable."

In view of the afore-stated settlement arrived at between the parties, counsel for the petitioner states that additional affidavit, as directed by this Court on 15.12.2005 is not required to be filed.

Counsel for the parties further state that I.A. Nos.25, 26, 31, 32, 48 and 53 may be disposed of in terms of the settlement arrived at between the parties. Ordered accordingly.

The stay order dated 5th May 2003 is vacated.

Adjourned by four weeks.

(Parveen Kr. Chawla)
Court Master

(Kanwal Singh)
Court Master

**SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS
WRIT PETITION (C) NO(s). 196 OF 2001**

PEOPLE'S UNION FOR CIVIL LIBERTIES

...PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

...RESPONDENT(S)

(With appln(s). for interim directions and directions and permission and permission to place addl. Documents on record and intervention and c/delay and modification of Court's order dated 07.10.2004 and ex-Parte stay and necessary directions)

WITH SLP(C) NO. 17906 of 2003

(With application for c/delay in filing SLP and permission to place addl. Documents on record and exemption from filing OT and directions and office report)

12.07.2006 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARIJIT PASAYAT
HON'BLE MR. JUSTICE S.H. KAPADIA

For Petitioner(s) Mr. Colin Gonsalves, Sr. Adv.
 Mr. Vipin M. Benjamin, Adv.
 Ms. Pooja Sharma, Adv.
 Mr. Anup Srivastava, Adv.
 Ms. Jyoti Mendiratta, Adv.
 Mr. Praveen Jain, Adv.

For Respondent(s) Mr. T.S. Doabia, Sr. Adv.
 Ms. Sunita Sharma, Adv.
 Ms. Sandhya Goswami, Adv.
 Mr. V.K. Verma, Adv. and ors.

UPON hearing counsel the Court made the following

ORDER

W.P.(C) NO.196 OF 2001

Delay condoned.

For intervention is allowed.

After having heard learned counsel for the parties, we find that there is practically no monitoring over the sums allotted for the Public Distribution System (in short PDS) by the Central Government, and its

utilisation. The amount involved, we are told, is in the neighbourhood of Rupees Thirty Thousand Crores annually.

Certain suggestions have been given by Mr. Colin Gonsalves, learned senior counsel, as to the modalities to be adopted in such cases. At the present stage, we feel it would be necessary to constitute a Central Vigilance Committee, headed by a retired Judge of this Court to be assisted by Dr. N.C. Saxena, the Commissioner earlier appointed by this Court. We request Mr. Justice D.P. Wadhwa to head the Committee.

The Committee shall look into the maladies which are affecting the proper functioning of the system, and also suggest remedial measures. For this purpose, the Committee shall, amongst other things, focus on:

- a) The mode of appointment of the dealers,
- b) The ideal commission or the rates payable to the dealers, and
- c) Modalities as to how the Committees already in place, can function better.
- d) Modes as to how there can be transparency in allotment of the food stock to be sold at the shops.

While dealing with the question of the mode of appointment, the Committee shall also suggest as to a transparent mode in the selection of the dealers. The Committee shall also indicate as to how more effective action can be taken on the report of the Vigilance Committees already appointed. It goes without saying that the same shall be in addition to the legal remedies available to any citizen in setting law into motion. We request the Committee to give its report within a period of four months so that further instructions/directions can be given.

The Committee would invite suggestions from general public, organisations and would consider the suggestions, if any received, in the proper perspective.

We are giving this unusual direction in view of the almost accepted fact that large scale corruption is involved and there is hardly any remedial step taken to put an end to this. The ultimate victim is the poor citizen who is deprived of his legitimate entitlement of food grains. The Public Distribution System is intended to ensure that a citizen gets the food grains at a reasonable price keeping in view his economic standards.

The expenses including honorarium to the Chairman and the Member Convener and other financial involvements of the Committee shall be borne by the Food Ministry of the Central Government. The honorarium shall be same as the pay and allowances of a sitting Judge of this Court and a Joint Secretary of the Union of India. The necessary infrastructure shall be provided by the concerned Ministry within three weeks from today. This direction is initially given for the Government of Delhi to be followed on All India basis.

List the matter after the Report is filed.

I.A. NOS.34, 35, 40 AND 49

List on 27th July, 2006.

I.A. NOS.58 AND 59

Mr. Ravindra K. Adsure, learned counsel accepts notice on behalf of the State of Maharashtra. Response, if any, shall be filed before the next date of hearing, i.e., 27th July, 2006.

I.A. NOS.60 AND 61

Learned counsel for the State of Maharashtra waives notice. However, it is stated that an affidavit indicating the factual position shall be placed on record before the next date., i.e. 27th July, 2006.

S.L.P.(C) NO.17906 OF 2003

Delay condoned.

We find that the grievance made in this petition can be considered by the authorities in the light of orders to be passed in the connected matters, if occasion so arises. This special leave petition is, accordingly, disposed of.

(Neena Verma)
Court Master

(Vijay Aggarwal)
Court Master

IN THE SUPREME COURT OF INDIA
ORIGINAL JURISDICTION
IA.Nos. 34, 35, 40, 49, 58, 59, 60, 61 & 62
IN
WRIT PETITION NO. 196 OF 2001

PEOPLE'S UNION FOR CIVIL LIBERTIES

...PETITIONER

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

JUDGMENT

Dr. ARIJIT PASAYAT, J.

Grievance is made by the petitioner about the non-implementation of the directions given by this Court to the Central Government and the State Governments relating to Integrating Child Development Scheme (in short the "ICDS"). The scheme is meant for children of the age group of 0-6, pregnant women, lactating mothers and adolescent girls. Undisputedly, funds are released by the Central Government to the State Governments who are required to implement the scheme. State Governments, it is alleged, have failed to match the grants given by the Central Government.

We shall deal with this aspect a little later in detail.

Dr. N.C. Saxena, Commissioner, and Sh. Harsh Mander, the Special Commissioner were appointed pursuant to the orders passed by this Court for giving their reports on the question whether the scheme has been implemented in the manner desired by this Court by various orders.

A bare reading of the reports shows the grim realities and apparent lethargy of some of the States in implementing the Scheme.

By report dated 19th July, 2006 following recommendations are made by the Committee.

- (1) Reassert the figure of 14 lakhs AWCs as a benchmark estimate of the minimum number of AWCs required for universalisation ICDS based on existing norms.
- (2) Direct the Government of India to raise the number of AWCs o 14 lakhs within three years.
- (3) Direct the Government of India to formulate improved norms for the creation and placement if AWCs, in the light of this report and in the light of this report and in consultation with the Commissioners. The improved norms should be consistent with universalisation in the sense that implementation of these norms would ensure convenient access to an Aanganwadi (or mini-Aanganwadi, as the case may be) to all children and eligible women.
- (4) Clarify that universalisation of ICDS involves extending all ICDS services (not just supplementary nutrition) to all children below the age of six, all pregnant or lacerating women and all adolescent girls.
- (5) Direct Chief Secretaries of all State Governments/UT's to submit affidavits to the Hon'ble Supreme Court with details of all habitations with a majority of SC/ST households, the availability of

AWCs in these habitations and the plan of action for ensuring that all these habitations have functioning AWCs within two years.

- 6) Direct Chief Secretaries of all State Governments/UTs to submit affidavits to the Honourable Supreme Court on the steps that have been taken with regard to the interim order of this Court of October 7th, 2004 directing that “contractors shall not be used for supply of nutrition in Anganwadis and preferably ICDS funds shall be spent by making use of village communities, self-help groups and Mahila Mandals for buying of grains and preparation of meals. Chief Secretaries of all State Governments/UTs must also commit to a time-frame within which the decentralisation of the supply of SNP through local community efforts will be made.

Under the Chapter 1.4 “Will India meet the Nutrition MDG? The Report indicates as follows:

“The Millennium Development Goals (MDGs) are a set of internationally agreed goals that countries and institutions have committed to reach by 2015. The second MDG target, which we refer to as the nutrition MDG, is to halve between 1990 and 2015.:

- (i) the prevalence of underweight children (under five years of age)
- (ii) the proportion of population below a minimum level of dietary energy consumption.

A few studies, using different assumptions, have considered the likelihood that India will attain the second nutrition MDG. Although their projections differ, in sum it seems unlikely that the prevalence of malnutrition in India will fall from its level of 54% in 1990 to 27% by 2015. NFHS data shows that in 1998/99 even the wealthiest quintile had a prevalence of malnutrition (33%) that far exceeded the MDG goal. Our projections indicate that economic growth alone is unlikely to be sufficient to lower the prevalence of malnutrition. When combined with policy interventions, the projections are rosier, but a rapid scaling-up of health, nutrition, education and infrastructure interventions is needed if the MDG is to be met.”

In the earlier report, i.e. 6th report, dated 21st November, 2005 the following observations of the Commissioner are relevant:

“Compliance with the 28 November 2001 order and coverage of ICDS beneficiaries:

Significant orders of this court were passed regarding the implementation of the ICDS on 28.11.2001 stating that the services of the ICDS must be made available to every child up to 6 years of age, every adolescent girl, every pregnant woman and nursing mother, that every malnourished child must get an enhanced ration and that there must be an ICDS disbursement centre in every settlement. The order was the first amongst many regarding the implementation of the ICDS.

The state-wise coverage of beneficiaries under the ICDS as it currently stands as per the Department of Women and Child Development, GoI, is given in Table 1.1. The number of children Census of India, the 0-6 year population in India stands at 1578 lakhs. Thus, as many as 1201 lakhs or 74% of children entitled to the ICDS are currently left out of its net.

The coverage of adolescent girls in the 11-18 year age group is worse than that of children in the 0-6 year age group. The Kishori Shakti Yojana (KSY), under which adolescent girls are covered remains limited to 2000 TCDs Projects. The total coverage of adolescent girls stands at a mere 2.4 lakhs. In comparison, as per the census of 2001, the total female population in the 11-18 year age group stands at approximately 844 lakhs. The coverage of adolescent girls has therefore virtually not taken off with

a mere 0.3% of adolescent girls being covered under the scheme. It is important to note that of the 35 states and UTs only Chhattisgarh, Gujarat, Haryana, Meghalaya, Rajasthan, Uttar Pradesh and Andaman and Nicobar Islands have reported to the Commissioner that adolescent girls are being covered under the ICDS. Other States such as Bihar, Goa, Jharkhand and Orissa have pointedly stated that adolescent girls are not being covered under the ICDS, although Blocks were identified for the implementation of the project as far back as 1992-92. Thus an entire section of beneficiaries remain completely ignored in the implementation of the scheme.

The number of pregnant women and nursing mothers is estimated to be 4% of the total population at any point in time as per ICDS Scheme guidelines. The current coverage of 81.05 lakh beneficiaries in this category therefore, is less than 20% of the estimated number of persons who should be covered by the scheme.”

The essence of the previous orders dated 28.11.2001, 29.4.2004 and 7.10.2004 of this Court can be summed up as follows:

- (1) Almost five years ago (on 28th November 2001) the Hon’ble Supreme Court issued an interim order calling for the universalisation of ICDS, in the sense that (1) every habitation should have a functional ICDS centre (Aanganwadi) and (2) ICDS services should be extended to all children upto the age of six years, all pregnant or nursing mothers and all adolescent girls. This order was reiterated and extended on 29th April, 2004 and 7th October, 2004 along with further directions on ICDS.
- (2) We are concerned that very little progress has been made towards the implementation of these orders. In the 2004-05 financial year, the Government of India sanctioned the opening of 1.88 lakh new Aanganwadi Centres towards implementation of the above quoted orders. It is a matter of concern that these Aanganwadi Centres have not so far been operationalised. The Hon’ble Court may seek an explanation from the Ministry of Women and Child Development, Government of India in this regard.
- (3) In fact, the Government of India has not only failed to implement aforementioned orders of the Hon’ble Court, but challenged the basic principles of universalisation outlined in these orders. The aim of this note is to clarify some key issues and present recommendations for further orders.

Aanganwadi Centres are hereinafter referred to as AWCs.

As noted above, the reports of the Commissioner present a grim picture. Though directions were given by this Court in relation to universalisation of coverage under ICDS, immediate operationalisation of all sanctioned projects/centers without delay, utilisation of all funds allocated, the implementation by the Central Government and the State Government is more in breach than observance. In the earlier orders dated 29.4.2004, 7.10.2004 the submissions made by the petitioner regarding universalisation was accepted to the effect that about 14 lakhs AWCs should be made functional. As the data available indicates till now only 9,52,764 centres have been sanctioned (including 1.8 lakhs new AWCs) under the first phase of expansion that was sanctioned in 2005. It appears that the Central Government has announced sanction of 1.07 lakhs in the last of August, 2006, which means the total number of sanctioned centers would be around 10.5 lakhs leaving a deficit of 3.5 lakhs centers. It appears that even the earlier expansion of 1.88 lakhs centers which were sanctioned have not yet become operational.

In its letter dated 23.1.2006 the Central Government in its letter addressed to the Commissioners rejected the figure of 14 lakhs suggested by the petitioner on the ground that it was based on a survey of drinking water facilities whereby any population cluster of at least 250 persons counts as a separate “habitation”. According to norms suggested by the petitioner, one AWC was intended “for every 1,000 population.” This was suggested on a practical basis because one AWC cannot serve more than 1000 persons i.e. about 200 households. Since many of the AWCs have a single worker even 1000 persons appear to be a high cut off.

The suggestions presently given are that a full-fledged AWC should be made operational for a population of 300 persons or above. This is stated to be pm the basis of 7th All Indian Educational Survey (in short ‘AIES’). Though the Central Government has accepted the need for revision of the norms for creation or placement of AWCs very little appears to have been done. An Inter-Ministerial Task Force (in short “IMTF”) was constituted for this purpose. It has submitted its report some time earlier this year.

Whatever be the norms suggested, immediate steps should be taken to make all the sanctioned centers functional and operational without further delay. Petitioner has placed on record various materials to contend that the benchmark needs to be substantially reduced to provide a rational base. As the data available goes to show about 79% of the sanctioned centers have been made operational. As the data placed by the petitioner goes to show only about 69.4% of the sanctioned centers are providing supplementary nutrition.

According to the data provided regarding the funds allocation and utilisation, following is the position:

“Till the 2004-05 financial year, norms for per beneficiary per day’ allocation of funds to be made by State/UT Governments were those sent in 1991. In the last financial year (in December 2004), the DoWCD took the long overdue step of revising the financial norms for money to be spent per beneficiary per day for the provision of supplementary nutrition. The cost norms have been changed to the following:

Table 1.3: Norms for per beneficiary per day allocation of Funds under State/UT Plans

Beneficiary	Old Rates*	New Rates**
Children (6-72 months)	Rs. 0.95 per child per day	Rs. 2/ per child per day
Severely malnourished children (6-72 months)	Rs. 1.35 per child per day	Rs. 2.70 per child per day
Pregnant women and nursing mothers/adolescent girls (KSY)	Rs. 1.15 per beneficiary per day	Rs. 2.30 per beneficiary per day

* Rates set by the DoWCD, GOI in 1991

** Rates set by the DoWCD, GOI in December 2004”

This is based on DoWCD letter No. F.No. 19-5/2003-CD-1(pt) dated 19th October, 2004.

As mentioned in the Sixth Report of the Commissioners to this Court, over the years the funds allocated by the State Governments for Supplementary Nutrition Programme (in short 'SNP) has been low and the utilisation of allocated funds has also been poor. According to data from the DoWCD, the following is the position of allocation and expenditure by States and GOI for SNP in 2005-06:

Statement indicating Budget allocation by States, Releases made by GOI and Expenditure reported during 2005-06* for Supplementary Nutrition Programme (SNP) under Integrated Child Development Services (ICDS) Scheme					
Rs. In Lakh					
Budget allocation for SNP by the States in the year 2005-06		Releases made by GOI	Total Allocation	Expenditure including State share	% Utilisation
Plan	Non Plan	During 2005-06	Reported by the States during 2005-06		
1	2	3	4	5	6
197512.08	84351.13	97458.55	379321.76	218801.73	57.7

*expenditure upto 15/2/06

This is based on DoWCD, GOI's letter to Commissioners (letter No. 19-5/2003-CD-1(vol.111) dated 28.08.06).

It is thus seen that the extent of utilisation of funds allocated for SNP is on an average 57.7% for the country as a whole. Despite allocations made by the States and a corresponding grant given by the Centre, huge amounts of money is being left unspent and rightful beneficiaries are being denied critically needed supplementary nutrition.

Further, shortfall in allocation required to cover all the children under 6 in the country under the SNP programme is about 60%.

Total Allocation	Total no. of Children under 6 (according to Census 2001)	Required Allocation*	Shortfall	% Shortfall
379321.76	1578.6	947178.87	567857.11	59.95%

*The figures are in lakhs

The calculation is at the rate of Rs. 2 per child per day for 300 days. The calculations above have been made only taking into account children under 6 years of age in the country. However, the allocations are for the entire SNP programme of the ICDS which is to also cover pregnant women, lactating mothers and adolescent girls taking this into account the shortfall in allocation would be even larger.

Certain States have been performing particularly badly in respect to most of the indicators seen above. The following is the data in relation to these states.

State	No. of AWCs sanctioned	No. of AWCs providing SNP	% providing service
Punjab	17421	14730	84.6
Haryana	16359	13546	82.8
Uttar Pradesh	137557	102881	74.8
Jharkhand	30854	19571	63.4
Bihar	80415	50503	62.8
West Bengal	74640	45285	60.7
Madhya Pradesh	59324	35549	59.9
Assam	32075	4330	13.5
Manipur	4501	0	0.0

Further even though the other states have a higher number of centers that are providing SNP, in terms of the utilisation and allocation of funds they are performing badly.

State	Total Allocation (Center + State)	Expenditure (upto to 15/02/06)	% Utilisation
Manipur	1334.24	1329.16	99.6
Jharkhand	16473.84	12711.01	77.2
Uttar Pradesh	67569.73	45916.19	68.0
Assam	9666.67	5337.64	55.2
Madhya Pradesh	20877.53	9457.82	45.3
Bihar	43040.62	18989.12	44.1
Haryana	13268.80	4046.03	29.7
West Bengal	45345.67	11845.38	26.1
Punjab	14814.55	3599.65	24.3

The basis for working out the above details is DoWCD, GOI's letter to Commissioners (letter No. 19-5/2003-CD-I (Vol.III), 28.08.2006).

While none of the States are utilising the funds allocated to them for the purpose of SNP, percent of utilisation is less than even 30% in the States of Haryana, West Bengal and Punjab. In the case of Manipur it is suspicious as to where the funds have been spent as according to the data given by the Department of Women and Child Development, number of beneficiaries under SNP in Manipur is nil.

In the following table the funds required for SNP to cover all the children under the age of six (based on the norm of Rs. 2 per child per day for 300 days) has been calculated. As can be seen in the table below, in states like Assam, Uttar Pradesh, Madhya Pradesh, Punjab, West Bengal and Haryana there is a shortfall of more than 60% of funds that are actually required to cover all children under 6. This combined with the fact that these states do not fully utilise even what is currently being allocated to them shows that many deserving beneficiaries are being left out of the supplementary nutrition programme of the ICDS.

State	Total Allocation (Centre + States)	0-6 population as per 2001 Census	Amount required to be allocated for the 0-6 population (in Rs. Crores)	% Shortfall
Manipur	1334.24	3.1	1876.146	28.88
Jharkhand	16473.84	48.0	28777.128	42.75
Bihar	43040.62	162.3	97407.234	55.81
Assam	9666.67	43.5	26101.488	62.97
Uttar Pradesh	67569.73	304.7	182832.252	63.04
Madhya Pradesh	20877.53	106.2	63709.938	67.23
Punjab	14814.55	30.6	18332.952	67.53
West Bengal	45345.67	111.3	66796.944	7.69
Haryana	13628.80	32.6	19554.48	75.11

The above details are culled out from DoWCD, GOI's letter to Commissioners, letter no. 19-5/2003-CD-I(Vol.III) 28.08.06 which has been referred to in detail above.

Keeping in view the submissions made and considering the materials placed on record we direct as follows:

- (1) Government of India shall sanction and operationalise a minimum of 14 lakh AWCs in a phased and even manner starting forthwith and ending December 2008. In doing so, the Central Government shall identify SC and ST hamlets/habitations for AWCs on a priority basis.
- (2) Government of India shall ensure that population norms for opening of AWCs must not be revised upward under any circumstances. While mainstreaming the upper limit of one AWC per 1000 population, the minimum limit for opening of a new AWC is a population of 300 may be kept in view. Further, rural communities and slum dwellers should be entitled to an "Aanganwadi on demand" (not later than three months) from the date of demand in cases where a settlement has at least 40 children under six but no Aanganwadi.
- (3) The universalisation of the ICDS involves extending all ICDS services (Supplementary nutrition, growth monitoring, nutrition and health education, immunisation, referral and pre-school education) to every child under the age of 6, all pregnant women and lactating mothers and all adolescent girls.
- (4) All the State Governments and Union Territories shall fully implement the ICDS scheme by inter alia,

- (i) allocating and spending at least Rs. 2 per child per day for supplementary nutrition out of which the Central Government shall contribute Re. 1 per child per day.
- (ii) allocating and spending at least Rs. 2.70 for every severely malnourished child per day for supplementary nutrition out of which the Central Government shall contribute Rs. 135 per child per day.
- (iii) allocating and spending at least Rs. 2.30 for every pregnant women, nursing mother/adolescent girl per day for supplementary nutrition out of which the Central Government shall contribute Rs. 1.15.
- (5) The Chief Secretaries of the State of Bihar, Jharkhand, Madhya Pradesh, Manipur, Punjab, West Bengal, Assam, Haryana and Uttar Pradesh shall appear personally to explain why the orders of this Court requiring the full implementation of the ICDS scheme were not obeyed.
- (6) Chief Secretaries of all State Governments/UTs are directed to submit affidavits with details of all habitations with a majority of SC/St households, the availability of AWCs in these habitations, and the plan of action for ensuring that all these habitations have functioning AWCs within two years.
- (7) Chief Secretaries of all State Governments/UTs are directed to submit affidavits giving details of the steps that have been taken with regard to the order of this Court of October 7th, 2004 directing that “contractors shall not be used for supply of nutrition in Anganwadis and preferably ICDS funds shall be spent by making use of village communities, self-help groups and Mahila Mandals for buying of grains and preparation of meals”. Chief Secretaries of all State Governments/UTS must indicate a time-frame within which the decentralisation of the supply of SNP through local community shall be done.
- (8) It is a matter that 15 States and Union Territories have not submitted any affidavit in compliance with the order dated 7.10.2004. They are the States of Orissa, Uttar Pradesh, Sikkim, Arunachal Pradesh, Nagaland, Goa Punjab, Manipur, Tamil Nadu, Andhra Pradesh, Mizoram, Haryana, Bihar and the National Capital of Delhi and the Union Territory of Lakshadweep. Within four weeks reply shall be filed through the concerned Chief Secretary as to why action for contempt shall not be initiated for the lapse.

The matters shall be listed after three months. Upto date statistic report shall be filed by the different states, Union Territories and the Central Government.

.....J
(Dr. ARIJIT PASAYAT)

.....J
(S.H. KAPADIA)

New Delhi
December 13, 2006

**SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS
WRIT PETITION (C) NO. 196 OF 2001**

PEOPLE'S UNION FOR CIVIL LIBERTIES

...PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

...RESPONDENT(S)

(With appln. for interim direction and directions and permission and permission to place addl. documents on record and intervention and c/delay and exem. from O.T. and modification and extension of time)

01.02.2007 This Petition was called on for hearing today.

CORAM:

HON'BLE Dr. JUSTICE ARIJIT PASAYAT
HON'BLE MR. JUSTICE S.H. KAPADIA

For Petitioner(s) Mr. Colin Gonsalves, Sr. Adv.
Ms. Pooja Sharma, Adv.
Mr. Anup Srivastava, Adv.
Ms. Jyoti Mendiratta, Adv.
Mr. Praveen Jain, Adv.

For Respondent(s) Mr. Rajiv Dutta, Sr. Adv.
Mr. T.S. Doabia, Sr. Adv.
Mr. M.F. Humayunisa, Adv.
Mr. Hemant Sharma, Adv. and ors.

UPON hearing counsel the Court made the following

ORDER

Heard Mr. Colin Gonsalves, learned senior counsel for the petitioner and learned counsel appearing for the Union of India and various states.

A detailed memorandum has been filed by Mr. Colin Gonsalves and certain directions have been prayed for. Essentially the National Maternity Benefit Scheme (in short the 'NMBC') and Janani Suraksha Yojana (JSY) are the schemes with which the present I.As. i.e. I.A.No. 37/2004 and I.A. No. 54/2005 are concerned. With reference to the report of the Commission appointed by this Court and certain statistical data, it has been highlighted that there is practically no step taken for implementation of the schemes in question.

Additionally, it is submitted that because of lack of monitoring the schemes have not taken up in the way they were intended to be put in place. Let the Union of India, which is providing the funds for the implementation of the schemes; file its response to the suggestions given by Mr. Colin Gonsalves. It has also been highlighted that there has been total non-implementation of the schemes in certain States including Delhi where it is stated the number of persons getting benefits i.e. targeted beneficiaries is nil.

Let the States of Uttar Pradesh, Uttaranchal, Bihar, Delhi, Jharkhand, Madhya Pradesh, Chhattisgarh, Assam, Rajasthan, Orissa and Jammu and Kashmir file their response as to why there has been such dismal inaction in implementation of the schemes. While filing the response, the Union of India shall

indicate as to how the Union of India proposes to monitor the implementation of the schemes by the State Government and in what way there can be more coordinated effort for implementing the schemes. In the response to be filed, the Union of India shall also indicate as to whether it would be in the interest of the beneficiaries if the funds are directly placed at the disposal of the Gram Panchayats so that without unnecessary delay beneficiaries can get immediate benefit of the schemes. The intention of the schemes appear to be providing nutritional assistance to the expecting mothers. It is apparent from the report of the Commissioner that in the rural areas the non performance is more acute. It is brought to our notice that there have been some modification in the JSY scheme which do not appear to have been made known to the beneficiaries.

It would be appropriate if the Union of India and the State Governments take steps to make the beneficiaries aware of the benefits of the schemes and the entitlements flowing therefrom. Let the response be filed within three weeks by the Union of India and by the State Governments within four weeks. The State Governments shall also indicate their suggestions as to what effective steps can be taken for better implementation of the schemes and how there can be more coordinated effort between the Union of India and the State Governments.

Mr. Colin Gonsalves, learned senior counsel is also requested to compile the responses, if any filed, and give his suggestions as regards the modes to be adopted for better results.

Call this matter in the third week of March 2007.

The budget estimates required for the Commissioner by this Court is placed on record. A copy has also been handed over to the learned counsel for the Union of India, let him take the instructions so that necessary orders can be passed on the next date of hearing.

(Shashi Sareen)
Court Master

(Madhu Saxena)
Court Master

**SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS**

I.A. Nos. 34, 35, 40, 49, 58, 59, 60, 61 & 62 In

WRIT PETITION (C) NO(s). 196 OF 2001

PEOPLE'S UNION FOR CIVIL LIBERTIES

...PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

...RESPONDENT(S)

(For intervention, extension of time, direction, impleadment and ex-parte stay and necessary direction and exemption from filing OT and for appointment of second Commissioner and provision of Financial support with affidavit and office report)

20.03.2007 This Petition was called on for hearing today.

CORAM:

**HON'BLE DR. JUSTICE ARIJIT PASAYAT
HON'BLE MR. JUSTICE S.H. KAPADIA**

For Petitioner(s) Mr. Colin Gonsalves, Sr. Adv.
 Mr. Anup K. Srivastava, Adv.
 Ms. Jyoti Mendiratta, Adv.

For Respondent(s)/ Mr. Mohan Parasaran, A.S.G.

Union of India Mr. Rajiv Dutta, Sr. Adv.
 Mr. T.S. Doabia, Sr. Adv.
 Ms. Sunita Sharma, Adv.
 Mr. R.C. Kathiya, Adv.
 Ms. Rajni Singh, Adv.
 Mr. Manpreet Singh Doabia, Adv.
 Mr. V.K. Verma, Adv.
 Ms. Sushma Suri, Adv.

UPON hearing counsel the Court made the following

ORDER

Heard.

Pursuant to our order, the concerned chief Secretaries have appeared except the chief Secretary of Andhra Pradesh. We have taken note of the affidavits filed by them.

The budget for the expenses of the Commissioner is directed to be approved by the Central Government subject to the clarifications regarding payment to Shri Harsh Mander Personal presence of the Chief Secretaries, who were personally present, is dispensed with until further orders.

Judgment reserved.

(Neena Verma)
Court Master

(Madhu Saxena)
Court Master

IN THE SUPREME COURT OF INDIA
EXTRA ORDINARY ORIGINAL JURISDICTION
I.A. NOS. 34, 35, 40, 49, 58, 59, 60, 61 and 62
IN
WRIT PETITION (CIVIL) No. 196/2001

PEOPLE'S UNION FOR CIVIL LIBERTIES**..PETITIONER****VERSUS****UNION OF INDIA AND ORS.****..RESPONDENTS****JUDGMENT**

Dr. ARIJIT PASAYAT, J.

1. Grievance of the writ petitioner in these I.As. is that a number of Aanganwadi centres which are required to be sanctioned by December 2006 is 14 lakhs. But the number of centres sanctioned as on March, 2007 is 10.53 lakhs. Therefore, about 3.47 lakhs centres need to be sanctioned. As which are operational as on 30.9.2006 is 7.81 lakhs. Therefore, even the sanctioned centres have not become operational and their number is 2.72 lakhs. The details of some of the States where sanctioned Aanganwadi centres have not been operationalised to a large extent are as follows :

State	No. of sanctioned Aanganwadis*	No. of sanctioned Aanganwadi centres Not operationalised*	
		As per UOI	As per State Govt. Affidavits
Bihar	80528	22761	19602
Jharkhand	32097	10638	7680
Madhya Pradesh	69238	19432	16165
Punjab	20169	5439	5439
Haryana	17192	1225	1225
West Bengal	92152	37088	37092
Uttar Pradesh	150727	33987	22087
Manipur	7639	3138	3138
Assam	37082	11635	11666

* This includes the ICDS centres sanctioned in December 2006 under Phase II expansion. None of these centres have obviously been operationalised.

From the affidavit of the Union of India it appears that the position is as follows :

2. By 31.3.2005 - 7,64,709, by 30.9.2006 - 9,46,000 (approx.) and by December 2006 - 1.02 lakhs centres have been sanctioned with a total of about 10,48,000.
3. By order dated 13.12.2006 it was inter-alia directed as follows:
“(1) Government of India shall sanction and operationalise a minimum of 14 lakh AWCs in a phased and even manner starting forthwith and ending December 2008. In doing so, the Central

Government shall identify SC and ST hamlets/habitations for AWCs on a priority basis.

(2) Government of India shall ensure that population norms for opening of AWCs must not be revised upward under any circumstances. While maintaining the upper limit of one AWC per 1000 population, the minimum limit for opening of a new AWC is a population of 300 may be kept in view. Further, rural communities and slum dwellers should be entitled to an Aanganwadi on demand” (not later than three months) from the date of demand in cases where a settlement has at least 40 children under six but no Aanganwadi.”

4. It is a matter of concern that even the sanctioned centres (the number of which is much less than the targeted one) have not been made operational.
5. Learned counsel appearing for different States have indicated various reasons for the same. Prime facie we are not satisfied with the reasons indicated. The need for having functional Aanganwadi centres have never been questioned and cannot be questioned.
6. The importance of Aanganwadi centres has been highlighted by this Court in several orders. By order dated 7.10.2004 it was noted as follows:

“....Now we would deal with the aspect of sanctioned AWCs and their working. In the Order dated 29.4.2004 it was directed that the sanctioned AWCs shall be made fully operational by 30th June, 2004. Further direction issued was that the sanctioned AWCs shall supply nutritious food/supplement to the children, adolescent girls and to pregnant and lactating women under the scheme for 300 days in a year. The Report presents a glooming picture both in regard to the operation of the sanctioned AWCs in some of the States like Uttar Pradesh, Bihar and Jharkhand and the position in those which are operational. Instances have been given in the Report where for months the supplies were not made to the children. For example, in the State of Jharkhand, the sanctioned AWCs were not working from May to December, 2003. No satisfactory reply is forthcoming from that State. Further, there are material discrepancies in two affidavits field by the said State one in September and the one handed over in the Court today. In the September affidavit, it was deposed on oath that 16689 AWCs were operational. In the affidavit field today, the figure of operational AWCs is stated to be 7429. According to the Report, on an average, 42 paisa as against the norm of rupee one was being allocated per beneficiary per day by the State of Jharkhand. The position in Bihar and Uttar Pradesh is also no better. Out of 394 sanctioned ICDS projects, only 249 were operational in the State of Bihar. As per the affidavit dated 30 September, 2004, all the projects were being made operational from 4 October, 2004. Whether that has happened or not, Mr. B.B. Singh learned counsel appearing for the State is unable to state for want of instructions. Be that as it may, if all have not been made operational since 4th October, 2004 has already passed and gone we direct that the same shall be made operational in period not later than one week from today.

In the State of Uttar Pradesh, though percentage of non-functional/non-operational AWCs is more as per the Report but according to the State, admittedly 24 percent are not operational. In the affidavit, it has been claimed that the remaining will be operational by 30th November, 2004. We direct the State Government to make operational all sanctioned AWCs by 30th November, 2004. After that, we would not entertain any application for extension of time.

The Report also mentions that some of AWCs are operating from private houses including those of grain dealers which it is suggested is not a healthy way of working as it is likely to increase the chances of pilferage of the grain etc. We are happy to note that as stated in the affidavit of State of Uttar Pradesh, it has made efforts to shift AWCs to primary schools. It is a good example for other States to follow. The Report also mentioned about the attempt to centralise the procurements in some of the States which has many fallouts. It has been explained in one of the affidavits that the procurements is at district level and not at the State level. Further, the problem of using contractors for procurement has also been mentioned in the Report suggesting that it should be done by agencies and officers at the Government level. These are only by way of illustrations as to facts and figures given in Section 1 of the Report relating to Integrated Child Development Services.

7. Learned counsel for the State of U.P. has pointed out that because of elections there was some delay.
8. In the circumstances, we direct as follows:

The backlog has to be cleared immediately and the centres which have been sanctioned upto September 2006 shall be made operational and functional by 15th July, 2007 in the case of all States except the State of U.P. where the last date is fixed to be 31st July, 2007. Those centres which have been sanctioned upto January 2007 shall be made functional by 30.9.2007.

9. It is made clear that if there is any non observance of the time period fixed would be seriously viewed. Affidavits shall be filed by 20th July, 10th August and 10th October, 2007 by the States in respect of the date lines fixed indicating the action taken.
10. List this matter on 20th July, 2007.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(S.H. KAPADIA)

New Delhi,
July 9, 2007

**SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS**

**I. A. Nos. 34, 35, 40, 49, 58, 59, 60, 61 & 62 In
WRIT PETITION (C) NO. 196 OF 2001**

PEOPLE'S UNION FOR CIVIL LIBERTIES **...PETITIONER(S)**
UNION OF INDIA AND ORS. **....RESPONDENT(S)**
VERSUS

(For intervention, extension of time, direction, impleadment for ex-parte stay and necessary direction and exemption from filing OT and for appointment of second Commissioner and provision of financial support with affidavit and office report).

25.07.2007 This Petition was called on for hearing today.

CORAM:

HON'BLE DR. JUSTICE ARIJIT PASAYAT

HON'BLE MR. JUSTICE S. H. KAPADIA

For Petitioner (s) Mr. Colin Gonsalves, Sr. Adv
Ms. Jayshree Satpute, Adv.
Ms. Jyoti Mendiratta, Adv.

For Respondent (s) Mr. V. K. Verma, Adv.
Ms. Sushma Suri, Adv.

UPON hearing Counsel the Court made the following

ORDER

In spite of several orders of this Court, the pace at which operationalisation of the sanctioned Aanganwadi Centres is taking place is a sad reflection on the sincerity and seriousness of various State Governments to carry out the policy decision relating to functioning of the Aanganwadi Centres. It is shocking to note that even in respect of Aanganwadi Centres sanctioned in 2005 – 2006, in several States, the percentage of functional centres is very low. Glaring examples are the State of Bihar, Rajasthan, Himachal Pradesh, Kerala and Orissa. Though in some of the other States, 100% operationalisation has not been done, keeping in view the deadlines of phases as fixed by this Court, but they are in most cases, more than 90%. It needs no reiteration that by various previous orders, emphasis was laid on the need for making of the sanctioned Aanganwadi Centres functional. Taking note of the lapse so far as named States are concerned notice of contempt is issued to the Chief Secretaries of the States of Bihar, Himachal Pradesh, Kerala, Rajasthan and Orissa to appear in person in this Court on 30th August, 2007. They shall file affidavits indicating the reason for non – compliance with this Court's orders and as to why exemplary action shall not be taken against them for not complying with this Court's orders. In the affidavits, they shall also indicate the names of the other officers who are responsible for not complying with this Court's orders. The affidavit shall be filed latest by 24th August, 2007.

Place this matter on 30th August, 2007

I. A. Nos. 37 and 54 shall also be listed along with this matter.

(Neena Verma)
Court Master

(Madhu Saxena)
Court Master

**SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS
I. A. Nos. 34, 35, 37, 40, 49, 54, 58, 59, 60, 61 & 62 In**

WRIT PETITION (C) NO. 196 OF 2001

PEOPLE'S UNION FOR CIVIL LIBERTIES **...PETITIONER(S)**
UNION OF INDIA AND ORS. **....RESPONDENT(S)**
VERSUS

(For interim directions, intervention, direction, and ex – parte stay and necessary direction and permission to place addl. documents on record and modification of Court's order dated 7.10.2004 and appln. for permission to modify the National Maternity Benefit Scheme and appointment of second Commissioner and office report).

30.08.2007 This Petition was called on for hearing today.

CORAM:

HON'BLE DR. JUSTICE ARIJIT PASAYAT
HON'BLE MR. JUSTICE S. H. KAPADIA

For Petitioner(s) Mr. Colin Gonsalves, Sr. Adv.
 Ms. Ragini Trakroo, Adv.
 Ms. Jyoti Mendiratta, Adv.
 Dr. Abhishek Manu Singhvi, Sr. Adv.
 Mr. L. Nageswara Rao, Sr. Adv.
 Ms. Kiran Suri, Adv.

For Respondent(s) Mr. V.K. Verma, Adv.
 Ms. Sushma Suri, Adv.

Upon hearing Counsel the Court made the following

ORDER

Heard learned amicus curiae and learned counsel for different States. From the details filed, it appears that more or less the stipulated operationalisation has been done, so far as the Aanganwadi Centres, which were, sanctioned upto September, 2006. For the subsequent period it is expected that the zeal shown after the notice of contempt was issued shall be continued to see that there is no further lapse.

The matter shall be listed after six weeks. The personal presence of the Chief Secretaries who are present in Court is dispensed with for the present. So far as the State of Orissa is concerned, though there is substantial progress, because the Chief Secretary has not appeared today, he shall appear on the next date of hearing to consider whether his appearance can be dispensed with.

Further affidavits, if any, are permitted to be filed. A copy of Mr. Justice D. P. Wadhwa's report be supplied to the learned amicus curiae and learned counsel appearing for the Union of India.

Sd/-
(Ganga Thakur)
PS to Registrar

Sd/-
(Madhu Saxena)
Court Master

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
IA NOS. 34, 35, 37, 40, 49, 54, 58, 59, 60, 61, 62 & 77**

IN

WRIT PETITION (C) NO. 196 OF 2001

WITH SUO MOTO CONTEMPT PETITION (C) NO. 128 OF 2007

**IN W.P. (C) NO. 196 OF 2001 IN RE: CHIEF SECRETARY
STATE OF BIHAR AND 4 ORS.**

PEOPLE'S UNION FOR CIVIL LIBERTIES

...APPELLANT

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. By this order two IAs. No. 37 of 2004 and No. 54 of 2005 stand disposed of IA No. 37 of 2004 is an application by the Union of India for permission to modify the National Maternity Benefit Scheme (in short 'NMBS') and to introduce a new scheme called the Janani Suraksha Yojana (in short 'JSY'). IA No. 54 of 2005 is an application by the petitioner questioning legality of the discontinuation of the benefit under the NMBS due to introduction of JSY. By order dated 27.04.2004 this Court directed as follows:

“No Scheme...in particular...National Maternity Benefit Scheme shall be discontinued or restricted in any way without prior approval of the Court.”

2. Again by order dated 09.05.2005 this Court directed as follows:

“By IA 37, permission is sought to modify The National Maternity Benefit Scheme (NMBS) and to introduce a new scheme namely Janani Suraksha Yojana (JSY). Whereas in IA 54, the prayer is that the Scheme should not be modified by reducing, abridging or qualifying in any way the social assistance entitlements created under the original scheme of NMBS for expecting BPL mothers, including cash entitlements of Rs.500/- provided therein. We have requested learned Additional Solicitor General to place on record further material in the form of affidavit to effectively implement the new Scheme sought to be introduced. The further material shall include the approximate distance of Public Health Centre from the residential complexes and the facility of transportation etc. The Commissioner shall also examine the matter in depth and file a report. The response to the application may be filed within eight weeks. Meanwhile, the existing National Maternity Benefit Scheme will continue.”

3. The government set a numerical ceiling of 57.5 lakh beneficiaries as the annual target for NMBS. However, the number of beneficiaries under JSY in 2006-07 was only 26.2 lakh i.e. 45.5% and in the year 2005-06 this was as low as 5.7 lakh i.e. 10%. While there has been an improvement in the last one year, the coverage under this scheme is still very below the target number of women to be covered by the NMBS.
4. According to the Union of India the JSY was introduced to put a premium on the willingness of poor women to go in the institutional delivery instead of home delivery. But it was recognised

that in States with lower institutional delivery rates, one of the reasons for low performance have been lesser availabilities of facilities in the Health Centres, which act as disincentive for the poor illiterate women to seek the services.

5. Pursuant to the order of this Court dated 09.05.2005 the Commissioner had prepared a report.
6. After discussions with the Commissioner appointed by this Court, senior officials, the Central Government took a decision to modify the JSY Scheme to continue the benefits of NMBS and also to improve upon such benefits for non institutional delivery, where the women chooses to deliver her baby at home. In this connection, a letter dated 13.07.2006 was written to the Commissioner by the Secretary health and Family Welfare under the amended JSY. The Low performing States and High Performing States were defined as follows:

“4.1 The scheme focuses on the poor pregnant woman with special dispensation for states having low institutional delivery rates namely the States of Uttar Pradesh, Uttaranchal, Bihar, Jharkhand, Madhya Pradesh, Chhattisgarh, Assam, Rajasthan, Orissa and Jammu and Kashmir. While these states have been named as Low Performing States (LPS), the remaining states have been named as High Performing States (HPS).”
7. The table below gives details of the number of beneficiaries under JSY (all these would have received the Rs.500/- under NMBS irrespective of place of delivery) vis-à-vis the annual targets set by the Government of India for NMBS.

Percentage of Eligible Beneficiaries Covered Under NMBS

State/UT`	No. of Women eligible for NMBS	No. of Beneficiaries in 2006-07	Percentage of Eligible Beneficiaries covered
Andhra Pradesh	296033	457000	154.4
Rajasthan	280123	387648	138.4
J & K	50494	57798	114.5
Assam	122894	183231	100.2
Orissa	264249	227204	86.0
Madhya Pradesh	472840	401184	84.8
Mizoram	4429	3330	75.2
Chhattisgarh	148876	74778	50.2
Uttaranchal	37117	18614	50.1
West Bengal	425520	199000	46.8
Tamil Nadu	301676	136091	45.1
Karnataka	289339	81152	28.0
A & N Islands	2295	600	26.1
Kerala	107602	27683	25.
Bihar	732891	171352	23.4
Pondicherry	6446	1315	20.4
Gujarat	212845	42373*	20.0
Punjab	41297	8276	20.0
Maharashtra	529777	97390	18.4
Tripura	20601	3203	15.5

Manipur	11112	1684	15.2
Goa	3188	483	15.1
Lakshadweep	333	42	12.6
Sikkim	4598	446	9.7
Meghalaya	22768	2031	8.9
Himachal Pradesh	29222	2508	8.6
Uttar Pradesh	1073341	71456	6.7
Haryana	92856	3294	3.5
D & N Haveli	3850	76	2.0
Chandigarh	2108	0	0.0
Delhi	42447	20	0.0
Arunachal Pradesh	10399	NR	NR
Daman and Diu	632	NR	NR
Jharkhand	208592	NR	NR
Nagaland	12763	NR	NR
Total India	5925554	2618889	44.2

8. The scheme as the details above go to show has virtually not taken off in many states. Delhi has given the benefit under the NMBS to only 20 women in 2006-07, while in Chandigarh the number of beneficiaries is 0. In Sikkim Meghalaya, Himachal Pradesh, Uttar Pradesh, Haryana and Dadar and Nagar Haveli has less than even 10% of the eligible beneficiaries have been covered under the NMBS. Except for the states of Andhra Pradesh, Jammu & Kashmir, Rajasthan, Madhya Pradesh, Assam, Orissa and Mizoram where more than 75% of the eligible beneficiaries seem to have been reached out to, the performance of this scheme has been very poor in all the other states.

Indicate below are percentage of Home delivery figures

State/UT	% Home delivery reported out of JSY beneficiaries (2006-07)	% Home delivery in the State (NFHS 3)
Assam	4.4	77
Madhya Pradesh	0.9	70
Haryana	0.0	61
Rajasthan	13.5	68
Manipur	0.0	51
Delhi	0.0	39
Meghalaya	41.4	70
Orissa	33.3	61
Chhattisgarh	59.2	84
Sikkim	44.8	51
Tamil Nadu	5.7	10
Bihar	75.9	78
Karnataka	37.6	33
Kerala	5.2	0
Mizoram	44.1	35
Tripura	60.5	51

Uttar Pradesh	90.2	78
Uttaranchal	96.9	64
Punjab	82.9	47
Maharashtra	86.0	34
Goa	67.9	7

9. In the States of Madhya Pradesh, Haryana, Manipur and Delhi there are almost no JSY beneficiaries who had a home delivery. This indicates that in these States the scheme's focus continues to be only on institutional deliveries and not all deliveries. Even in the States of Assam, Rajasthan, Meghalaya, Orissa and Chhattisgarh the JSY has been disproportionately given to only those who have had institutional deliveries.
10. At this juncture, the financial performance needs to be noted.
11. The Janani Suraksha Yojana is a centrally-sponsored scheme with the centre providing 100% of the funds. Some states e.g. Andhra Pradesh make their own contribution thereby increasing the amount of cash assistance for institutional deliveries. Tamil Nadu has introduced a separate scheme for providing mothers with Rs.1000/- per month for six months i.e. three months prior to the delivery and three months after. Given below are the details of allocation and utilisation of the funds provided by the Central Government.
12. Out of the funds provided for JSY for 2006-07, about 71.2% of the funds allocated have been utilised in the year 2006-07.

Utilisation of Funds allocated by JSY

State/UT	Funds released in 2006-07	Expenditure reported by State	% Utilisation
Andaman Nicobar Island	10.00	1.99	19.9
Andhra Pradesh	4073.20	4550.00	111.7
Arunachal Pradesh	26.2	0.31	1.2
Assam	1300.00	1331.32	102.4
Bihar	610.00	190.00	31.1
Chandigarh	5.23	0.00	0.00
Chhattisgarh	513.00	516.55	100.7
D & N Haveli	9.17	0.73	8.0
Daman & Diu	5.23	0.00	0.0
Delhi	65.49	0.20	0.3
Goa	7.86	3.38	43.0
Gujarat	851.85	185.56	21.8
Haryana	350.00	39.11	11.2
Himachal Pradesh	100.00	20.66	20.7
J & K	138.33	123.84	89.5
Jharkhand	392.89	64.67	16.5
Karnataka	916.00	594.02	
Kerala	511.94	284.45	55.6
Lakshadweep	4.83	0.31	7.1

Madhya Pradesh	4261.00	2482.00	58.2
Maharashtra	785.79	209.07	26.6
Manipur	78.57	13.45	17.1
Meghalaya	39.29	42.75	108.8
Mizoram	78.57	37.27	47.4
Nagaland	65.49	0.00	0.00
Orissa	1600.00	1571.31	98.2
Pondichery	19.64	6.10	31.1
Punjab	145.37	56.84	39.1
Rajasthan	4085.00	3056.35	74.8
Sikkim	13.1	7.46	56.9
Tamil Nadu	1827.00	1441.00	78.9
Tripura	117.86	43.70	37.1
Uttar Pradesh	1375.00	436.80	31.8
Uttaranchal	79.56	56.06	70.5
West Bengal	1678.99	1233.67	73.5
Total	26141.00	18600.93	71.2

13. Looking at the Statewise break-up it is seen that states like Delhi, Nagaland and Arunachal Pradesh, and union territories of Chandigarh and Daman & Diu have not at all utilised the funds allocated to them for the purpose of JSY. Among other states, Manipur, Jharkhand and Haryana utilised less than 20% of the funds released to them. Only 10 states spent more than 70% of the funds allocated to them under JSY.
14. At the time of hearing of the applications, learned counsel for the petitioner and the Union of India highlighted various aspects. Considering the submissions and the material data placed on record we direct as follows:
- The Union Of India and all the State Governments and the Union Territories shall (i) continue with the NMBS and (ii) ensure that all BPL pregnant women get cash assistance 8-12 weeks prior to the delivery.
 - The amount shall be Rs.500/- per birth irrespective of number of children and the age of the women.
 - The Union of India, State governments and the Union Territories shall file affidavits within 8 weeks from today indicating the total number of births in the State, number of eligible BPL women who have received the benefits, number of BPL women who had home/ non-institutional deliveries and have received the benefit, number of BPL women who had institutional deliveries and have received the benefit.
 - The total number of resources allocated and utilised for the period 2000-2006.
 - All concerned governments are directed to regularly advertise the revised scheme so that the intended beneficiaries can become aware of the scheme.
 - The Central Government shall ensure that the money earmarked for the scheme is not utilised for any other purpose. The mere insistence on utilisation certificate may not yield the expected result.
 - It shall be the duty of all concerned to ensure that the benefits of the scheme reach the intended beneficiaries. In case it is noticed that there is any diversion of the funds allocated for the scheme, such stringent action as is called for shall be taken against the erring officials responsible for diversion of the funds.

- 15. At this juncture it would be necessary to take note of certain connected issues which have relevance. It seems from the scheme that irrespective of number of children, the beneficiaries are given the benefit. This in a way goes against the concept of family planning which is intended to curb the population growth. Further the age of the mother is a relevant factor because women below a particular age are prohibited from legally getting married. The Union of India shall consider this aspect while considering the desirability of the continuation of the scheme in the present form. After considering the aforesaid aspects and if need be, necessary amendments may be made.

- 16. The IAs are accordingly disposed of.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(S.H. KAPADIA)

New Delhi
November 20, 2007

**SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS**

WRIT PETITION (C) NO.196 OF 2001

PEOPLE'S UNION FOR CIVIL LIBERTIES

PETITIONER (S)

VERSUS

UNION OF INDIA AND ORS.

RESPONDENT (S)

(Letter dated 02.01.2008 received from Hon. D. P. Wadhwa, Retd. Judge, Supreme Court of India)

Date : 10/01/2008 This Petition was called on for hearing today.

CORAM:

HON'BLE DR. JUSTICE ARIJIT PASAYAT

HON'BLE MR. JUSTICE S.H. KAPADIA

For Petitioner(s) Mr. Colin Gonsalves, Sr. Adv.
Mr. Vipin M. Benjamin, Adv.
Ms. Jyoti Mendiratta, Adv.

For Respondent(s) Mr. Mohan Parasaran, A.S.G.
Ms. Sunita Sharma, Adv.
Ms. Sushma Suri, Adv.
Mr. D.S. Mahra, Adv.
Mr. Ashok Bhan, Adv.
Ms. Sunita Sharma, Adv.
Mr. S. Wasim A. Qadri, Adv.
Mr. D.S. Mahra, Adv.

St. of UP Mrs. Savitri Pandey, Adv.
Mr. Vijay Pratap Singh, Adv.
Mr. Anil Kumar Jha, Adv.

St. of Maharashtra Mr. V.N. Raghupathy, Adv.
Mr. Ravindra K. Adsure, Adv.

St. of Haryana Mr. T.V. George, Adv.

St. of Arunachal Pradesh Mr. Anil Shrivastav, Adv.

St. of Gujarat Ms. Hemantika Wahi, Adv.

Ms. Pinky Behera, Adv.

Ms. Jesal, Adv.

Ms. Sangeeta Singh, Adv.

Ms. Shivangi, Adv.

St. of Nagaland Mr. Upamanyu Hazarika, Adv.

Mr. Satya Mitra, Adv.

Ms. Sumita Hazarika, Adv.

St. of Punjab Mrs. Jayshree Anand, Adv.

Mr. Kuldip Singh, Adv.

RIGHT TO FOOD

St. of Goa	Ms. A. Subhashini, Adv.
St. of West Bengal	Mr. Tara Chandra Sharma, Adv.
St. of Bihar	Mr. Gopal Singh, Adv.
St. of Tripura	Mr. Gopal Singh, Adv.
St. of Assam	Mr. Riku Sharma, Adv.
	M/s. Corporate Law Group
St of H.P.	Mr. J.S. Attri, Adv.
St. of Sikki m	Mr. Sonam P. Wangdi, A.G.
	Mr. A. Mariarputham, Adv.
	Mrs. Aruna Mathur, Adv.
for	M/s. Arputham Aruna & Co.
St. of Mizoram	Mr. K.N. Madhusoodhanan, Adv.
	Mr. R. Sathish, Adv.
St. of A P	Mrs. D. Bharthi Reddy, Adv.
St. of Nagaland	Mr. S. Balaji, Adv.
St. of Chhattisgarh	Mr. Manish Sharma, Adv.
	Ms. Suparna Srivastva, Adv.
	Mr. Rahul Srivastava, Adv.
	Mr. Rajesh Srivastava, Adv.
St. of Manipur	Mr. KH Nobin Singh, Adv.
St. of Meghalaya	Mr. Ranjan Mukherjee, Adv.
St.of Tamil nadu	Mr. V.G. Pragasa, Adv.
St. of Orissa	Mr. Sibo Shankar Mishra, Adv.
St. of Kerala	Mr. Ramesh Babu M.R., Adv.
St. of Uttarakhand	Ms. Rachana Srivastava, Adv.
St. of Rajasthan	Mr. Aruneshwar Gupta, Adv.
St. of M.P .	Mr. Vikas Upadhyay, Adv.
	Mr. B.S. Banthia, Adv.
St. of Karnataka	Mr. Sanjay R. Hegde, Adv.
	Mr. Amit Kr. Chawla, Adv.
St. of J & K	Mr. Anis Suhrawardy, Adv.
U.Ts. of Andaman & Nicobar, Daman & Diu, D & NH and Lakshadweep	Mr. Ashok Bhan, Adv.
	Ms. Sunita Sharma, Adv.
	Mr. D.S. Mahra, Adv.
	Ms. Kamini Jaiswal, Adv.
	Mr. Jana Kalyan Das, Adv.
	Ms. Indra Sawhney, Adv.
	Mr. R. K. Maheshwari, Adv.
	Mr. K.V. Mohan, Adv.
	Mr. Prakash Shrivastava, Adv.
	Ms. Kavita Wadia, Adv.
	Mr. P.N. Ramalingam, Adv.
	Mr. Uday B. Dube, Adv.
	Mr. Kuldip Singh, Adv.

UPON hearing Counsel the Court made the following

ORDER

We have perused the Report submitted by the Commission headed by Justice D. P . Wadhwa. The Report is very comprehensive and gives a detailed analysis of various aspects which needed to be addressed. There is unanimity at the Bar that the Report deserves acceptance. Therefore, we direct acceptance of the Report. In terms of the earlier order, let similar exercise be undertaken by the Commission for the entire country, because the factors highlighted by the Commission are not restricted to Delhi alone, and appear to be prevalent throughout the country.

The Commission is requested to submit its Report within a period of six months. The earlier modalities relating to salary etc. shall be continued. The various suggestions given and shortfalls noticed by the Commission shall be addressed after the subsequent Report is received.

The order dated 28. 11. 2001 is modified to the extent that the allotment shall be 35 KG in view of the increase, subsequent to the order.

(Neena Verma)
Court Master

(Madhu Saxena)
Court Master

**SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS**

WRIT PETITION (C) NO.196 OF 2001

PEOPLE'S UNION FOR CIVIL LIBERTIES

...PETITIONER (S)

VERSUS

UNION OF INDIA AND ORS.

...RESPONDENT (S)

(Letter dated 07. 03 . 2008 received from Hon. D.P. Wadhwa, Retd. Judge, Supreme Court of India)

Date : 31/03/2008 This Petition was called on for hearing today.

CORAM:

HON'BLE DR. JUSTICE ARIJIT PASAYAT

HON'BLE MR. JUSTICE S.H. KAPADIA

For Petitioner(s)	Mr. Colin Gonsalves, Sr. Adv. Ms. Puja Sharma , Adv. Ms. Jyoti Mendiratta, Adv. Mr. Anup Kumar Srivastava, Adv.
For Respondent(s)	Mr. B.Dutta, ASG, Mr. Mohan Parasaran , ASG, Mr. T.S.Doabia, Sr. Adv. Ms. Varuna Bhandari Gugnani, Adv. Ms. Savitri Pandey, Adv. Ma. Alka Sharma , Adv. Ms. Sunita Sharma , Adv. Ms. Sushma Suri, Adv. Mr. D.S. Mahra, Adv. Mr. Ashok Bhan, Sr. Adv. Mr. D.S. Mahra, Adv. Ms. Vandana Mishra, Adv.
St. of UP	Ms. Savitri Pandey, Adv. Mr. Mohd. Fuzail Khan, Adv Mr. Anil Kumar Jha, Adv.
St. of Maharashtra	Mr. V.N. Raghupathy, Adv. Mr. Ravindra K. Adsure, Adv.
St. of Haryana	Mr. Manjit Singh, Adv. Mr. T.V. George, Adv.
St. of Arunachal Pradesh	Mr. Anil Shrivastav, Adv. Mr. Ritu Raj, Adv.
St. of Gujarat	Ms. Hemantika Wahi, Adv. Ms. Pinky Behera, Adv. Ms. Jesal, Adv.

St. of Nagaland	Mr. Upamanyu Hazarika, Adv. Mr. Satya Mitra, Adv. Ms. Sumita Hazarika, Adv.
St. of Punjab	Mrs. Jayshree Anand, Adv. Mr. Kuldip Singh, Adv. Mr. Ajay Pal, Adv.
St. of Goa	Ms. A. Subhashini, Adv.
St. of West Bengal	Mr. Tara Chandra Sharma, Adv. Ms. Neelam Sharma, Adv.
St. of Bihar	Mr. Gopal Singh, Adv. Mr. Manish Kumar, Adv. MS. Sujaya Bardhan, Adv.
St. of Tripura	Mr. Gopal Singh, Adv. Mr. Ritu Raj Biswas, Adv. Ms. Sujaya Bardhan, Adv.
St. of Assam for St of H.P. St. of Sikki m	Mr. Riku Sharma, Adv. M/s. Corporate Law Group Mr. J.S. Attri, Adv. Mr. A. Mariarputham, Adv. Mrs. Aruna Mathur, Adv.
for St. of Mizoram	M/s. Arputham Aruna & Co. Mr. K.N. Madhusoodhanan, Adv. Mr. R. Sathish, Adv.
St. of A P St. of Nagaland St. of Chhattisgarh	Mrs. D. Bharthi Reddy, Adv. Mr. S. Balaji, Adv. Ms. Suparna Srivastava, Adv. Mr. S. Nidhi Minocha, Adv. Mr. Rajesh Srivastava, Adv.
St. of Manipur	Mr. KH Nobin Singh, Adv. Mr. David Rao, Adv. Mr. Tarun Jamwal, Adv. Mr. S. Biswajit Meitei, Adv. Mr. Vijay Prakash, Adv.
St. of Meghalaya	Mr. Ranjan Mukherjee, Adv. Mr. S.C. Ghosh, Adv.
State of Tamil Nadu/U.T. of Pondicherry St. of Orissa St. of Kerala St. of Uttarakhand St. of Rajasthan	Mr. V.G. Pragasam, A dv. Mr. S.J. Aristotle, Adv. Mr. Prabhu Ramasubramanian, Adv. Mr. Sibho Shankar Mishra, Adv. Mr. Ramesh Babu M.R., Adv. Ms. Rachana Srivastava, Adv. Mr. Aruneshwar Gupta, Adv. Mr. Naveen Kumar Singh, Adv. Mr. Shashwat Gupta, Adv.
St. of M.P .	Mr. Vikas Singh Bais, Adv. Mr. B.S. Banthia, Adv.
St. of Karnataka	Mr. Sanjay R. Hegde, Adv. Mr. Amit Kr. Chawla, Adv.

RIGHT TO FOOD

St. of J & K

Mr. Altaf H. Naiyak, AG,
Mr. Anis Suhrawardy, Adv.
Mr. Tabraj, Adv.

U.Ts. of Andaman &
Nicobar, Daman &
Diu, D & NH and
Lakshadweep

Mr. Ashwani Garg, Adv.
Mr. Ashok Bhan, Sr. Adv.
Ms. Sunita Sharma, Adv.
Mr. D.S. Mahra, Adv.
Ms. Kamini Jaiswal, Adv.
Mr. Gopal Singh,
Mr. Anukul Raj, Adv.
Ms. Sweta Singh, Adv.
Mr. Rajesh Pathak, Adv.
Mr. B. K. Sood, Adv.
Mr. B.V. Balaram Das, Adv.
Mr. Jana Kalyan Das, Adv.
Ms. Indra Sawhney, Adv.
Mr. R. K. Maheshwari, Adv.
Mr. K.V. Mohan, Adv.
Mr. Prakash Shrivastava, Adv.
Ms. Kavita Wadia, Adv.
Mr. P.N. Ramalingam, Adv.
Mr. R.S. Suri, Adv.
Mr. Uday B. Dube, Adv.
Mr. Kuldip Singh, Adv.

UPON hearing Counsel the Court made the following

ORDER

Considering the importance of the matter involved and the sensitiveness of the nature of the inquiry, we do not think it necessary to go into the broader aspect raised by learned Additional Solicitor General. We feel it would be appropriate if the requirements as indicated by Hon'ble Justice D. P. W a d h w a for the functioning of the Committee be provided as early as possible preferably within two weeks from today.

Call after two weeks.

(Shashi Sareen)
Court Master

(Madhu Saxena)
Court Master

**SUPREMECOURTOFINDIA
RECORDOFPROCEEDINGS**

WRIT PETITION (C) NO.196 OF 2001

PEOPLE'S UNION FOR CIVIL LIBERTIES

PETITIONER (S)

VERSUS

UNION OF INDIA AND ORS.

RESPONDENT (S)

(Letter dated 07.07.2008 for extension of time reed, from Hon. D.P. Wadhwa, Retd. Judge, Supreme Court of India)

Date : 11/07/2008 This Petition was called on for hearing today.

CORAM:

HON'BLE DR. JUSTICE ARIJIT PASAYAT

HON'BLE MR. JUSTICE S.H. KAPADIA

For Petitioner(s)	Mr. Colin Gonsalves, Sr. Adv. Ms. Puja Sharma, Adv. Ms. Jyoti Mendiratta. Adv.
For Respondent(s)	Mr. S. Wasim A. Qadri, Adv. Mr. D.S. Mahra, Aadv. Ms. Sunita Sharma, adv. Mr. D.S. Mahra, Adv. Ms. Sushma Suri, adv. Ms. Vandana Mishra. Adv. Mr. D.S. Mahra, Adv.
St. of UP	Mr. Vijay Pratap Singh, adv. Mr. Anil Kumar Jha, Adv.
St. of Maharashtra	Ir. V.N. Raghupathy, Adv. Ir. Ravindra K. Adsure. Adv.
St. of Haryana	Mr. Manjit Singh, Adv. Mr. T.V. George. Adv.
St. of Arunachal Pradesh	Mr. Anil Shrivastav, Adv. Mr. Ritu Raj, Adv.
St. of Gujarat	Is. Hemantika Wahi, Adv.
St. of Nagaland	Mr. Upamanyu Hazarika, Adv. Mr. Satya Mitra. Adv. Ms. Sumita Hazarika, Adv.
St. of Punjab	Mr. Ajay Pal, Adv.
St. of Goa	Ms. A. Subhashini, Adv.
St. of West Bengal	Mr. Tara Chandra Sharma, Adv.
St. of Bihar	Mr. Gopal Singh, Adv.
St. of Tripura	Mr. Gopal Singh, Adv.
St. of Assam	Mr. Riku Sharma, Adv.
for	M/s. Corporate Law Group
St of H.P.	Mr. J.S. Attri. Adv.
St. of Sikkim	Mr. A. Mariarputham. Adv.

for	Mrs. Aruna Mathur, Adv.
St. of Mizoram	M/s. Arputham Aruna & Co. Mr. K.N. Madhusoodhanan. Adv. Mr. R. Sathish,Adv.
St. of AP	Mrs. D. Bharthi Reddy,Adv.
St. of Nagaland	Mr. S. Balaji.Adv.
St. of Chhattisgarh	Mr. Rajesh Srivastava.Adv.
St. of Manipur	Mr. KH Nobin Singh,Adv. Mr. David Rao, Adv. Mr. Tarun Jamwal, Adv. Mr. S.Biswajit Meitei, Adv. Mr. Vijay Prakash, Adv.
St. of Meghalaya	Mr. Ranjan Mukherjee,Adv. Mr. S.C.Ghosh, Adv.
State of Tamil Nadu	Mr. V.G. Pragasam,Adv. Mr. S.J.Aristotle, Adv.
U.T. of Pondicherry	Mr. Prabhu Ramasubramanian, Adv.
St. of Orissa	Mr. Sibho Shankar Mishra,Adv.
St. of Kerala	Mr. Ramesh Babu M.R.,Adv.
St. of Uttarakhand	Ms. Rachana Srivastava,Adv.
St. of Rajasthan	Mr. Aruneshwar Gupta,Adv.
St. of M.P.	Mr. Vikas Singh Bais,Adv. Mr. B.S. Banthia.Adv.
St. of Karnataka	Mr. Sanjay R. Hegde,Adv. Mr. A.Rohen Singh, Adv. Mr. Vikrant Yadav, Aadv. Mr. Amit Kr. Chawla,Adv.
St. of J & K	Mr. Anis Suhrawardy,Adv. Ms. Kamini Jaiswal,Adv. Mr. Gopal Singh, Mr. Rajesh Pathak, Adv. Mr. B.V.Balaram Das, Adv. Mr. Jana Kalyan Das,Adv. Ms. Indra Sawhney,Adv. Mr. R.K. Maheshwari,Adv. Mr. K.V. Mohan,Adv. Mr. Prakash Shrivastava,Adv.

Ms. Kavita Wadia,Adv. Mr. P.N. Ramalingam,Adv. Mr. R.S.Suri, Adv. Mr. Uday B. Dube.Adv. Mr. Kuldip Singh,Adv.

UPON hearing Counsel the Court made the following

ORDER

The time for submission of report is extended till April, 2009. In the meantime, the directions contained in order dated 31.03.2008 be carried out if not already done within a period of one week positively.

(Shashi Sareen)
Court Master

(Madhu Saxena)
Court Master

ITEM NO.1

COURT NO.3

SECTION PIL

**SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS**

IA.NO.85 IN WRIT PETITION (CIVIL) NO(s). 196 OF 2001

PEOPLE'S UNION FOR CIVIL LIBERTIES

...PETITIONER(S)

VERSUS

**UNION OF INDIA & ORS.
(With appln. for directions)**

...RESPONDENT(S)

Date: 19/11/2008 This Petition was called on for hearing today.

CORAM :

HON'BLE Dr. JUSTICE ARIJIT PASAYAT
HON'BLE MR. JUSTICE S.H. KAPADIA

For Petitioner(s) Mr. Colin Gonsalves, Sr.Adv.
Ms.Puja Hingmani, Adv.
Mr. Anup Srivastava, Adv.
Ms.Jyoti Mendiratta,Adv.

For Respondent(s) Mr. Mohan Parasaran, ASG
Mr. T.S. Doab7ia, Sr.Adv.
Ms. Sunita Sharma, Adv.
Mrs.Anil Katiyar, Adv.
Mr.S.Wasim Qadri, Adv.
Ms. Sushma Suri, Adv.
Mr.D.S. Mahara, Adv.

Mr. Gopal Singh, Adv.
Mr.Manish Kumar, Adv.

UPON hearing counsel the Court made the following

ORDER

Heard the counsel in respect of the report relating to the State of Bihar.

Mr. Gopal Singh, learned counsel appearing for the State of Bihar wants to obtain instructions and file response, if so advised. Let it be done within a period of four weeks. So far as the report relating to the deaths from starvation is concerned, a copy has been supplied to the learned Additional Solicitor General, Mr. Mohan Parasaran. He states that if so advised, a response shall be filed within six weeks. The matter shall be listed thereafter.

RIGHT TO FOOD

The matter relating to the implementation of the report submitted by Justice Wadhwa shall be listed after four weeks.

[Usha Bhardwaj]
Court Master

[Madhu Saxena]
Court Master

ITEMNO.1

COURT NO.3

SECTION PIL

**SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS**

I.A.No. 85 In W.P.(C) No. 196/2001

PEOPLE'S UNION FOR CIVIL LIBERTIES

...PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

...RESPONDENT(S)

(With appln(s). for directions and office report)

Date: 28/01/2009 This Petition was called on for hearing today.

CORAM:

HON'BLE Dr. JUSTICE ARIJIT PASAYAT

HON'BLE MR. JUSTICE S.H. KAPADIA

For Petitioner(s) Mr. Colin Gansalves, Sr. Adv.
Mr. Anup Srivastava, Adv.
Ms. Jyoti Mendiratta, Adv.

For Respondent(s) Mr. M. Parasaran, ASG. and othres

UPON hearing counsel the Court made the following

ORDER

So far as the report of the Court Commissioner filed on 19/11/2008 is concerned, learned counsel for the State of Bihar filed a copy of the proceedings of the meeting held on 22/1/2009 under the Chairmanship of the Chief Secretary of the State, to discuss the suggestions given by the Court Commissioner. Mr. Gansalves prays for three weeks' time to file his response/suggestions, if any, in this regard.

So far as the second report of the Court Commissioner, filed on 19/11/2008 is concerned, learned Additional Solicitor General prays for three weeks' time to file response of the Union of India.

Two weeks time thereafter is granted to Mr. Gansalves to indicate suggestions, if any, in that regard.

List this matter in the last week of March, 2009.

[SUMAN WADHWA]
COURT MASTER

[MADHU SAXENA]
COURT MASTER

**SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS**

W.P.(C) No.196/2001

PEOPLE'S UNION FOR CIVIL LIBERTIES

PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

RESPONDENT(S)

Date: 22/04/2009 This Petition was called on for hearing today.

For Appearing parties:

Mr. Gopal Subramaniam, ASG.
Mr. D.S.Mehra, Adv.
Ms. Sushma Suri, Adv.
Ms. Sunita Sharma, Adv.

Mr. Colin Gonsalves, Sr. Adv.
Ms. Jyoti Mendiratta, Adv.

Mr. Anil Kr.Jha, Adv.
Mr. V.G.Pragasam, Adv.
Mr. K.N.Madhusoodhanan, Adv.
Mr. R.Sathish, Adv.
Mr R.K.Adsure, Adv.
Mr. T.V.George, Adv.
Mr. R.C. Kaushik ,Adv
Ms. Rachna Srivastava, Adv.
Mrs. H.Wahi, Adv.
Mr. Vikas Mehta, Adv.
Mr. Gopal Singh, Adv.
Mr. Edward Belho, Adv.
Mr. Rituraj Biswas, Adv.
Mr. P.Athuimei R.Naga, Adv.
Mr. Riku Sharma, Adv.
M/s. Corporate Law Group.
Mr. T.C.Sharma, Adv.
Mr. Sanjay R.Hegde, Adv.
Mr. K.H.Nobin Singh, Adv.
Mr. Vikas Upadhyaya, Adv.
Mr. B.S.Banthia, Adv.
Mr. Jana Kalyan Das, Adv.
Ms. A.Subhashini ,Adv.
Mr. Prakash Shrivstava, Adv.

Mr. Kuldip Singh,Adv.
Mr. K.V.Mohan,Adv.
Mr. J.K.Bhatia,Adv.
Mr. K.V.Mohan,Adv.
Mr. G.Prakash,Adv.
Mr. S.M.Jadhav,Adv.
Mr. B.V.Balram Das,Adv.
Mrs. Indira Swhney,Adv.
Mr. Aruneshwar Gupta,Adv.
Mr. Ranjan Mukherjee,Adv.
Mr. Anil Shrivastav,Adv.
Mr. Ramesh Babu M.R.,Adv.
Mrs.D.Bharathi Reddy,Adv.
Mr. Prashant Kumar,Adv.
Mr. Vishwajit Singh,Adv.
Mr. Anis Suhraquwardy,Adv.
Mr. Rajesh Shrivastava,Adv.
Mr. Anuvrat Sharma,Adv.
Mr. Pradeep Mishra,Adv.
Mr. V.R.Anumolu,Adv.
Ms. Anjana Chandrashekar,Adv.
Mr. B.B. Singh ,Adv.
Ms. Kamini Jaiswal ,Adv.
Mr. Naresh K. Sharma ,Adv.

Hon'ble Dr. Justice Arijit Pasayat pronounced Judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice S.H.Kapadia.

It shall however be ensured that the following direction by order dated 7th October, 2004 which was reiterated by order dated 13.12.2006 shall continue to be operative.

It is pointed out that several States like Andhra Pradesh, Gujarat, Uttar Pradesh and Nagaland have not met the requisite norms. These States are directed to take steps as required to be taken.

Compliance reports filed by all the States and Union Territories by 15th January, 2010.

Put up thereafter.

(Suman Wadhwa)
Court Master

(Shashi Bala Vij)
Court Master

Signed Reportable judgment is placed on the file.

**REPORTABLE
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
WRIT PETITION (C) NO. 196 OF 2001**

PEOPLE'S UNION FOR CIVIL LIBERTIES

...APPELLANT

VERSUS

UNION OF INDIA & ORS.

....RESPONDENTS

JUDGMENT

Dr. ARIJIT PASAYAT, J.

3. Heard learned counsel for the parties. It has been submitted by learned counsel for the Union of India that keeping in view the orders passed by this Court on several dates, several actions have been taken, which substantially comply with the directions given by this Court.
4. Colin Gonsalves, Sr. counsel on the other hand stated that though there has been substantial compliance of the directions given by this court yet there is some reservation about the revised nutritional and feeding norms for supplementary nutrition in ICDS Scheme. It is submitted that there is scope of involving contractors in the supplies which was prohibited by that Court.
5. By affidavit dated 2nd March, 2009, the Union of India has highlighted several factors which create serious dent against malnutrition. It is stated that same can be made to achieve a significant reduction in the rate of malnutrition. The said affidavit clarifies that these interventions include universalisation of ICDS (by sanctioning 13.80 lakh Anganwadi/ Mini Anganwadi Centres and 20,000 Anganwadis-on-Demand making a total of 14 lakh Anganwadis/ Mini Anganwadi Centres as mandated by this Court) and, most importantly, reduction in the gap between Recommended Dietary Allowance (hereinafter referred to as "RDA") and Actual Dietary Intake (hereinafter referred to as "ADI"). On a careful consideration of the matter, the Central Government has revised both the nutritional and feeding norms as well as the financial norms of supplementary nutrition under the ICDS Scheme.
4. It is noted that the nutritional norms have remain unchanged since inception of the Scheme (in 1975) until a recent comprehensive review by a Task Force constituted by the Central Government. On the basis of the recommendations of this Task Force, the calorific and feeding norms for supplementary nutrition in ICDS Scheme in respect of children of all categories below 6 years of age and pregnant women and nursing mothers have been revised. The Table below shows the old and revised norms:

Category	Old Norms			Revised Norms		
	Rate Rs./ per beneficiary	Calorie (Cal)	Protein (g)	Rate Rs./ per beneficiary	Calorie (Cal)	Protein (g)
(i) Children below 3 years	2.00	300	8-10	4.00	500	12-15
(ii) Children 3-6 years	2.00	300	8-10	4.00	500	12-15
(iii) Severely malnourished children	2.70	600	20	6.00	800	20-25
(iv) Pregnant & Lactating (P&L) mothers	2.30	500	20-25	5.00	600	18-20

The above revised norms are incorporated in para 8.2(b) of the affidavit.

5. The Revised Nutritional and Feeding Norms for SNP in ICDS Scheme circulated vide letter no.5-9/2005/ND/Tech (Vol. II) dated 24.02.2009 states that children in the age group of 6 months to 3 years must be entitled to food supplement of 500 calorie of energy and 12-15 gm of protein per child per day in the form of take home ration (THR). For the age group of 3-6 years, food supplement of 500 calories of energy and 12- 15 gm of protein per child must be made available at the Anganwadi Centres in the form of a hot cooked meal and a morning snack. For severely underweight children in the age group of 6 months to 6 years, an additional 300 calories of energy and 8-10 gm of protein would be given as THR. For pregnant and lactating mothers, a food supplement of 600 calories of energy and 18-20 gm of protein per beneficiary per day would be provided as THR.
6. The letter dated 24.02.2009 No.5-9/2005/ND/Tech (Vol.II) has been annexed to the affidavit dated 2nd March 2009 filed by the Union of India. It is directed that norms indicated in the said letter addressed to all the State Governments and Union Territories have to be implemented forthwith and the respective States/UTs would make requisite financial allocation and undertake necessary arrangements to comply with the stipulations contained in the said letter.
7. It is further stated by the Ld. Additional Solicitor General that Supplementary Nutrition Food (SNP) in the form of THR shall be provided to all children in the age group of 6 months to 3 years, an additional 300 calories to severely underweight children in the age group of 3 to 6 years, pregnant women and lactating mothers as per paras 5(c), 5(d) and 5(e) of the letter dated 24th February 2009. Accordingly all Union Territories and State Governments are directed to ensure compliance with the aforementioned stipulations without fail.

RIGHT TO FOOD

8. Further, all the States and Union Territories are directed to provide supplementary nutrition- in the form of a morning snack and a hot cooked meal to the children in the age group of 3 to 6 years as per Para 5(d) of the guidelines contained in the letter dated 24th February 2009 preferably by 31st December 2009.
9. As far as adolescent girls are concerned, they would continue to be covered by the entitlements of the Nutritional Programme for Adolescent Girls (hereinafter referred to as 'NPAG') and Kishori Shakti Yojana (hereinafter referred to as 'KSY') till such time as a comprehensive universal scheme for the empowerment of adolescent girls called 'The Rajiv Gandhi Scheme for the Empowerment of Adolescent girls' is implemented within six months from the date of the order.
10. It shall however be ensured that the following direction by order dated 7th October, 2004 which was reiterated by order dated 13.12.2006 shall continue to be operative.
11. It is pointed out that several States like Andhra Pradesh, Gujarat, Uttar Pradesh and Nagaland have not met the requisite norms. These States are directed to take steps as required to be taken.
12. Compliance reports filed by all the States and Union Territories by 15th January, 2010.
13. Put up thereafter.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(S.H. KAPADIA)

New Delhi
April 22, 2009

**SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS**

**I.A. No. 1 in Petition(s) for Special Leave to Appeal
(Civil) CC 3461/2006**

(From the judgement and order dated 14/07/2005 in DBCWP No. 4777/2005 of the High Court of Rajasthan at Jaipur)

PEOPLE'S UNION FOR CIVIL LIBERTIESPETITIONER(S)
STATE OF RAJASTHAN & ORS. VERSUS ...RESPONDENT(S)

(For permission to file SLP and prayer for interim relief and office report)

Date: 01/05/2006 This petition was called on for hearing today.

CORAM: HON'BLE MR. JUSTICE ARIJIT PASAYAT
HON'BLE MR. JUSTICE S.H. KAPADIA

For Petitioner(s) : Mr. Colin Gonsalves, Sr. Advocate
Mr. Rajesh Pandey, Advocate
Ms. Jyoti Mendiratta, Advocate

For Respondent(s)

UPON hearing counsel the Court made the following

ORDER

Heard learned counsel for the petitioner.

It appears that the High Court declined to interfere only on the ground that the matter is subjudice before this court.

We notice that this Court in D.K. Basu Vs. State of West Bengal 1997 (1) SCC 416 passed the following order:

“Failure to comply with the requirements herein above mentioned shall apart from rendering the official concerned liable for departmental action also rendered him to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country having territorial jurisdiction over the matter.”

Instead of contempt proceedings, it would be appropriate if the High Court shall take up the matter as a writ petition so that the matter can be approximately dealt with.

With the aforesaid observations, the special leave petition is disposed of.

(Shashi Sareen)
Court Master

(Vijay Aggarwal)
Court Master

IN THE SUPREME COURT OF INDIA

ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 232 OF 2006

EKTA SHAKTI FOUNDATION

.....PETITIONER

VERSUS

GOVT. OF NCT OF DELHI

.....RESPONDENT

WITH

W.P. {C} NO. 233/2006 AND W.P. {C} NO. 234/2006

JUDGEMENT

ARIJIT PASAYAT, J.

These three writ petitions filed under article 32 of the constitution of India, 1950 (in short the 'Constitution'), question legality of certain terms in inviting offers for implementation of the scheme called the detailed scheme for capacity building of self help groups to prepare and supply supplementary nutrition under the Integrated Child Development Service (in short the 'ICDS') Programme.

By order dated 7.10.2004 in writ petition © no. 196 of 2001 (Peoples Union for Liberties v. Union of India and Others) this court observed as under:

"We have gone through the 5th (august, 2004) report of the commissioners. Further the problem of using contractors for procurement has also been mentioned in the report suggesting that it should be done by agencies and officers at the government level."

The following directions were issued:

"The contractors shall not be used for supply of nutrition in Anganwadis and preferably ICDS funds shall be spent by making use of village communities, self-help groups and mahila mandals for buying of grains and preparation of meals."

ICDS is perhaps the largest of all the food and supplementation programmes in the world which was initiated in the year 1975 with various objectives as per the document prepared by the planning commission. It was also noted by this court that there was a problem in using contractors for procurement and in the report of the commissioners it was suggested that it should be done by agencies and officers at the government level. In that context, it was noted by this court as follows:

"The report also mentions that some AWCS are operating from private houses including those of grain dealers which it is suggested is not a healthy way of working as it is likely to increase the chances of pilferage of the grain etc. we are happy to note that as stated in the affidavit of state of uttar pradesh, it has made efforts to shift AWCS to primary schools. It is a good example for other state to follow. The report also mentions about the attempt to centralise the procurements in some of the states which has many fallouts. It has been explained in one of the affidavit that the procurements is at district level and not at the state level. Further, the problem of using contractors for procurement has also been mentioned in the report suggesting that it should be done by agencies and officers at the government level. There are only by way of illustration as to facts and figures given in section 1 of the report relating to ICDS."

In accordance with this court's order the Delhi government framed a detailed scheme. The objectives as appears from the scheme is involvement of self-help groups (SHGs) would be framed and would completely take over the running of the Anganwadis from the NGOs. Keeping in view the observations made by this court about the elimination of the contractors it was stipulated that registered non profit organisations with atleast 3 years experience were eligible to apply. Accordingly an advertisement titled "ICDS- Expression of Interest" was placed in newspapers.

Writ petitioners question that the rationale of the stipulation regarding 3 years experience of working as a non profit organisation or public trust registered under the Indian Societies Registration Act, 1860 (in short the Societies Act). According to them, this condition does not in any way further the objectives and on the other hand keeps out genuine organisations. It is pointed out that though the writ petitioners were registered less than three years back, their functionaries have verified experience for long period. Prayer is made for a declaration that the three years period stipulated is irrational, contrary to the objects of the scheme and should be declared to be invalid. The eligibility criteria according to them should be on the basis of actual experience of the persons who are incharge of the legal entities and not the time period of three years as a registered entity. It is submitted that the three writ petitioners have taken various projects and have wide experience and to keep them out would be giving premium to inexperience.

Per contra, learned counsel for the government of NCT of Delhi, submitted that the government set up a committee of experts such as representatives from the nutrition department of Lady Irwin College, representative of Care India, one of the most reputed NGOs and a representative of Commissioner who was appointed by this court in PUCL case. The committee scrutinised the applications (117 in number) and shortlisted 60 entities and out of them 9 have been selected and out of them in the case of 1 enquiry is being conducted to verify the credentials. Committee was of the view that the three writ petitioners have not been registered for the period of three years and therefore were ineligible. Writ petitioners have raised a plea that even though they have not registered for three years, the experience of such individuals connected with the organisation should be treated as experience of organisation. The committee examined this plea and noted as follows:

"It was pointed to the committee that some NPOs were questioning their ineligibility on the grounds that they had more than three years experience even if they were registered as society/trust for less than three years. The committee confirming the criteria that no NPO which had been registered as a society for less than three years would be considered under the scheme since the experience which the said organisation could have had as an unregistered organisation could not be counted for the purpose of this scheme and that any relaxation of this account could lead to back door entry of contractors who may have got themselves registered as NGO recently only to gain entry into such schemes without having social objective of woman empowerment as the actual perspective of their work."

It has been indicated in the counter affidavit filed that the writ petitioners have not come with clean hands. They are catering contractors having their own commercial interest and are now trying to take up the project in the garb of NGO. Many erstwhile contractors who have now been barred by this Court's order from entering ICG programme have registered themselves as NGO entities to overreach the order of this court. The writ petitioners, it is to be noted, had approached Delhi High Court. The writ petitions were dismissed as withdrawn in view of submission made that this court shall be approached.

The eligibility criteria which form the subject matter of challenge read as follows:

"Must be a non-profit organisation or public trust registered under the Indian Societies registration Act, 1860/Public Trust Act.

At least three years experience of working in a relevant field such as child development, nutrition, formation of SHCs, Supplementary Nutrition, Home Counselling, Nutrition Counseling, Pre-school activities and Women empowerment related works."

At this juncture we may take note of a submission by learned counsel for the writ petitioners. It was submitted that the writ petitioners were registered before this Court's order and therefore, it cannot be said that they had registered only to overreach this court's order. It is pointed out by the learned counsel for the respondent that PUCL case was being heard for a long time, and various details were being called for. The intention of this court to keep contractors out of the picture was clearly evident. Ekta Shakti Foundation (Writ petition No. 232 of 2006) was registered on 21.11.2003, Surya Society (Writ Petition No. 233 of 2006) was registered on 15.12.2003 and Jay Gee Society (Writ petition No 234 of 2006) was registered on 25.3.2004.

While exercising the power of judicial review of administrative action, the court is not the appellate authority and the constitution does not permit the court to direct or advise the executive in matter of policy or to sermonise any matter which under the constitution lies under the sphere of the Legislature or the Executive, provided these authorities do not transgress their constitutional limits or statutory power. (see *ashif hamid v. State of J&K. (AIR 1989 SC 1889)*, *Shri Sitaram Sugar Co. v. Union of India (AIR 1990 Sc 1277)*). The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or is violative of the fundamental rights of the citizens or is opposed to the provisions of the constitution. Thus, the position is that even if the decision is taken by the Government does not appear to be agreeable to the Court it cannot interfere.

The correctness of the reasons which prompted the Government in decision making, taking one course of action instead of another is not a matter of concern in judicial review and the Court is not the appropriate forum for such investigation.

The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of the fundamental right is not shown Courts will have no occasion to interfere and the Court will not substitute its own judgement for the judgement of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government.

The Court should constantly remind itself of what the Supreme Court of the United states said in *Metropolis Theatre Company v. City of Chicago (1912) 57 L Ed 730*. "The problems of Government are practical ones and may justify, if they do not require, rough accommodations, illogical it may be, and unscientific. But even such criticism should not be hastily expressed. What is the best is not always discernible, the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review. [See: *State of Orissa and others V. Gopinath Dash and others (2005) 13 SCC 495*].

It was submitted that in some other cases, a departure has been made. No definite material has been placed in that regard. In any event, article 14 has no application or justification to legitimise an illegal and illegitimate action. Article 14 proceeds on the premise that a citizen has a legal and valid right enforceable at law and persons having similar right and persons similarly circumstanced, cannot be denied of the benefit thereof. Such person cannot be discriminated to deny the similar benefit. The rational relationship and legal back up are the foundation to invoke the doctrine of equality in case of persons similarly situated. If some person derived benefit by illegality and had escaped from the clutches of law; similar persons cannot plead nor court can countenance that benefit had from infraction of law and must be allowed to be retained. Can one illegally be compounded by permitting similar illegal or illegitimate or ultra vires acts? Answer is obviously no.

In *Coromandel fertilisers Ltd. v. Union of India and Ors., [(1984) Supp SCC 457]*, it was held in paragraph 13, that wrong decision in favour of any party does not entitle any other party to claim the

benefit on the basis of the wrong decision. In that case, one of the items was excluded from the Schedule by wrong decision, from its purview. It was contended that authorities could not deny benefit to the appellant, since he stood on the same footing with excluded company. Article 14, therefore, was pressed into service. This court had held that even if the grievances of the appellant was well founded, it did not entitle the appellant to claim the benefit on the basis of the wrong decision. Therefore, the claim for exemption on the anvil of article 14 was rejected.

If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of this case, it is obvious that such illegal or unwarranted order could not be made the basis of issuing a writ compelling the respondent authority to repeat the illegality to cause another unwarranted order. The extraordinary and discretionary power of the high court under article 226 cannot be exercised for such a purpose.

[See: Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain and Others [(1997) 1 SCC 35].

The concept of equality as envisaged under Article 14 of the constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals others cannot claim the same illegality or irregularity on ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits. In this regard this court in Gursharan Singh & Ors. V. NDMC & ors. [1996 (2) SCC 459] held that citizens have assumed wrong notions regarding the scope of article 14 of the constitution which guarantees equality before law to all citizens. Benefits extended to some persons in an irregular or illegal manner cannot be claimed by a citizen on the plea of equality as enshrined in article 14 of the constitution by way of writ petition filed in the high court. The court observed:

"neither article 14 of the constitution conceives within the equality clause this concept nor article 226 empowers the high court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination."

In Jaipur Development Authority's case (supra) this considered the scope of article 14 of the constitution and reiterated its earlier position regarding the concept of equality holding:

"Suffice it to hold that the illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalised. In other words, judicial process cannot be abused to perpetuate the illegalities. Thus considered, we hold that the high court was clearly in error in directing the appellants to allot the land to the respondents."

In State of Haryana & Ors. V. Ram Kumar Mann [1997(3)SCC 321] this court observed:

"the doctrine of discrimination is founded upon existence of an enforceable right. He was discriminated and denied equality as some similarly situated persons had been given the same relief. Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. The respondent has no right, whatsoever and cannot be given to them, i.e., benefit of withdrawal of resignation. The high court was wholly wrong in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong to perpetrate, an employee, after committing misappropriation of money, is dismissed from service and subsequently that order is withdrawn and he is reinstated into the service. Can a similarly circumstanced person claim equality under article 14 for reinstatement? The answer is obviously "No".

In a converse case, in the first instance, one may be wrong but the wrong order cannot be foundation for claiming equality for enforcement of the same order. As stated earlier, his right must be founded upon enforceable right to entitle him to equality treatment for enforcement thereof. A wrong decision by the government does not give a right to enforce the wrong order claim parity or equality. Two wrongs can never make a right". [see : State of Bihar and others v. Kameshwar Prasad Singh and another {(2000)} 9 SCC 94].

So far as the allotment to non-eligible societies is concerned even if it is accepted, though specially denied by the authority, to be true that does not confer any right on appellants. Two wrongs do not make one right. A party cannot claim that since something wrong has been done in another case direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters, there is no discrimination involved. The concept of equal treatment on the logic of article 14 of the constitution cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on a par. Even if hypothetically it is accepted that a wrong has been committed in some other cases by introducing a concept of negative equality the appellant cannot strengthen its case. It has to establish strength of its case on some other basis and not by claiming negative equality. (See Union of India v. international trading co. [{2003} 5 SCC 437].

It is not a case of the petitioners that with any oblique motive the eligibility criteria has been stipulated. On the contrary after analysing the issues, a , committee appointed by the respondent had suggested the norms and the scheme was accordingly prepared. We do not find any irrationality much less something which is totally out of context to justify interference.

Clause 4 of the scheme (broad description of proposed arrangement) indicates that in order to implement this courts order there was desirability to discourage contractors and involve SSG through non-profit organisations. As the scheme itself provides, the intention is to make the SSGs fully equipped within a certain period after these NGOs, go out of the picture and state Government steps in.

In the aforesaid background we do not find anything illicit in the impugned criteria to warrant interference.

The writ petitions fail and are, therefore, dismissed. No costs.

.....J.
(ARIJIT PASAYAT)

NEWDELHI,

JULY 17, 2006

.....J.
(C.K. THAKKER)



**Orders/Judgment of the
High Court of the States of
Rajasthan, Chhattisgarh, Punjab,
TN, MP, Maharashtra, Jharkhand,
Uttar Pradesh, Karnataka ,
Gujarat, Manipur, Gauhati and
Arunachal Pradesh**



**IN THE HIGH COURT OF JUDICATURE RAJASTHAN
BENCH AT JAIPUR**

ORDER

IN

D. B. Civil Writ Petition. 4777/2005.

With

D. B. Civil Misc. Stay Application No. 4122/2005

Amit Kumar Jain,

... Petitioner

Versus

1. The State of Rajasthan through: The Chief Secretary, Government Secretariate, Jaipur (Raj.)
2. The Secretary, Department of Women & Child Welfare Government Secretariate, Jaipur (Raj.)
3. The Director, Department of Women & Child Welfare Government of Rajasthan, 2, Jal Path Gandhi Nagar, Jaipur (Raj.)
4. JVS Food Pvt. Ltd. Company (Incorporated Under the Indian Companies Act 1956) having its registered office at Ratnavali, New Colony, Jaipur. (Through its power of attorney holder Satish Kumawat son of Shri K.L.Kumawat aged 32 year Resident of 5, Kisan Colony, Near Malpura Gate, Sanganer, Jaipur, posted as Deputy General Manager

... Respondents

DATE OF ORDER – 14.07.2005

PRESENT

HON'BLE MR.JUSTICE S.K. KESHOTE

HON'BLE JUSTICE AJAY RASTOGI

SHRI RAKESH KUMAR FOR PETITIONER

SHRI B.P. AGARWAL ADVOCATE GENERAL WITH

SHRI R.P. AGARWAL AND

SHRI J.K. AGARWAL ADDL. GOVERNMENT ADVOCATE, FOR THE RESPONDENT.

NOS. 1 TO 3

SHRI ASHOK GAUR FOR RESPONDENT NO. 4 JVS FOODS PRIVATE LIMITED COMPANY

BY THE COURT (Per Hon'ble Mr. Justice S.K. Keshote),

The learned counsel for the respondent no. 4 has raised a preliminary objection re the maintainability of the writ petition. In his submission the petitioner is praying for a direction to the respondent to comply with the direction of the Hon'ble Supreme court and thus the remedy lies before Hon'ble the Supreme Court and not before this Court.

Shri Rakash Meena the learned counsel for the petitioner, submit that it is the duty of the state Government to comply with the direction of the Hon'ble Supreme Court and in case the same are not complied with the petitioner has a locus stand to approach to this Court under Article 226 of the constitution of India. The learned counsel for the petitioner also made submission on the merit of the matter.

We have given our anxious and thoughtful consideration to the rival contention made by the learned counsel for the parties.

During the course of argument the learned counsel for the petitioner dose not dispute that in sum and substance the grievance of the petitioner in the writ petition is that the State Government, in violation of the direction of the Hon'ble Supreme Court issued under its order, dated 7.10.2004, in Writ Petition (Civil) No. 196/2001, Peoples's Union for Civil Liberties Vs. Union of India & Others, has invited tenders for supply of nutritious items for the children and pregnant women of weaker sections of the society during the year 2003. The learned counsel for the petitioner also does not dispute that the matter is sub-judice before Hon'ble the Supreme Court.

In Union of India Vs. Jaiswal Coal Company Limited & Others (1999) 5 SCC 733, their Lordships of the Hon'ble Supreme Court held that the judicial discipline required the High Court not to entertain any such petition when the proceedings were pending in the Hon'ble Supreme Court in respect of subject matter of the case. The parties should have been asked to approach the Hon'ble Supreme Court, if so advised.

The matter is sub-judice before Hon'ble the Supreme Court. During the pendency of the matter in case the directions given to the Union of India and the States by Hon'ble the Supreme Court are violated, in our opinion the appropriate and only remedy left to the person, who approached to the Court, is to go before Hon'ble the Supreme Court. That apart we are of the opinion that where the State violates any direction given by Hon'ble the Supreme Court, it may amount to contempt of the court's order and if a party to the litigation has any grievance the remedy lies before Hon'ble the Supreme Court. The matter in which the petitioner has filed the present writ petition, is subjudice before Hon'ble the Supreme Court and the writ petition in this court is difficult to appreciate and we are of the opinion that such writ petition is wholly misconceived and misplaced. It clearly exhibits an example how attempts are being made by the litigants to misuse the public interest litigation jurisdiction of the High Court.

As a result of the aforesaid discussion the writ petition fails and the same is dismissed. Consequent upon the dismissal of the writ petition, the stay application, filed therewith, does not survive and the same is also dismissed.

**Sd/ -
(Ajay Rastogi), J.**

**Sd/ -
(S.K. Keshote), J.**

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

(Division Bench)

WRIT PETITION NO. 445 OF 2005

RAGHUVVEER SINGH GOND

...PETITIONERS

VS.

UNION OF INDIA AND OTHERS

...RESPONDENTS

WRIT PETITION NO. 578 OF 2005

Ambika Prasad Rajwade and others

Vs.

State of Chhattisgarh and others

WRIT PETITION NO.1034 OF 2005

Ajay Mishra and others

Vs.

State of Chhattisgarh and others

WRIT PETITION NO.1558 OF 2005

Ramnarayan Markandey and others

Vs.

Union of India and others

WRIT PETITION NO. 1518 OF 2005

Kapil Dev and others

Vs.

State of Chhattisgarh and others

WRIT PETITION NO.2150 OF 2005

Tulsi Ram and others

Vs.

State of Chhattisgarh and others

WRIT PETITION NO.2316 OF 2005

Nain Das Gaikwad and others

Vs.

Union of India and others.

WRIT PETITION NO.1397 OF 2005

Mahamaya Swayatt Sahkarita Prathmik Upbhokta Bhandar
Vs.
State of Chhattisgarh and others.

WRIT PETITION NO.2600 OF 2005

Bastar Zila Thok Upbhokta Bhandar Maryadit
Vs.
The State of Chhattisgarh and others

Mr. Kanak Tiwari, Sr. Adv. with Mr. Rahul Jha,
Mr. P.K.C. Tiwari, Sr. Adv. with Mr. Shashibhushan,
Mr. Prashant Jayaswal, Sr. Adv.,
with Mr. Ali Asgar, Mr. Manindra Shrivastava,
Sr. Adv. with Mr. Amrito Das, Mr. Rajesh Pandey,
Mr. Rajiv Shrivastava, Mr. Yashwant Tiwari
and Mr. Sudhir Verma, learned counsel
for the petitioner..

Present:

Thakur Vijay Singh, Assistant Solicitor General for the Union of India.

Mr. Prashant Mishra, Additional Advocate General, for the State of Chhattisgarh.

CORAM : Hon'ble Shri A.K. Patnaik, CJ & Hon'ble Shri Sunil Kumar Sinha, J.

Dated: 06/09/2005

ORDER

(Passed on 6th of September, 2005)

The following Order of the Court was passed by A.K. Patnaik, CJ:

All these writ petitions under Article 226 of the Constitution of India relate to the Chhattisgarh Public Distribution System (Control) Order, 2004 made under the Essential Commodities Act, 1955 were heard analogously and are being disposed of by this common order.

- (2) Under Section 3 of the Essential Commodities Act, 1955 (for short "the Act") the Central Government has been vested with the power to make orders providing for regulating or prohibiting the production, supply and distribution of essential commodity and trade and Commerce therein if the Central Government is of the opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices. The Central Government delegated this power to the State Governments under Section 5 of the Act by an order dated 9th of June, 1978 in relation to food stuffs subject to such conditions as specified in the said order. On 23rd of June 2001 the State Government of Chhattisgarh made the Chhattisgarh (Khadya Padarth) Sarvajanic Nagrik Poorti

Vitran Scheme, 2001 in exercise of such delegated power under section 3 of the Act for distribution of different foodstuffs through fair price shops. Pursuant to said Scheme of 2001, the State Government entered into agreements with the petitioners and also issued licences in favour of the petitioners for running fair price shops at different place in the State of Chhattisgarh. On 31st of August, 2001 the Central Government made the Public Distribution System (Control) Order, 2001 under Section 3 of the Act providing for distribution of food grains through fair price shops and provided therein that the State Government shall issue an order under Section 3 of the Act for regulating the sale and distribution of essential commodities and shall issue the licences to the fair price shop owner under the said order laying down the duties and responsibilities of the fair price shop owners. Accordingly, the State Government made a fresh order under Section 3 of the Act by a notification dated 23rd of December 2004 called the Chhattisgarh Public Distribution System (Control) order, 2004 (for short “the Order 2004”). Clause 9 (1) of the Order 2004 makes provisions regarding allocation of fair price shops in the State of Chhattisgarh and is extracted hereunder: “9. Allocation of fair price shops (1) Fair Price Shop run by Large Aadim jati Multipurpose Cooperative Societies (LAMPS), Primary credit cooperative societies, forest protection committees, self help groups, Gram Panchayats and other cooperative societies shall be continued but not run by the private persons. Within six months from commencement of this Order, Fair Price Shops run by the private persons shall be cancelled and allotted to the specified agencies mentioned in sub rule (3) and (4) of rule 9.” In accordance with provisions of Clause 9(1) of the Order 2004, quoted above, the licences issued to the petitioners are proposed to be cancelled and the fair price shops are proposed to be allotted to agencies specified in the said Order 2004. Aggrieved, the petitioners have challenged the provisions of the Order 2004 on different grounds and/or the orders of the authorities proposing to cancel the licences of the petitioners for running the fair price shops.

- (3) Mr. Prashant Jayaswal, Sr. Advocate, assisted by Mr. Ali Asgar learned counsel appearing for the petitioner in Writ Petition No.445 of 2005 submitted that the petitioner is a private person and the agreement between the petitioner and the State Government relating to the fair price shop being run by the petitioner provided in Clause (15) that the agreement could be terminated only for breach of the conditions of the agreement by the petitioner and hence the allotment of fair price shop to the petitioner and the licence of the petitioner for running the fair price shop cannot be cancelled by the State Government unless it is established that the petitioner has committed some breach of the agreement. He submitted that though there is no allegation that the petitioner has committed any breach of the agreement, the authorities are now proposing to cancel the allotment of fair price shop to the petitioner as well as the licence for the fair price shop of the petitioner under the Order 2004. Mr Prashant Mishra, learned Additional Advocate General, for the State of Chhattisgarh, on the other hand, submitted that the allotment as well as the licence of the petition for running the fair price shop will have to be cancelled in accordance with the provisions of Clause 9 (1) of the Order 2004
- (4) We are of the considered opinion that the cancellation of the fair price shop is not to be made under Clause (15) of the agreement between the petitioners and the State Government for running the fair price shop but because of supervening change of law. The Order 2004 is a statutory order made under Section 3 of the Act and Clause 9 (1) of the Order 2004 inter alia provides that within six months from the commencement of the Order, fair price shops run by the private persons shall be cancelled and allotted to the specified agencies mentioned in the order. Hence, the cancellation of the fair price shop of the petitioner who was a private person was to be done by virtue of the provisions in Clause 9 (1) of the Order 2004. In other words, it

is the change of law after the agreement was made between the petitioner and the State Government for running of the fair price shop by the petitioner on account of which the agreement has to be cancelled. Section 56 of the Indian Contract Act, 1870 provides that a contract do an act which, after the contract is made, become Impossible, or, by a reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful. Hence, the contract between the petitioner and the State Government in so far as it provides for running of the fair price shop by the petitioner who is a private person would become unlawful after expiry of six months period from the date of enforcement of the Order 2004 and would therefore, become void and will have to be cancelled. This is thus not a case of cancellation of a fair price shop for breach of agreement but a case of cancellation of fair price shop of the petitioner due to change of law.

- (5) Mr Jayaswal, learned counsel for the petitioner, next submitted that the Order 2004 is discriminatory and violative of Article 14 of the Constitution of India inasmuch as it provides that private persons would not be allowed to run any fair price shop and only the agencies such as co-operative societies as specified in the Order 2004 would be allowed to run the fair price shops. He cited the decision of the Gujarat High Court in Ramanlal Nagardas and Others Vs. M.S. Palnitkar & another, AIR 1961 Gujarat 38, in which it has been held that the decision of the State to entrust wholesale distribution to the Co-operative Societies to the exclusion of other licence holders amounted to discrimination and could not be justified on any reasonable principles of classification and was thus violative of the provisions of Article 14 of the Constitution. He submitted that the only reason given in the return filed by the State of Chhattisgarh for excluding private persons from running fair price shops and for entrusting fair price shops to Co-operative Societies and other agencies specified in the Order 2004 is that some complaints of malpractices and irregularities by fair price shops run by private persons have been registered in the State of Chhattisgarh during the years 2001 - 2002, 2002-2003 and 2003- 2004. He submitted that the statements Annexure-R/1 annexed to the return would show that cases have also been registered against Co-operative Societies and other agencies running fair price shops in the State of Chhattisgarh during the years 2001- 2002, 2002 - 2003 and 2003-2004. He argued that there was, therefore, no justification for excluding private persons from running fair price shops and at the same time allowing Co-operative Societies and other agencies specified in the Order 2004 to run fair price shops. He cited the judgment of the Gujarat High Court in Ramanlal Nagardas and Others Vs. M.S. Palnitkar & another (supra) in which the Gujarat High Court has held that classification of individuals and Co-operative Societies and cancelling the licences of the individuals only has been held to be having no rational nexus with the object sought to be achieved by the Act.
- (6) Mr. Manindra Shrivastava, Sr. Advocate assisted by Mr. Amrito Das, leaned counsel appearing for the petitioner in Writ Petition No.578 of 2005, further submitted that the statistics given by the State Government in Annexure-R/1 annexed to the return regarding number of cases of malpractices and irregularities registered against fair price shops for the years 2001-2002, 2002-2003 and 2003-2004 are leading, as these statistics do not disclose the number of private persons who have been running air price shops during these three years and the number of Co-operative Societies which have been running fair price shops during these three years. He argued that in the State of Chhattisgarh the number of fair price shops run by the private persons is much larger than the number of fair price shops run by the Co-operative Societies and, therefore, the number of complaints in the case of private persons running fair price shops are bound to be numerically more than the number of complaints against Co-operative Societies

running the fair price shops. He further argued that the State has not indicated in the return whether the complaints against private persons were examined and if so the result of the examination. He vehemently argued that the Court should not therefore rely on the statistics given by the respondent/State in the statements annexed to the return as Annexure-R/1.

- (7) Mr. Rajesh Pandey learned counsel appearing for the petitioner in Writ Petition No.1034 of 2005 reiterated the aforesaid contention that the exclusion of private persons from running fair price shops by the Order 2004 was discriminatory and violative of Article 14 of the Constitution. He submitted that one of the objects indicated in the preamble of the Constitution is social justice for the people of India and the classification adopted by the Order 2004 classifying private persons separately from Co-operative Societies and other agencies specified in the Order 2004 is not consistent with this object of social justice mentioned in the preamble of the Constitution and is therefore irrational and the Order 2004 has to be held as violative of the right to equal protection of laws guaranteed under Article 14 of the Constitution of India. In support of this submission he relied on the decision of the Supreme Court in *Atam Prakash Vs. State of Haryana and others*, AIR1986 SC 859, in which it has been held that a classification adopted by the legislature in the statute which is not in tune with the socialist goal set out in the Preamble and the Directive Principles enumerated in Part-IV of the Constitution and the Constitution is per se illegal and cannot be permitted. He also relied on the decision of the Supreme Court in *LIC of India and another Vs. Consumer Education and Research Centre and others*, AIR 1995 SC 1811. He vehemently argued that private persons in the State of Chhattisgarh have been excluded from running fair price shops by the Order 2004 and thereby deprived of their only means of livelihood and such exclusion of private persons for running fair price shops was inconsistent with the goal of social justice in the Constitution and the Order 2004 was thus discriminatory towards individual private persons and was violative of Article 14 of the Constitution.
- (8) Mr. Rajiv Shrivastava learned counsel appearing for the petitioner in Writ Petition No.1558 of 2005 also reiterated the submission that the provision made in the Order 2004 excluding private persons from running fair price shops is discriminatory and violative of Article 14 of the Constitution. He submitted that the Classification is not only unreasonable but also unfair and has no nexus with the object of Section 3 (1) of the Act namely distribution of essential commodities at fair prices in an equitable manner.
- (9) Mr. Kanak Tiwari, Sr. Advocate, assisted by Mr.Rahul Jha learned counsel appearing for the petitioner in Writ Petition No.1518 of 2005 submitted that a scheme for public distribution of essential commodities through fair price shops may give preference to the Co-operative Societies but it should also provide that where Co-operative Societies are not available in any area, private persons can be allowed to run fair price shops or where consumer Co-operative Society, available in a particular area, refuses to run the fair price shop, private persons in the area may be allowed to run a fair price shop. He submitted that in *M.P. Ration Vikreta Sangh, Jabalpur and others Vs. State of Madhya Pradesh and another*, AIR 1981 MP 203, clause 2 of the Scheme framed by the Madhya Pradesh High Court in the year 1981 which provided that preference would be given to Co-operative Societies in the matter of appointment of agents for running fair price shops was challenged on the ground that it was violative of Article 14 of the Constitution and the Division Bench after taking note of the concession of the learned Advocate General that Cooperative Societies in clause 2 mean only a consumers' Co-operatives held that the scheme seeks to prefer the consumer societies in the matter of appointment of the agents for running fair price shops and it is only when such societies refuse to accept appointment as agents that others can be

considered for appointment. He also cited the decision of the Supreme Court in *Madhya Pradesh Ration Vikreta Sangh Society and others Vs. State of Madhya Pradesh and others*, AIR 1981 SC 2001, wherein the Supreme Court has held that the preference given to consumers' co-operative societies for running fair price shops for distribution of food stuffs was not violative of Article 14 of the Constitution of India. He argued that the total exclusion of the private persons from consideration for appointment as agents for running fair price shops would be violative of Article 14 of the Constitution.

- (10) Mr. Yashwant Tiwari learned counsel appearing for the petitioners in Writ Petition No.2150 of 2005 submitted that no exercise has been undertaken by the State Government to find out how many private persons have actually resorted to by mal practices. He further submitted that most of the Co-operative Societies in the State of Chhattisgarh are running at a loss and therefore if the Co-operative Societies in the State of Chhattisgarh are entrusted with the work of distribution of essential commodities through fair price shops, they will not be able to efficiently handle the said work. He argued that total exclusion of persons from carrying on the business of fair price shops is discriminatory and violative of Article 14 of the Constitution inasmuch as it affects the rights of the individuals to equality.
- (11) Mr. Sudhir Verma learned counsel appearing for the petitioner in Writ Petition No.2316 of 2005 submitted that those private persons who have indulged in mal practices while carrying on the business of fair price shops have now constituted new Co-operative societies and would be greatly benefited from the provision in clause (9) of the Order 2004 that the specified agencies including Co-operative Societies instead of private persons would be allowed to run fair price shops. He submitted that the classification made by Clause (9) of the Order 2004 between private persons and Co-operative Societies and other agencies specified in the Order 2004 is unreasonable inasmuch as there is no rational nexus between the intelligible differentia of such classification and the object of distributing food stuffs and other essential commodities through fair price shops at fair prices sought to be achieved by Order 2004. Mr. Verma submitted that the exclusion of individual private persons is therefore arbitrary, discriminatory and violative of Article 14 of the Constitution. He relied on the decision of the Supreme Court in *Onkar Lal Bajaj and others Vs. Union of India and another*, (2003) 2 SCC 673 to the effect that Article 14 guarantees to everyone equality in law and arbitrary exercise of executive powers can be quashed by the Court in exercise of the power of judicial review.
- (12) Mr. Prashant Mishra, Additional Advocate General, assisted by Mr. Sumesh Bajaj, learned Dy. Govt. Advocate, for the State of Chhattisgarh, on the other hand, relying on the reply filed on behalf of the State of Chhattisgarh in Writ Petition No.445 of 2005 submitted that before the State of Chhattisgarh came into existence in November, 2000, the Madhya Pradesh Sarvajanic Nagrik Vitaran Scheme, 1991 was in force under which fair price shops were being allotted to Co-operative Societies for public distribution of essential commodities at fair prices, but in the year 2001 when the State Government decided to extend the Public Distribution System Network found that due to the financial constraints Co-operative Societies were not in a position to run the additional fair price shops and hence made a provision for allotment of fair price shops to private persons in the Scheme 2001 and such private persons were appointed to run fair price shops on the recommendations of the Minister of the Food Department, Government of Chhattisgarh by the Food Inspector. He submitted that after allotment of fair price shops to such private persons, however, there were complaints of mal practices by such private persons running fair price shops. He referred to the statements annexed to the reply as Annexure-R/1 to show the

numbers of cases registered against the fair price shops run by private persons in the years 2001-02, 2002-03 and 2003-04. He further pointed out that in a PIL Writ Petition (Civil) No.196 of 2001 filed by the People's Union for Civil Liberties, the Supreme Court also passed some orders on 28th of November, 2001, 8th of May 2002 and 2nd of May 2003. He submitted that by the order dated 2nd of May 2003 the Supreme Court issued some directions to evolve a system whereby eligible BPL families, which may not be on BPL list, are supplied food grains and to cancel the licences of those licences who do not keep their shops open throughout the month, fail to provide food grain to BPL families strictly at BPL rates, keep the cards of BPL households with them, make false entries in the BPL cards, engage in black-marketing, siphon away food grains to the open market or hand over such ration shops to such other person/organisations. He submitted that the State Government has a constitutional duty and obligation to protect the poor persons against malnutrition and hunger and to comply with the orders passed by the Supreme Court in the aforesaid case and since it came to the knowledge of the State Government that private persons running fair price shops are not distributing the commodities to the persons living below poverty line and are not providing essential commodities to Antyodaya and Annapoorna beneficiaries as per their entitlement and were resorting to the mal practices mentioned in the aforesaid orders of the Supreme Court in Writ Petition (Civil) No.196 of 2001, the State Government took the view that a private individual should no longer be allowed to run a fair price shop and that fair price shops should be run by the Co-operative Societies and other agencies specified in the Order 2004. He submitted that such exclusion of private persons altogether from running fair price shops as agents of the State Government was based on a reasonable classification of private persons who were not suitable to run fair price shops and Co-operative Societies and other agencies specified in the Order 2004 who were suitable to run fair price shops is based on an intelligible differentia having rational nexus with the object to be achieved by the Order 2004 namely distribution of food stuffs and other essential commodities at fair price shops through the Public Distribution System of the State Government. He cited the decision of the Supreme Court in Kerala Education Bill, 1957 for the proposition that while article 14 forbids class legislation it does not forbid reasonable classification for the purposes of legislation and submitted that the classification under the Order 2004 of private persons who have not been allowed to run fair price shops and Co-operative Societies and other agencies specified in the Order 2004 which have been allowed to run fair price shops is a reasonable classification and the Order 2004 is not hit by Article 14 of the Constitution.

- (13) In re Kerala Education Bill, 1957 (supra) cited by Mr. Mishra the Supreme Court after referring to its earlier decisions on the true meaning, scope and effect of Article 14 of the Constitution, quoted the following passage from its earlier decision *Mohd. Hanif Qureshi Vs. State of Bihar*, AIR 1958 SC 731:

“It is now well established that while Article 14 forbids class legislation it does not forbid reasonable classification for the purposes of legislation and that in order to pass the test of permissible classification two conditions must be fulfilled, namely, (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) such differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification, it has been held, may be founded on different basis, namely, geographically or according to objects or the occupations or the like and what is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. The pronouncements of this Court further establish amongst other things, that

there is always a presumption in favour of the constitutionality of an enactment and that the burden is upon him, who attacks it to show that there has been a clear violation of the constitutional principles. The Courts, it is accepted, must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest and finally that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation.”

Thus, the law laid down by the Supreme Court is that equal protection of Article 14 of the Constitution forbids class legislation but does not forbid reasonable classification for the purposes of legislation and that in order to pass the test of permissible classification two conditions must be fulfilled; (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) such differentia must have a rational nexus to the object sought to be achieved by the statute in question. These propositions have been reiterated in the judgment of the Gujarat High Court in *Ramanlal Nagardas and Others Vs. M.S. Palnitkar & another* (supra) cited by Mr. Prashant Jayaswal, and it has been further explained in the said decision of the Gujarat High Court that sometimes the law itself may not make the classification but may lay down a policy and vest a discretion in the executive to make a classification for the purpose of administering the law and in such cases the power given to the executive would import a duty on it to classify the subject matter of the legislation in accordance with the policy indicated in the statute and the discretion has to be exercised in accordance with the policy to effectuate which the discretion is given and it is in relation to that policy that the propriety of the classification has to be tested and if the executive proceeds to classify persons or things on a basis which has no rational relation to the policy of the legislature, its action can certainly be struck down as offending against the equal protection clause. In the said decision, the Gujarat High Court further held that in the Act the legislature has laid down the legislative policy and has left it to the Central Government or the State Government to work out the details of that policy within the framework to be found in the four corners of the Act and accordingly make orders under Section 3 of the Act in accordance with the policy laid down in the Act. The observations of Bhagwati, J who delivered the said judgment of the Gujarat High Court on behalf of the Division Bench is quoted herein below:

“Whether this classification can stand the test of Article 14 must depend on various factors such as the background against which the State action has been taken, the nature and character of the commodity and business sought to be regulated by such action and the object which the legislature had in view in enacting the said Act in the execution or administration of which the classification has been made. When we turn to the provisions of the said Act we find that the ambit and character of the said Act is such that the Legislature can do no more than lay down the legislative policy and leave it to the executive to work out the details of that policy within the framework to be found in the four corners of the said Act, for the executive would be in a better position to judge the needs and exigencies of the situation. The preamble and the body of the sections clearly

formulate the legislative policy and the details of that policy are left to be worked out by delegating them to the Central Government or the State Government or other subordinate officers or authorities within the framework of that policy. The Legislature has in the preamble and the body of the Sections declared the policy of the law and the legal principle which is to guide and control the executive in the exercise of its powers under the provisions of the said Act or any Orders made under the said Act. That principle is the maintenance or increase in supply of essential commodities and securing their equitable distribution and availability at fair prices. This is the objective indicated in the said Act and whenever the executive in exercise of its powers under the provisions of the said Act or any orders made under the said Act or any orders made under the said Act makes a classification, the propriety of the classification must be tested in relation to that objective. Whatever is done by the executive in pursuance of or in exercise of its powers under the provisions of the said Act or any Order made under the said Act is ultimately traceable to the said Act and must derive its sustenance and force from the said Act and must, therefore, be in conformity with the legislative policy or principle or objective formulated in the said Act. The classification made by the State in the present case must, therefore, in order to successfully meet the challenge of Article 14, bear a just and rational relation to the object sought to be achieved by the said Act, namely, the maintenance or increase in supply of essential commodities and securing their equitable distribution and availability at fair prices.”

(14) Applying the aforesaid law as has been lucidly enunciated by Bhagwati, J in the said judgment of the Gujarat High Court Ramanlal Nagardas and Others Vs. M.S. Palnitkar & another (supra), the Order 2004 has been made for achieving the objects mentioned in Section 3(1) of the Act and therefore the challenge to the Order 2004 under Article 14 of the Constitution in these writ petitions have to be examined by reference to the objects mentioned in Section 3(1) of the Act. If the classification made by the Order 2004 has no rational nexus with the said objects mentioned in Section 3(1) of the Act, the classification would be an unreasonable classification and would have to be struck down by the Court as ultra vires the Article 14 of the Constitution. On the other hand, if the classification made by the Order 2004 has a rational nexus with the said objects mentioned in Section 3 (1) of the Act, the classification has to be held as reasonable classification and not hit by the equal protection clause in Article 14 of the Constitution of India. Further more, as has been held by the Gujarat High Court in the aforesaid case whether the classification made by the Order 2004 can stand the test of Article 14 would depend upon various factors such as the background in which the Order 2004 has been issue and the nature and character of the commodities and business sought to be regulated.

(15) For finding out the background in which the Order 2004 has been issued by the State Government of Chhattisgarh, we have to refer to the return filed on behalf of the State Government of Chhattisgarh. It is stated in the said return that before the commencement of the Scheme 2001, fair price shops could be allotted to Co- operative Societies only, as per the provisions of the Madhya Pradesh Sarvajanic Nagrik Scheme, 1991. It is further stated in the return filed on behalf of the State Government that in the year 2001 the State Government decided to extend the Public Distribution System network but due to the financial constraints the Co-operative Societies were not in a position to run the additional fair price shops and hence a provision was made in

the Scheme 2001 for allotment of fair price shops to private persons. After the allotment of fair price shops to private persons, however, the number of cases of irregularities registered against fair price shops increased enormously. Along with the return statements showing the number of cases registered in the years 2001- 2002, 2002-2003 and 2003-2004 against fair price shops run by Co-operative Societies and against fair price shops run by private persons has been annexed as Annexure- R/1. We find from the said statements in Annexure-R/1 annexed to the return of the State Government that the total number of cases registered against fair price shops run by private persons and different agencies during the years 2001-2002, 2002-2003 and 2003-2004 are as follows:

Year	Private Person	Co-operative Societies	Panchayat	Consumer Co-operative	Marketing Society
2001-2002	133	54	28	0	0
2002-2003	357	54	0	1	0
2003-2004	710	167	1	16	4

It will be clear from the figures indicated in the chart above that the number of complaints of irregularities against fair price shops run by private persons was 133 in the year 2001-2002, 357 in the year 2002-2003 and 710 in the year 2003-2004. The aforesaid chart will also show that the number of complaints against fair price shops run by other agencies such as Co-operative Societies, Panchayat, Consumer Co-operative and Marketing Societies have been comparatively less. Thus, the number of complaints of irregularities against fair price shops run by private persons is not only much more than the number of complaints received against other agencies such as Co-operative Societies, Panchayat, Consumer Co-operatives and Marketing Societies, but such number of complaints against fair price shops run by private persons have been increasing manifold year by year.

- (16) In the return filed on behalf of the State Government of Chhattisgarh it is also stated that in Writ Petition No.196 of 2001, People's Union for Civil Liberties Vs. Union of India and others the Supreme Court has been monitoring the implementation of the Public Distribution System and other welfare schemes through its appointed Commissioners and by order dated 2nd of May 2003 the Supreme Court has directed that the licences of fair price shop keepers be cancelled if they do not keep their shops open throughout the month during the stipulated period, fail to provide grain to BPL and Antyodaya families strictly at fixed rates and no higher, keep the cards of BPL households with them, make false entries in the BPL and Antyodaya cards, engage in black marketing, siphon away of grains to the open markets hand over such ration shops to other persons/functionaries, or BPL and Antyodaya are not supplied food grains as per their entitlement. It is further stated in the return that Mr. Biraj Patnaik, State Advisor to the Commissioner appointed by the Supreme Court made extensive visits throughout State, interacted with the beneficiaries and thereafter submitted a report to the Commissioner appointed by the Supreme Court and the Commissioner appointed by the Supreme Court sent a communication dated 20/04/2004 to the Chief Secretary, Govt. of Chhattisgarh, mentioning therein that the

advisor has highlighted several irregularities in the implementation of mid-day meal and Tribal Development Projects (TDPs). The relevant portion of the report dated 03/04/2004 of the Advisor of the Commissioner, Mr. Biraj Patnaik regarding the Public Distribution System in the State of Chhattisgarh is reproduced herein below:

“Public Distribution System:

The situation with regard to the PDS is distressing in the entire district and as the reports that I have enclosed as annexures reflect a breakdown of the system due to lack of monitoring. I had in my earlier reports and in my personal briefings apprised you about the positive steps which the State Government had taken including the creation of a food security fund and the increase in the subsidy given to the lead societies and commission to the PDS shops. While welcoming this, I had however cautioned that unless the governance issues in the districts are addressed, this progressive step would have minimal impact. The situation in Manendragarh is a testimony of this failure. I am enclosing the complaints and a set of affidavits that I have received with regard to the PDS shops in the panchayats - Ghagra, Charwahi, Kelua, Badkabehera, Mahai, Tarabehera, Kachhod, Garudol, Pendri and Biharpur.

It is clear from the aforesaid extract on the Public Distribution System in Manendragarh Block of Korea district that in Manendragarh Block Public Distribution System had broken down and this finding of the Advisor was based on complaints and the set of affidavits that the said Advisor had received with regard to the PDS shops in Ghagra, Charwahi, Kelua, Badkabehera, Mahai, Tarabehera, Kachhod, Garudol, Pendri and Biharpur Panchayats. The copies of the said complaints and affidavits have also been annexed to the return along with Annexure-R/6 and a reading of the said complaints and affidavits would show that lot of irregularities were being committed by the fair price shops. The aforesaid report relates to Manendragarh Block of Korea district but was a sample before the State Government as to how badly the fair price shops were being run. In paragraph 38 of the return it is stated that the State Government received information that there are flagrant violation of the terms and conditions of the grant as well as other provisions of the Scheme and the fair price shop owned by private individuals were opened well after the appointed time and closed well before the appointed time and the consumers are finding it difficult to obtain their rations and further that individual private shop keepers do not maintain sufficient stocks and siphon away the food grains of the fair price shops to shops of local traders. It is this unhappy experience of allowing individual private persons to run fair price shops in the State of Chhattisgarh during the years 2001-2002, 2002- 2003 and 2003-2004 which had prompted the State Government to exclude private persons altogether from running fair price shops under the Order 2004. Section 3(1) read with the order of delegation under Section 5 of the Act enables the State Government to make an order for securing the equitable distribution of any essential commodity and their availability at fair prices and a plain reading of the Order 2004 also shows that the object of the Order 2004 is to distribute foodstuffs and other essential commodities to ration card holders through fair price shops under Public Distribution System and if the experience in the State of Chhattisgarh is that the aforesaid object cannot be achieved through fair price shops owned by private persons, exclusion of private persons from running fair price shops under the Order 2004 has rational nexus with the object sought to be achieved by the Act as well as the Order 2004. The contention of the petitioners, therefore, that the classification in the Order 2004 excluding private persons altogether from running fair price shops while allowing other agencies specified therein to run the fair price shops is unreasonable and is hit by Article 14 of the Constitution has no merit.

- (17) In *Ramanlal Nagardas and Others Vs. M.S. Palnitkar & another* cited by Mr. Prashant Jayaswal, the State has decided as a matter of policy to entrust wholesale distribution of sugar to Co-operative Societies to the exclusion of other licence-holders and this decision of the State was challenged by the petitioners in that case on the ground that it was discriminatory and violative of the equal protection clause of Article 14 of the Constitution. The contention of the petitioner in the said case was that the classification of licence-holders into those who are Co-operative Societies and those who are not for the purpose of wholesale distribution of sugar was unrelated to the policy or object of the Act. The classification was sought to be justified in that case in the reply filed by the Collector on the ground that the State had decided to entrust wholesale distribution of sugar to Co-operative Societies to the exclusion of other licence-holders in order to put the distribution of sugar on more satisfactory basis and to promote and encourage the work of Co-operative Societies. The Supreme Court held that the promotion and encouragement of the work of Co-operative Societies cannot afford a reasonable basis for classification as it would have no nexus with the policy or object of the Act which is to maintain or increase supplies of sugar and to secure its equitable distribution and availability at fair prices. The Supreme Court also held that putting distribution of sugar on more satisfactory basis may afford a reasonable basis for classification, but the State had not indicated to the Court in the affidavit as to how and in what manner the wholesale distribution of sugar through the Association formed of the licence-holders was unsatisfactory and how and in what way it will put the distribution of sugar on more satisfactory basis if it is entrusted only to Co-operative Societies to the exclusion of other licence-holders. The Supreme Court in particular held that the State had not placed any facts before the Court on the basis of which it could be said that wholesale distribution of sugar would be put on more satisfactory basis by entrusting it to Co-operative Societies in preference to other licence-holders. In the present case, on the other hand, the State in its return has given facts and figures to show that the whole experiment of entrusting fair price shops to private owners during the years 2001-2002, 2002-2003 and 2003-2004 has not been at all happy and there have been large number of complaints by ration card holders of irregularities committed by fair price shops owned by private persons. The facts of the present case, therefore, are distinguishable from the facts of the aforesaid decision of the Gujarat High Court in *Ramanlal Nagardas and Others Vs. M.S. Palnitkar & another* (supra). The exclusion of private persons from running fair price shops in the facts of the present case has a rational nexus with the object of Section 3 (1) of the Act as well as the Order 2004 namely, the distribution of foodstuffs and other essential commodities in equitable manner at fair prices to ration card holders.
- (18) For the aforesaid conclusion, we find support in the judgment of the Supreme Court in *Madhya Pradesh Ration Vikreta Sangh Society and others Vs. State of Madhya Pradesh and others* (supra). The facts of that case are that the M.P. Foodstuffs (Distribution) Control Order, 1960 provided for running of fair price shops through retail dealers and the State Government of Madhya Pradesh on 31st of October, 1980 amended the said Control Order by deleting the provisions relating to running of fair price shops through retail dealers and providing for running the fair price shops under a Government scheme. On 20th of March 1981 the State Government promulgated the M.P. (Foodstuffs) Civil Supplies Public Distribution Scheme, 1981 under which preference was to be given to Co-operative Societies in appointment of agents for running fair price shops. The M.P. Ration Vikreta Sangh Society and others challenged the said provision of the scheme for giving preference to Co-operative Societies on the ground that the same was violative of Article 14 of the Constitution of India. The Madhya Pradesh High Court upheld the said provision in the M.P. (Foodstuffs) Civil Supplies Public Distribution Scheme, 1981 for giving preference to consumer Co-operative Societies in appointment as agents for running fair

price shops. The judgment of the Madhya Pradesh High Court was challenged by M.P. Ration Vikreta Sangh Society and others before the Supreme Court and the Supreme Court rejected the challenge under Article 14 of the Constitution of India with the following reasons:

“We have given a brief outline of the impugned scheme and it cannot be said that it suffers from arbitrariness or is irrational to the object sought to be achieved. The State Government after due deliberation, took a responsible decision to run the fair price shops directly being satisfied that it was necessary to do with the object of distributing foodstuffs at fair prices to the consumers, after taking into consideration the fact that the earlier experiment of running these shops through retail dealers was an utter failure. The scheme has been designed by the State Government by executive action under Art.162 of the Constitution with a view to ensuring equitable distribution of foodstuffs at fair prices. As already stated, the Court has found in the Sarkari Sasta Anaj Vikreta Sangh case (supra), the entire system of distribution of foodstuffs had collapsed and had become wholly unworkable due to flagrant violations of the provisions of the Control Order by the retail dealers. The action of the State Government in entrusting the distribution of foodstuffs to consumers’ co-operative societies, though drastic, was an inevitable step taken in the interests of the general public. The State Government was not bound to give the fair price shops to the retail dealers under a Government scheme. The governmental action in giving preference to consumers’ co-operative societies cannot be construed to be arbitrary, irrational or irrelevant.”

It will be clear from the aforesaid decision of the Supreme Court that once the Court found that the system of distribution of foodstuffs through appointment of retail dealers was an utter failure and had become wholly unworkable due to flagrant violations of the control order by retail dealers, the Court held that the action of the State Government in entrusting the distribution of foodstuffs to consumers’ co-operative societies could not be said to be arbitrary or irrational or unrelated to the object sought to be achieved. In the present case, as we have seen, the experiment of allowing private persons to run fair price shops has been an utter failure inasmuch as complaints had been received in large numbers from the ration cardholders against the private persons who run the fair price shops and such complaints are growing every year during the years 2001-2002, 2002-2003 and 2003- 2004 and for this reason the State Government had in the Order 2004 decided not to entrust the running of fair price shops to individual private persons and instead to other agencies specified in the Order 2004. The exclusion of individual private persons from running fair price shops in the Order 2004 cannot in the facts and circumstances of the case be held to be arbitrary, irrational or unreasonable.

- (19) The contention of Mr. Kanak Tiwari, learned Sr. Advocate, for the petitioner, however, is that under the Madhya Pradesh (Foodstuffs) Civil Supplies Public Distribution Scheme, 2001 private persons were not altogether excluded from running fair price shops but preference was to be given to consumer co-operatives for running fair price shops and this would mean that in any area if consumers’ co-operative society is not available to run a fair price shop or the consumers’ co-operative society refuses to run a fair price shop an individual private person can be allowed to run the fair price shop by the State Government. He submitted that such a provision would not be arbitrary but would be reasonable and thus would not be hit by Article 14 of the Constitution. As we have found above, during the years 2001-2002, 2002-2003 and 2003-2004 a large number of complaints of irregularities against fair price shops owned by private persons from the ration cardholders have been received and such complaints have been growing in number every year

and on these facts, it is for the State Government to decide as to whether preference is only to be given to Co-operative Societies and other agencies to run fair price shops and entrust such fair price shops to private individuals in areas where such Co-operative Societies or other specified agencies are not available or whether to altogether prohibit allotment of fair price shops to the private individuals. This decision to give preference to Co-operative Societies or to altogether discontinue running of fair price shops by private individuals is a policy decision within the domain of the State Government. Once we have found that the classification in the Order 2004 in between private persons, on the one hand, and Co-operative Societies & other agencies specified in the Order 2004, on the other, has a rational nexus with the object sought to be achieved by Section 3 (1) of the Act as well as the Order 2004 namely distribution of foodstuffs and in particular essential commodities at fair prices to the ration card- holders, the Court will have to uphold the classification as valid and reasonable and not violative of Article 14 of the Constitution and it is not within the domain of the Court thereafter to suggest that instead of excluding private persons altogether from running fair price shops only preference should have been given to Co-operative Societies and other agencies specified in the Order 2004 for running fair price shops and individual private persons could also be considered for allotment of fair price shops wherever such Co-operative Societies and other specified agencies were not willing to run fair price shops or were not available. The decision in this regard, in our considered opinion, can that be of the Legislature or the Government and not of the Court. In *State of West Bengal Vs. Anwar Ali Sirkar* and another, AIR 1952 SC 75 cited by Mr. Prashant Mishra, Bose, J observed in para 83:

“This, however, does not mean that judges are to determine what is for the good of the people and substitute their individual and personal opinions for that of the government of the day, or that they may usurp the functions of the legislature. That is not their province and though there must always be a narrow margin within which judges, who are human, will always be influenced by subjective factors their training and their tradition makes the main body of their decisions speak with the same voice and reach impersonal results whatever their personal predilections or their individual backgrounds. It is the function of the legislature alone, headed by the government of the day, to determine what is, and what is not, good and proper for the people of the land; and they must be given the widest latitude to exercise their functions within the ambit of their powers, else all progress is barred. But, because of the Constitution, there are limits beyond which they cannot go and even though it falls to the lot of judges to determine where those limits lie, the basis of their decision cannot be whether the Court thinks the law is for the benefit of the people or not. Class of this type must be decided solely on the basis whether the Constitution forbids it.”

(20) We may now deal with the novel argument of Mr. Rajesh Pandey, learned counsel for the petitioner that the classification in the Order 2004 is inconsistent with the socialist goals set out in the Preamble and the Directive Principles enumerated in Part IV of the Constitution inasmuch as it excludes private persons to earn their livelihood by running fair price shops and for this reason the Order 2004 is violative of the right to the equal protection of law under Article 14 of the Constitution. In support of the submission, he relied on the following observations of Chinappa Reddy, J in *Atam Prakash Vs. State of Haryana* and others (supra):

“Whatever article of the Constitution it is that we seek to interpret, whatever statute it is whose constitutional validity is sought to be questioned, we must strive to give such an interpretation as will promote the march and progress towards a Socialistic Democratic State. For example, when we consider the question whether

a statute offends Article 14 of the Constitution we must also consider whether a classification that the legislature may have made is consistent with the socialist goals set out in the Preamble and the Directive Principles enumerated in Part IV of the Constitution. A classification which is not in tune with the Constitution is per se unreasonable and cannot be permitted.”

In the aforesaid observations Chinnappa Reddy, J has held that when we consider the question as to whether the statute offends Article 14 of the Constitution, we must also consider whether a classification that the legislature may have made is consistent with the socialist goals set out in the Preamble and the Directive Principles enumerated in Part IV. The Preamble of the Constitution seeks “to secure to all its citizens” justice, social, economic and political. The expression “all its citizens” in the preamble of the Constitution means not only the private persons running fair price shops but also the ration cardholders under the Order 2004 including persons or families below the poverty line and Antyodaya families (the poorest families identified by the State Government) and destitute families. Hence, social and economic justice in the Preamble of the Constitution would mean that essential commodities and in particular foodstuffs are distributed to such ration card- holders at fair prices and not at prices beyond their reach. The Directive Principle in Article 47 of the Constitution mandates that the State shall regard the raising of the level of nutrition and the standard of living of its people as among its primary duties. Hence, it is part of the duty of the State to ensure that the foodstuffs and other essential commodities are made available to the people at fair prices and not at prices beyond their reach. If the State Government has found that during the three years from 2001 to 2004 a large number of complaints have been received of irregularities and malpractices adopted by the fair price shops owned by private persons and such complaints have been growing in number year by year, the State Government was justified in providing in the Order 2004 that private persons will not be allowed to run fair price shops as agents of the State Government and such a provision in the Order 2004 would be consistent with the socialist goals in the Preamble of the Constitution and such a classification in the Order 2004 excluding private persons from running fair price shops would not be violative of Article 14 of the Constitution.

- (21) The contention of Mr. Manindra Shrivastava, Mr. Rajesh Pandey, Mr. Rajeev Shrivastava, Mr. Yashwant Tiwari and Mr. Sudhir Verma, however, is that the data given by the State Government in its return as well a Annexure-R/4 relating to number of cases registered against fair price shops run by private persons and fair price shops run by Co-operative Societies and other agencies should not be relied upon by the Court as the said data does not disclose the total number of fair price shops owned by private persons and the total number of fair price shops owned by Co-operative Societies and other agencies and in the absence of figures of the total number of fair price shops owned by private persons and the total number of fair price shops owned by Co- operative Societies, it is difficult for the Court to find out as to what proportion of fair price shops in either category have resorted to malpractices and irregularities. This contention overlooks the law laid down by the Apex Court in a series of the decisions including Mohd. Hanif Qureshi and others Vs. State of Bihar quoted above that there is always a presumption in favour of the statute and the burden is upon him, who attacks it to show that there has been a clear violation of the Constitution and that the Courts must presume that the legislature understands and correctly appreciates the needs of its own people and that its laws are directed to problems made manifest by experience and that its discriminations are bases on adequate grounds. We must presume, therefore, that the State Government while making the Order 2004 has correctly understood and appreciated the failure of the public distribution system through

fair price shops run by private persons and has accordingly made the Order 2004 excluding such private persons from running fair price shops through which essential commodities and in particular foodstuffs are to be distributed to the ration cardholders. If the data furnished in the return of the State Government as well as in Annexure-R/1 on which such understanding and appreciation of the State Government was based was incomplete or incorrect, onus was on the petitioners to furnish additional data before the Court and rebut the presumption of constitutionality in favour of the Order 2004. On whatever materials have been placed before us by the State Government in its reply as well as Annexure- R/1, we have no doubt in our mind that exclusion of private persons from running fair price shops and the Order 2004 cannot be held to be discriminatory and violative of Article 14 of the Constitution.

- (22) Mr. Kanak Tiwari learned counsel for the consumer Co-operative Society submitted that Sub Clause (3) (a) of Clause 9 of the Order 2004 provides that allotment of fair price shops in ITDP areas shall be done in order of priority to the following agencies:
- (i) Large Aadim Jati Multipurpose Co-operative Societies (LAMPS).
 - (ii) Gram Panchayats
 - (iii) Women's Self help groups
 - (iv) Primary credit co-operative societies
 - (v) Forest protection committees
 - (vi) Other co-operative societies,

He submitted that similarly Sub clause 4 (a) of Clause 9 of the Order 2004 provides that allotment of fair price shops in other areas shall be in order of priority to the following agencies:

- (i) Gram Panchayats
- (ii) Women's Self help groups
- (iii) Primary credit co-operative societies
- (iv) Other co-operative societies

He submitted that consumer Co-operative Societies fall under the category "other Co-operative Societies" and have thus been placed at the bottom of the priority list for allotment of fair price shops both in ITDP areas and other areas. He submitted that Sub-clause 3(b) of Clause 9 provides for allotment of only 10% of the shops to other Co-operative Societies in ITDP areas and for giving top priority to Co-operative Societies of ex-serviceman Co-operative Societies and also 33% reservation for Forest Protection Committees and Women's Self help groups. He pointed out that similarly Sub-clause 4(b) of Clause 9 of the Order 2004 provides for reservation of 33% of the fair price shops in other areas for Women's Self help groups or other Co-operative Societies run by women and for allotment of fair price shops to Co-operative Societies of ex-serviceman on top priority basis. He vehemently argued that these provisions have been made in the Order 2004 by the State Government mechanically following the recommendations of Mr. Biraj Patnaik, State Advisor to the Commissioner appointed by the Supreme Court, without any application of mind as to whether such reservation and priority is permissible under Article 14 of the Constitution. He submitted that the object of Section 3 of the Act and the Order 2004 is to distribute essential commodities at fair prices to ration cardholders and in particular to ensure food security to all vulnerable citizens in the State of Chhattisgarh and the Madhya Pradesh High Court in Madhya Pradesh Ration Vikreta Sangh, Jabalpur and others Vs. State of Madhya Pradesh, Bhopal and others, AIR 1961 MP 203, as well as in Sarkari Sasta Anaj Vikreta Sangh, Tehsil Bemetra and others Vs. State of Madhya Pradesh and others, AIR 1981 SC 2030, the Madhya Pradesh and the Supreme Court, respectively, have upheld the Madhya Pradesh Food-

stuffs (Civil Supply Distribution) Scheme (1981) providing for giving priority to consumer Co-operatives in the matter of allotment of fair price shops. But this position of law has been ignored altogether by the State Government while accepting the said recommendations of Mr. Biraj Patnaik. He submitted that the petitioner being a consumer Co-operative is apprehensive that on account of such reservations and priorities made in Clause 9 of the Order 2004 petitioner will not be allotted any fair price shop. In this context he submitted that in *M.P. Ration Vikreta Sangh Society and others Vs. State of Madhya Pradesh and others* (supra) the Supreme Court has further held that there can be no quarrel with the principles laid down in the *Airport Authority case* (AIR 1979 SC 1628) that if the governmental action disclosed arbitrariness, it would be liable to be invalidated as offending against Article 14 of the Constitution. He submitted that the provisions in Clause 9 of Order 2004 giving priority and making reservations in favour of the Women's Self Help Groups, Forest Protection Committees, Co-operative Societies of ex-servicemen are absolutely arbitrary and have no nexus whatsoever with the object sought to be achieved by Section 3 of the Act as well as the Order 2004. Mr. Tiwari also referred to the provisions of Chhattisgarh Co-operative Societies Act, 1960 to show that only LAMPS and consumer Co-operatives are authorised to sell essential commodities in fair price shops and that the Primary Credit Co-operative Societies are not authorised under the provisions of the said Act to sell essential commodities at fair prices.

- (23) Mr. Prashant Mishra, learned Additional Advocate General, on the other hand, submitted that it is or the legislature and the Government to choose the agencies which are to be allotted fair price shops for selling the essential commodities including foodstuffs to the ration cardholders and if the State Government has in the Order 2004 decided as to which of the agencies should be allotted fair price shops and on what priority, the Court should not interfere with the choice of such agencies in the Order 2004.
- (24) Mr. Prashant Mishra is right that it is for the Government and the legislature to choose the agencies which are to be allotted fair price shops for selling the essential commodities including foodstuffs to ration cardholders, but such power of the legislature and the Government to choose the agencies is subject to Article 14 of the Constitution. Article 14 of the Constitution provides that the State shall not deny to any person equality before the law or the equal protection of the laws. Hence, the State Government while making an order under Section 3 of the Act may choose the persons, natural or legal, which are to be allotted fair price shops in selling essential commodities including foodstuffs to ration cardholders, but it cannot discriminate between such persons. It has, however, been held by the Supreme Court that Article 14 forbids class legislation but does not forbid reasonable classification and that in order to pass the test of permissible classification two conditions must be fulfilled (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out from the group and (ii) such differentia must have a rational nexus sought to be achieved by the legislature. The object sought to be achieved by the Order 2004 is to distribute essential commodities including foodstuffs at fair prices to ration cardholders. There is no material placed before the Court to show that this object can be better achieved by fair price shops run by the LAMPS, Gram Panchayats, Women's Self Help Groups, primary credit co-operative societies, Forest Protection Committees than those run by Consumer Co-operative Societies categorised under "Other Co-operative Societies. Thus, there is no reason for giving priority to LAMPS, Gram Panchayats, Women's Self Help Groups, primary credit co-operative societies and Forest Protection Committees over Consumer Co-operative Societies falling under

the category “Other Co-operative Societies” in the matter of allotment of fair price shops either in ITDP areas or other areas. There is, therefore, no rational basis for the classification of the agencies mentioned in Sub-clause (3)(a) of Clause 9 and Sub-clause (4) (a) of Clause 9 of the Order 2004 for the purpose of giving priority in the matter of allotment of fair price shops. The classification made in the said Sub-clauses (3)(a) and (4)(a) of Clause 9 of the Order 2004 of the agencies for the purpose of giving priority in allotment of fair price shops is thus unreasonable and the provision regarding priority in the said Sub-clause (3)(a) and (4)(a) of Clause 9 of the Order 2004 is thus discriminatory and violative of Article 14 of the Constitution. Similarly, there is no rational basis for providing in Sub-clause (3)(b) of Clause 9 for giving priority to Co-operative Societies of Ex-serviceman and for providing 33% reservation for Forest Protection Committees and Women’s Self Help Groups in Sub-clause (3)(b) of Clause 9 and Sub-clause 4(b) of Clause 9 of the Order 2004 as no material has been placed before us to show that the Co-operative Societies of Ex-serviceman or Forest protection Committees and Women’s Self Help Groups can achieve the object of distribution of essential commodities including foodstuffs at fair prices to ration cardholders better than the Consumer Co-operative Societies falling under “Other Co-operative Societies”. In our considered view the specified agencies are to be considered for allotment of fair price shops without any priority or reservation in favour of any category of specified agencies and the only consideration that should weigh with the authorities for making the allotment of fair price shops in any area should be as to which specified agency would be able to best achieve the object of Section 3 of the Act and the Order 2004 namely distribution of essential commodities including foodstuffs at fair prices to the ration cardholders. The provisions in Sub-clauses (3)(a) & (3)(b) and (4)(a) & (4)(b) of Clause 9 of the Order 2004 providing for priority amongst the specified agencies and reservation in favour of some of specified agencies are liable to be struck down as ultra vires Article 14 of the Constitution.

- (25) The power to make legislation under Section 3 that may be enforced. Section 2 of the Chhattisgarh Co-operative Societies Act, 1960 contains definitions of the different types of Co-operative Societies and a reading of the different provisions of Section 2 defining different types of Co-operative Societies would show that different types of Co-operative Societies have been defined keeping in mind the object for which the Co-operative Societies are formed. Section 10 (1) of the said Act further provides that the Registrar shall classify all societies under one or more of the heads mentioned therein and Section 10(1-a) further provides that the Registrar may further classify the societies falling under any of the heads specified in sub-section (1) as Apex Society, Central Society or Primary Society. Section 31 of the said Act also provides that the registration of the Co-operative Society shall render it a body corporate by the name under which it is registered, having perpetual succession and a common seal, and with power to hold property, enter into contracts, institute and defend suits and other legal proceedings and to do all things for the purposes for which it was constituted. Hence, unless a Co-operative Society is constituted with the object of distributing or selling essential commodities to its members and to other people in the area, and is registered and classified as such under the said Act, such a Co-operative Society will not be authorised under law to distribute or sell the essential commodities at fair price shops to the ration cardholders. Sub-clause (3) and (4) of Clause 9 of the Order 2004 provide for allotment of fair price shops to primary Credit Co-operative Societies and other Co-operative Societies even though primary Credit Co-operative Societies and some of the other Co-operative Societies are not authorised as per the provisions of the said Act to carry on the activity of distributing or selling essential commodities to ration cardholders and to that extent are illegal.

(26) Mr. Kanak Tiwari, learned counsel for the petitioner further submitted that in sub-Clause 3(c) of Clause 9 of the Order 2004 a provision has been made that sales persons of all fair price shops operating in ITDP areas shall be appointed from the BPL families of local tribal communities and sub-Clause 3(d) of Clause 9 of the Order 2004 provides that 33% of all salespersons in ITDP area should be tribal women. He pointed out that similarly sub-Clause (7) of Clause 9 of the Order 2004 provides that the Scheduled Caste and Other Backward Caste have to be given priority in making appointments of sales person and at least 33% of all the sales persons have to be women and 10% have to be disabled. He vehemently argued that the fair price shop owner is the employer of the sales persons for the fair price shops and the State Government cannot by an order made under Section 3 of the Act force the employer to employ tribal women, Scheduled Caste persons, Other Backward Caste persons and disabled persons as salesmen in the fair price shops. He submitted that in any case such provisions for employing all sales persons of fair price shop in ITDP area from among the BPL families of local tribal communities and all sales persons of fair price shops in other areas from amongst Scheduled Caste and Other Backward Classes are contrary to the law laid down by the Supreme Court that there cannot be 100% reservation in employment in favour of Scheduled Caste, Scheduled Tribe and Other Backward Class. In support of this submission, he cited the decision of the Supreme Court in *Indra Sawhney Vs. Union of India*, 1992 Supp. (3) SCC 217.

(27) Mr. Prashant Mishra, learned Additional Advocate General, on the other hand, submitted that the objective of the provisions in said sub-Clauses (3), (4) and (7) of Clause 9 of the Order 2004 for employing sales persons from among the BPL families of local tribal communities, Scheduled Caste community, OBC community, women and disabled persons is not to make any reservation in their favour in employment but to ensure that the interest of tribals, Scheduled Caste, OBCs, women and disabled are protected while operating the public distribution system.

(28) The Government may make provisions in the Order 2004 for employing sales persons from BPL families, Scheduled caste community, OBC community, women and disabled persons so that the interest of these vulnerable sections of the society are protected while operating the public distribution system, but such provisions in the Order 2004 cannot be discriminatory and violative of Article 14 of the Constitution. We find it difficult to accept that employment of any sales persons in an ITDP area who does not belong to the tribal communities and of any sales person in other areas who does not belong to the Scheduled Caste or OBC communities would be detrimental to the operation of the public distribution system in the ITDP or other areas. Jeevan Reddy, J has held in *Indra Sawhney Vs. Union of India* (supra) that the principal aim of Articles 14 and 16 of the Constitution is equality and equality of opportunity and that clause (4) of Article 16 is a means of achieving the very same objective. Paragraphs 808, 809 and 810 of the judgment of Jeevan Reddy, J which are relevant are quoted herein below:

“808. It needs no emphasis to say that the principal aim of Articles 14 and 16 is equality and equality of opportunity and that clause (4) of Article 16 is but a means of achieving the very same objective. Clause(4) is a special provision - though not an exception to clause (1). Both the provisions have to be harmonised keeping in mind the fact that both are but the re-statements of the principle of equality enshrined in Article 14. The provision under Article 16(4) - conceived in the interest of certain sections of society - should be balanced against the guarantee of equality enshrined in clause (1) of Article 16 which is a guarantee held out to every citizen and to the entire society. It is relevant to point out that Dr. Ambedkar himself contemplated reservation being “confined to a minority of seats” (See his speech

in Constituent assembly, set out in para 693). No other member of the Constituent assembly suggested otherwise. It is, thus, clear that reservation of a majority of seats was never envisaged by the Founding Fathers. Nor are we satisfied that the present context requires us to depart from that concept.

809. From the above discussion, the irresistible conclusion that follows is that the reservations contemplated in clause (4) of Article 16 should not exceed 50%.

810. While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in farflung and remote areas the population inhabiting those areas might, on account of their being out of the mainstream of national life and in view of conditions peculiar to and characteristic to them, need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out.”

Even though employment under the fair price shops owned by private agencies and not State agencies may not be covered under Article 16 of the Constitution, any provision made by the State for employment of sales persons in fair price shops run by private or state agencies under the public distribution system of the State Government cannot be discriminatory and violative of Article 14 of the Constitution. As has been held by Jeevan Reddy, J in the aforesaid judgment in the case of *Indra Sawhney Vs. Union of India* (supra) as a normal rule reservation in any employment should not exceed 50% but there may be population inhabiting far flung and remote areas which are out of the mainstream of national life and in view of the conditions peculiar to these areas there may be need for relaxation of the strict rule of 50% reservation in employment in these areas. Applying this test, more than 50% reservation for tribal communities for employment of sales persons in ITDP areas may be justified but 100% reservation in the matter of appointment of sales persons of fair price shops from tribal communities, we are afraid, will be discriminatory and violative of Article 14 of the Constitution. The provision in Sub clause (3)(c) or Clause 9 of the Order 2004 which provides for appointment of sales persons of fair price shops in ITDP areas from the BPL families of local tribal communities is therefore ultra vires Article 14 of the Constitution. Similarly, the provision in Sub clause (7) of Clause 9 of the Order 2004 that the sales persons in fair price shops in other areas will be appointed on the basis of priority only from amongst scheduled caste and other backward caste is a provision of 100% reservation for scheduled caste and other backward caste and is ultra vires Article 14 of the Constitution. But the provisions for reservation in favour of the women upto 33% in the matter of appointment of sales persons of fair price shops cannot be held to be ultra vires Article 14 of the Constitution. Similarly, the provision of 10% reservation for disabled persons for employment in fair price shops in sub clause (7) of Clause 9 of the Order 2004 cannot be held to be ultra vires Article 14 of the Constitution.

(29) Mr. P.K.C. Tiwari learned counsel for the petitioner in Writ Petition No.2600 of 2005 submitted that the petitioner is a Co-operative Society and Clause 9(1) of the Order 2004 provides that fair price shops will be continued to be run by Co-operative Societies and yet the order dated 13/05/2005 in Annexure-P/1 has been issued to the petitioner cancelling the allotment of fair price shop in favour of the petitioner. We fail to see as to why the impugned order has been issued cancelling the allotment of fair price shop in favour of the petitioner when a clear provision has been made in Clause 9(1) of the Order 2004 for continuance of Co-operative Societies as fair price shops. If

under the agreement between the petitioner and the State Government the petitioner is to continue as fair price shop for certain tenure, the tenure of the petitioner to run fair price shop cannot be shortened by cancelling the allotment of the fair price shop in favour of the petitioner except in accordance with terms of the agreement between the petitioner and the State Government.

(30) It was next contended by Mr. Prashant Jayaswal, learned counsel appearing for the petitioner that the Order 2004 in so far as it excludes private persons from running fair price shops is violative of the fundamental right of the petitioner under Article 19 (1)(g) of the Constitution to carry on any trade or business. He cited the judgment of the Andhra Pradesh High Court in District Collector, Hyderabad Vs. M/s. Ibrahim and Company and others, AIR 1966 Andhra Pradesh 310. Mr. Rajesh Pandey learned counsel for the petitioner similarly submitted that the petitioner has fundamental right under Article 19(1)(g) of the Constitution and the International covenants 1966 to carry on any trade of business and this right of the petitioners who are private persons have been taken away by the Order 2004. Mr. Rajeev Shrivastava learned counsel for the petitioner submitted that by the Order 2004 the State Government has created a monopoly in favour of the Co-operative Societies and other agencies specified in the said Order and has excluded all private persons from carrying on their business in furtherance of their right under Article 19(1)(g) of the Constitution and such creation of monopoly in favour of the Co-operative Societies and other agencies was not permissible under Article 19 (6) of the Constitution. He relied on the decision of Gujarat High Court in Ramanlal Nagardas and Others Vs. M.S. Palnitkar & another (supra) in support of this submission. Mr. Sudhir Verma learned counsel for the petitioner similarly submitted that the petitioners were carrying on the business of fair price shops and the Order 2004 in so far as it prohibits the petitioners from carrying on the business of fair price shops has affected the fundamental right to carry on their business under Article 19(1)(g) of the Constitution. In support of this submission he has cited the decision of the Punjab High Court in Shivji Nathubhai Vs. Union of India, AIR 1959 Punjab 510.

(31) This contention of the learned counsel appearing for the petitioners that the Order 2004 inasmuch as it excludes private persons altogether from carrying on the business or trade of fair price shops is wholly misconceived. This is because fair price shops are agencies of the State Government for supply of essential commodities to ration cardholders under the public distribution system and no citizen has fundamental right to carry on trade or business through such agencies set up by the State Government for supply of essential commodities to ration cardholders under the public distribution system. This will be clear from the definitions of “Fair Price Shop” in Clauses 2 (1)(e) of the Order 2004 which are quoted herein below:

“2(1)(e): “Fair Price Shop” means a shop setup by the State Government with agreement for supply of essential commodities to ration cardholders of Public Distribution System under this Order. {Emphasis supplied}.

Moreover, by the Order 2004 the private persons are not prohibited altogether from carrying on business or trade in essential commodities. They can still carry on their trade or business of selling of essential commodities in terms of a licence issued under the orders made under Section 3 of the Act, but if they are private persons, they will not be allowed to run fair price shops set up by the State Government for supply of essential commodities to ration cardholders under the public distribution system. The Order 2004, therefore, does not in any way affect the fundamental right of the petitioners who are private persons to carry on business or trade of essential commodities. This position of law has been clarified by the Supreme Court in Sarkari Sasta Anaj

Vikreta Sangh, Tehsil Bemetra and others Vs. State of Madhya Pradesh and others. The relevant passage from the judgment of the Supreme Court in the said case is quoted herein below:

“The fundamental right of traders like the petitioners to carry on business in foodstuffs was in no way affected. They could carry on trade in foodstuffs without hindrance as dealers; only, they could not run fair price shops as agents of the Government. No one could claim a right to run a fair price shop as an agent of the Government. All that he could claim was a right to be considered to be appointed as an agent of the Government to run a fair price shop. If the Government took a policy decision to prefer co-operative societies for appointment as their agents to run fair price shops, in the light of the frustrating and unfortunate experience gathered in the last two decades, we do not see how we can possibly hold that there was any discrimination.

(32) In *District Collector, Hyderabad Vs. M/s. Ibrahim and Company and others* (supra) the State Government had passed a Government order dated 30th December 1964 by which the entire quota of sugar allotted to the cities of Hyderabad and Secunderabad was directed to be handed over exclusively to a Co-operative Society and it was mentioned in the Government Order that the Government had decided that Co-operative Society as the wholesale dealer in the district should be given the monopoly distribution. As a direct consequence of this Government Order, the allotment of sugar to the petitioners in that case was stopped and the Co-operative Society concerned became the only recognised dealer entitled to lift the entire quota for the purposes of distribution and sale in the twin cities. Thus, the stocks which were necessary for carrying on trade by recognised dealers were no longer available to the petitioners in that case who were recognised dealers with the result that their trade in sugar came to a halt. It is on these facts that a Division Bench of Andhra Pradesh High Court held that the said Government Order dated 30/12/1964 issued by the State Government was an executive order which interfered with the proper working of Andhra Pradesh Sugar Dealers Licensing Order of 1963 and Sugar Control Order, 1963 and tends to hold in abeyance and defeat the rights of the traders which are expressly or by necessary implication recognised by the said Andhra Pradesh Sugar Dealers Licensing Order, 1963 and Andhra Pradesh Sugar Control Order 1963 and therefore violated the fundamental rights of the petitioners guaranteed by the Constitution of India under Article 19(1)(g). In the present case, as we have seen, the Order 2004 does not interfere with the fundamental right essential commodities in terms of a licence issued under the order made under Section 3 of the Act but it only excludes them from being appointed as fair price shop agents by the State Government for distribution of essential commodities and in particular foodstuffs to the ration cardholders under the public distribution system.

(33) *Shivji Nathubhai Vs. Union of India* (supra) cited by Mr. Sudhir Verma learned counsel for the petitioner is a decision on the Mines and Minerals (Regulation and Development) Act, 1948 and the Mineral Concession Rules, 1949 and in the said decision the Punjab High Court has held that the right to work a mine upon another's land is in no way analogous to the fundamental right of a citizen to carry on trade and buy and sell in the open market. The said decision does not in any way apply to the facts of the present case. In the said decision it has been held that the owner of immovable property has every right to refuse to lease it out to another and an intending lessee has no fundamental right to claim that the property should be leased out to him. Similarly, under the Order 2004, the State Government can formulate its own scheme for excluding private persons from running fair price shops through which the Government distributes essential commodities

at fair prices under the public distribution system and a private person cannot claim any fundamental right to run a fair price shop set up by the State Government under such public distribution system.

- (34) Mr. Manindra Shrivastava, learned counsel for the petitioner, next submitted that under Section 3 of the Act power has been vested in the Central Government to make an order for securing the equitable distribution and availability of essential commodities at fair prices and Section 5 of the Act enables the Central Government to delegate its power in relation to specific matters by a notified order to State Government. He submitted that the State Government, therefore, exercises the power under Section 3 of the Act as a delegate of the Central Government. He cited the decision of the Supreme Court in *Hamdard Dawakhana Vs. Union of India*, AIR 1960 SC 554, and in *Agricultural Market Committee Vs. Shalimar Chemical Works Ltd.*, (1997) 5 SCC 516, for the proposition that a delegate cannot exceed the power conferred on it by the delegation. He also relied on the decision of the Supreme Court in the *District Collector, Chittoor and others Vs. The Chittoor District Groundnut Traders Association*, AIR 1989 SC 989, in which the Supreme Court has held that the State Government while making an order under Section 3 of the Act as a delegate of the Central Government is not entitled to exercise power in excess of the delegated powers and if any order is issued by the State Government in excess of the powers delegated to it such order would be illegal and void. Developing this argument, Mr. Shrivastava submitted that the Central Government has also framed the Public Distribution System (Control) Order, 2001 in which there is no provision whatsoever to the effect that private persons will not be allowed to run fair price shop. He referred to the definitions of “fair price shop” and “fair price shop owner” in Clauses 2(j) & (k) of the Public Distribution System (Control) Order, 2001 made by the Central Government to show that it may also include a private person. He pointed out that Clause 14 of the said Public Distribution System (Control) Order, 2001 made by the Central Government further provides that the provisions of the said Order shall have effect notwithstanding anything to the contrary contained in any made Order by a State Government or by an Officer of the State Government before the commencement of the said Order 2001. He submitted that Clause 5 of the Annexe to the said Public Distribution System (Control) Order, 2001 further provides that the State Government shall issue an order under Section 3 of the Act for regulating the sale and distribution of the essential commodities and the licences to the fair price shop owner shall be issued under the said order and shall lay down the duties and responsibilities of the fair price shop owner. He submitted that the State Government, therefore, was only required to issue an order under Section 3 of the Act in terms of Clause 5 of the Annexe to the Public Distribution System (Control) Order, 2001 made by the Central Government providing for terms and conditions of the licences to the fair price shops and other matters as enumerated in the said Clause 5 of the Annexe to the Public Distribution System (Control) Order, 2001 could not introduce altogether new provision in such an order under Section 3 of the Act that private persons will not be allowed to run fair price shops in the State of Chhattisgarh. Hence Clause 9 (1) of the Order 2004 made by the State Government prohibiting allotment of fair price shops to private persons was in excess of the powers delegated to it by the Central Government under Section 5 of the Act and the Order 2004 should be held by the Court as ultra vires and void. Mr. Rajesh Pandey, learned counsel for the petitioner, further submitted that the word “person” in the definition of “fair price shop owner” in the Public Distribution System (Control) Order 2001 would include a natural person and therefore a private individual could also be a “fair price shop owner” as per the said Order made by the Central Government.

(35) Mr. Prashant Mishra, learned Additional Advocate General, for the State of Chhattisgarh, on the other hand, submitted that the delegation of the power of the Central Government under Section 3 of the Act has been made to the State Governments by Order No. GSR 800, dated 9th June 1978 and in exercise of such delegated power the State Government has made the Order 2004 under Section 3(1) of the Act for securing equitable distribution and availability of food grains at fair prices to vulnerable sections of the society. He submitted that such delegated powers have to be exercised by the State Government subject to directions, if any, as may be issued by the Central Government and therefore the State Government cannot make an order under Section 3(1) of the Act in contravention of the directions of the Central Government. He submitted that there is no specific direction in the Public Distribution System (Control) Order, 2001 made by the Central Government to the effect that private persons should be allotted fair price shop by the State Government and for this reason the Order 2004 in so far it states that the fair price shops run by private persons will not be continued after the Order 2004 and shall be cancelled and allotted to agencies specified in the Order 2004 is not in contravention of the provisions of Public Distribution System (Control) Order, 2001.

(36) Section 5 of the Act which provides for delegation of the power of the Central Government to other authorities including the State Government is quoted herein below:

“5. Delegation of power: - The Central Government, may by notified order, direct that the power to make orders or issue notifications under Section 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by-

(a) such officer or authority subordinate to the Central Government;

or

(b) such State Government or such officer of authority subordinate to a State Government, as may be specified in the direction.” A reading of Section 5 of the Act quoted above shows that the Central Government by a notified order may direct that the power to make orders or issue notification under Section 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by the authorities mentioned in the said Section and the State Government is one such authority. Hence, the powers of the State Government to make an order under Section 3 of the Act is to be exercised only in such matters and subject to such conditions as may be specified in the notified order of the delegation made by the Central Government under Section 5 of the Act. The Public Distribution System (Control) Order, 2001 made by the State Government does not direct that the power to make any order or issue a notification under Section 3 of the Act in relation to foodstuffs and other essential commodities sought to be distributed through the public distribution system shall also be exercisable by the State Government. Hence, the Public Distribution System (Control) Order, 2001 made by the Central Government cannot be held to be notified order delegating the power to make an order under Section 3 of the Act to the State Government in relation to foodstuffs or any other essential commodities. In other words, the Public Distribution System (Control) Order, 2001 made by the Central Government does not constitute the charter of delegation in favour of the State Government.

(37) The charter of delegation made by the Central Government in favour of the State Government in terms of the Section 5 of the Act to issue an order or notification under Section 3 in relation to foodstuffs is the Central Government Order No. GSR 800 dated 9th June, 1978 which is quoted herein below:

“Central Government Order No. G.S.R. 800, dated the 9th June 1978 [Published in Gazette of India, Part II, Section 3, Sub-Section (1), Dated 17th June 1978/27 Jyaistha, 1909 (Saka)]

MINISTRY OF AGRICULTURE AND IRRIGATION (Department of Food) In exercise of the powers conferred by section 5 of the essential Commodities Act, 1955 (10 of 1955) and in supersession of the Order of the Government of India in the late Ministry of Agriculture (Department of Food) No. G.S.R. 316 (E), dated the 20th June 1972, the Central Government hereby directs that the power conferred on it by sub-section (1) of section 3 of the said Act to make orders to provide for the matters specified in clause (a), (b), (c), (d), (e), (f), (g), (h), (i), (ii), and j) of sub-section (2) thereof shall, in relation to foodstuffs be exercisable also by a State Government subject to the conditions:

- (1) that such powers shall be exercised by a State Government subject to such directions, if any, as may be issued by the Central Government in this behalf;
- (2) that before making an order relating to any matter specified in the said clauses (a), (c) or (f) or in regard to distribution or disposal of foodstuffs to places outside the State or in regard to regulation of transport of any foodstuff, under the said clause (c), the State Government shall also obtain the prior concurrence of the Central Government; and
- (3) that in making an order relating to any of the matters specified in the said clause (j) the State Government shall authorities only an officer of Government.”

A plain reading of the aforesaid Central Government Order No. G.S.R. 800 dated 9th June 1978 would show that the Central Government has delegated the power conferred on it by sub-section (1) of Section 3 of the Act in relation to foodstuffs to the State Governments subject to the conditions specified in the said Order and the first condition specified in the said Order is that such powers would be exercisable by the State Government subject to such directions, if any, as may be issued by the Central Government in this behalf. The State Government, therefore, could make an order under sub-section (1) of the Section 3 of the Act for securing equitable distribution of foodstuffs and their availability at fair prices through public distribution system for vulnerable sections of the society in the State of Chhattisgarh, but while making such order it cannot transgress any directions made by the Central Government in the Public Distribution System (Control) Order, 2001. Clauses 2(j), (k) and 7 (1) of the Public Distribution System (Control) Order, 2001 and paragraph 5 of the Annexe to the said order are extracted here in below:

- “2 (j) ‘fair price shop’ means a shop, which has been licensed to distribute essential commodities by an order issued under Section 3 of the Act, to the ration card holders under the Public Distribution System;
- (k) ‘fair price shop owner’ means a person and includes a co-operative society or a corporation or a company of a state Government or a Gram Panchayat or any other body in whose name a shop has been licensed to distribute essential commodities under the Public Distribution System.
7. Licensing: - (1) The procedure for issue of licenses or authorisation to the fair price shops for the distribution of essential commodities under Public Distribution System and duties

and responsibilities of the fair price shop owners shall be as per paragraph 5 of the Annexe to this Order.

Annexe TO THE PUBLIC DISTRIBUTION SYSTEM (CONTROL) ORDER, 2001

5. Licensing: - State Governments shall issue an order under section 3 of the Act for regulating the sale and distribution of the essential commodities. The licenses to the fair price shop owner shall be issued under the said order and shall lay down and the duties and responsibilities of the fair price shop owner. The responsibilities and duties of fair price shop owners shall include, inter alia:
- (i) sale of essential commodities as per the entitlement of ration card holders at the retail issue prices fixed by the concerned State Government under the Public Distribution System;
 - (ii) display of information on a notice at a prominent place in the shop on daily basis regarding
 - (a) list of BPL and Antyodaya beneficiaries,
 - (b) entitlement of essential commodities,
 - (c) scale of issue,
 - (d) retail issue prices,
 - (e) timings of opening and closing of the fair price shop,
 - (f) stock of essential commodities received during the month
 - (g) opening and closing stock of essential commodities and
 - (h) the authority for redressal of grievances/lodging complaints with respect to quality and quantity of essential commodities under the Public Distribution System;
 - (iii) maintenance of records of ration card holders (APL, BPL and Antyodaya), stock register, issue or sale register;
 - (iv) furnishing of copies of specified documents, namely, ration card register, stock register, sale register to the office of the Gram Panchayat or Nagar Palika or Vigilance Committee or any other body authorised by State Governments for the purpose;
 - (v) display of samples of foodgrains being supplied through the fair price shop;
 - (vi) production of books and records relating to the allotment and distribution of essential commodities to the inspecting agency and furnishing of such information as may be called for by the designated authority;
 - (vii) accountable of the actual distribution of essential commodities and the balance stock at the end of the month to the designated authority of the concerned State Government with a copy to the Gram Panchayat;
 - (viii) opening and closing of the fair price shop as per the prescribed timings displayed on the notice board.

A plain reading of the aforesaid clauses 2(j) and 2(k) of the Public Distribution System (Control) Order, 2001 made by the Central Government would show that fair price shop means a shop which has been licensed to distribute essential commodities by an order issued under Section 3 of the Act to the ration card holders under the public distribution system, and fair price shop owner means a person in whose name a shop has been licensed to distribute the essential commodities under the public distribution system. Clause 7 of the Public Distribution System (Control) Order, 2001 made by the Central Government further provides that the procedure for issue of licenses or authorisation to the fair price shops for the distribution of essential commodities under public distribution system and duties and responsibilities of the fair price shop owners shall be as per paragraph 5 of the Annexe to the Order. Para 5 of the Annexe to the Order quoted above provides that the State Government shall issue an order under Section 3 of the Act for regulating the sale and distribution of the essential commodities and the license to

the fair price shop owner shall be issued under the said order and such licence shall lay down the duties and responsibilities of the fair price shop owner. It is thus clear that under the Public Distribution System (Control) Order, 2001 the Central Government has left it to the State Government to make an order under Section 3 of the Act for regulating the sale and distribution of essential commodities through the public distribution system to vulnerable sections of the society and to provide for issue of licences under such order made under Section 3 of the Act to persons incorporating the responsibilities and duties to fair price shop owners. The Central Government has left it to the State Government to decide as to the persons in whose favour the licences should be issued to run the fair price shops and it is for the State Government to decide as to whether such persons would be private persons or Co-operative Societies, Corporations, company, Gram Panchayat or any other body. There is nothing in the provisions of the Public Distribution System (Control) Order, 2001 directing that individuals or private persons are to be conferred licences to distribute essential commodities through fair price shop. The contention of the learned counsel for the petitioners that the Order 2004 made by the State Government is in excess of the power delegated to the State Government by the Central Government or is in contravention of the directions in the Public Distribution System (Control) Order, 2001 therefore has no merit.

- (38) Mr. Kanak Tiwari, learned counsel for the petitioner submitted that Section 3(1) of the Act only provides for an opinion to be formed by the Central Government about the necessity or expediency of making any order for maintaining or increasing supplies of any essential commodity or for securing equitable distribution and availability at fair prices, or for providing for regulating or prohibiting the production supply and distribution thereof and trade and commerce therein and Section 3 (2) of the Act provides for making of an order. According to Mr. Tiwari any order under Section 3 of the Act has therefore to be made under Sub Section (2) of Section 3 of the Act and not under Sub-section (1) of Section 3 of the Act and the Order 2004 was thus an order under Sub-section (2) of Section 3 of the Act. He further submitted that the language of the Central Government Order No.GSR 800 dated 9th June 1978 would show that the power to make orders to provide for matters specified in Clauses (c) and (d) of Sub Section (2) of Section 3 of the Act in relation to foodstuffs can be exercised by the State Government subject to conditions that before making such order the State Government shall obtain prior concurrence of the Central Government. He pointed out that Clause (c) of Sub Section (2) provides for an order for controlling the price at which any essential commodity may be bought or sold and Clause (d) of Sub Section (2) of Section 3 of the Act provides for regulating by licences, permits or otherwise inter alia the transport of any essential commodity. He argued that the State Government, before making any order controlling the price at which an essential commodity may be bought or sold or regulating the licences, permits or otherwise the transport of any essential commodity, has to obtain the prior concurrence of the Central Government under the second condition mentioned in the Central Government Order No.GSR 800 dated 9th June, 1978. He pointed out that Clause 5 (10) of the Order 2004 provides for transportation of all essential commodities including foodstuffs and Clause 11(5) of the Order 2004 provides for sale of essential commodities including foodstuffs at retail issue price as has been specified from time to time by the State Government. He vehemently argued that these are provisions for controlling price of essential commodities and for regulating transport of essential commodities in the Order 2004 which could not have been made by the State Government without prior concurrence of the Central Government. In support of this submission he relied on the decision of the Supreme Court in District Collector, Chittoor and others Vs. The Chittoor District Groundnut Traders Association (supra) and Nagrik Upbhokta M. Manth Vs. Union of India and others, (2002) 5 SCC 466.

(39) In reply, Mr. Prashant Mishra, learned Additional Advocate General submitted that the Order 2004 is not an order under sub-Section (2)(c) and (d) of Section 3 of the Act but is an order under sub-Section (1) of Section 3 of the Act for distribution and sale of essential commodities at fair prices through fair prices shops and hence no prior concurrence of the Central Government was required before making the Order 2004. He submitted that sub-Section (2) (c) of Section 3 of the Act provides for an order for controlling the price at which any essential commodity may be bought or sold, but the Order 2004 does not make any provision for controlling the price at which any essential commodities are bought or sold. He further pointed out that sub-Section 2 (d) of Section 3 of the Act provides for an order for regulating by licences, permits or otherwise transport of any essential commodity. But the Order 2004 does not provide for regulating the transport of any essential commodities by licence. He explained that the provisions in the Order 2004 are for sale by fair price shop owners at prices to be fixed by the State Government and for transport of the essential commodities but do not relate to control of price or regulation of transport of essential commodities. He relied on the decision of the Supreme Court in *K. Ramnathan vs. State of Tamil Nadu & Another*, AIR 1985 SC 660 and in *Maharashtra Rajya Sahakari Sakkar Karkhana Sangh Ltd. & Others vs. State of Maharashtra & Others*, 1995 Supp (3) SCC 475 in support of his aforesaid submissions that the Order 2004 is an order under sub-Section (1) of the Section 3 of the Act and not an order under sub-Section (2) (c) and (d) of Section 3 of the Act.

(40) Sub section (1) of Section 3 and Sub section (2) Clauses (c) and (d) on which the argument of Mr. Tiwari is based are quoted herein below:

“3. Power to control production, supply distribution, etc., of essential commodities. - (1) If the Central Government is of the opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, or for securing any essential commodity for the defence of India or the efficient conduct of military operations, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred by sub- section (1), an order made thereunder may provide -

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) for controlling the price at which any essential commodity may be bought or sold;

(d) for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of, any essential commodity.”

Under sub-section (1) of Section 3 of the Act a general power has been vested in the Central Government to make an order providing for regulating or prohibiting the production, supply and distribution of essential commodities and trade and commerce therein if the Central Government is of the opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing equitable distribution and availability of fair prices. Sub- section (2) of Section 3 of the Act provides that without prejudice to the generality of the powers conferred by Sub section (1) such an order under Sub section (1) may provide for the different matters specified in different clauses therein. Interpreting Sub sections (1) and (2) of Section 3 of the Act, the Supreme Court in *K. Ramnathan vs. State of Tamil Nadu & Another* (supra) has held that Sub Section (2) of Section 3 of the Act confers no fresh powers but is merely illustrative of the general powers conferred by Sub section (1) of Section 3 without exhausting the subjects in relation to which such powers can be exercised. In support of the said

view the Supreme Court has quoted following observations of Shastri, J in an earlier decision in Santosh Kumar Jai Vs. The State, AIR 1951 SC 201, on the relevant functions of Sub sections (1) and (2) of Section 3 of the Act:

“It is manifest that sub-section (2) of s. 3 confers no further or other powers on the Central Government than what are conferred under sub-section (1), for it is “an order made thereunder” that may provide for one or the other of the matters specifically enumerated in sub- s. (2) which are only illustrative, as such enumeration is “without prejudice to the generality of the powers conferred by sub-section (1).”

Hence, the argument of Mr. Kanak Tiwari learned counsel for the petitioner that under Sub section (1) of Section 3 of the Act the Central Government only forms an opinion as to whether any order should be made providing for regulating or prohibiting the production, supply and distribution of essential commodities and trade and commerce therein for maintaining or increasing supplies of any essential commodity or for securing equitable distribution and availability at fair prices and that after formation of such opinion the order is passed only under sub section (2) of Section 3 of the Act is not correct. The Central Government can make an order under Sub section (1) of Section 3 of the Act providing for regulating or prohibiting the production, supply and distribution of essential commodities and trade and commerce therein if it is of the opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices and if the Central Government by a notified order delegates the said power under Section 5 of the Act to the State Government, that the State Government can also pass similar order under Sub-section (1) of Section 3 of the Act.

(41) In fact, in exercise of such power under Section 3(1) of the Act as delegated to it under Section 5 of the Act by the Central Order No. GSR 800 dated 9th June 1978, the State Government appears to have made the Order 2004 providing for regulating the supply and distribution of foodstuffs for securing equitable distribution of foodstuffs and their availability at fair prices for the vulnerable sections of the society. The Order 2004 is titled “Chhattisgarh Public Distribution System (Control) order, 2004” and provides for a system for distribution of essential commodities to ration cardholders through the fair price shops such as rice, wheat, kerosene and salt etc. Clause 11 of the Order 2004 is titled “Responsibilities of Fair Price Shopkeeper” and sub clause (5) of Clause 11 provides as follows:

“11. Responsibilities of Fair Price

Shopkeeper: -

(1)xxx xxx xxx

(2)xxx xxx xxx

(3)xxx xxx xxx

(4)xxx xxx xxx

(5) Fair Price Shopkeeper shall sell essential commodities in such quantities and at the retail issueprice as may be specified from time to time by the State Government to those consumers whose ration cards have been registered at her/his shop. Fair Price Shopkeeper shall not sale any essential commodities without ration card.”

The aforesaid sub clause (5) of Clause 11 of the Order 2004, in our considered opinion, is not a provision for controlling the price at which any essential commodity may be bought or sold, but is a provision imposing a responsibility or duty upon fair price owner to sell essential commodities

at retail issue prices fixed by the State Government under the public distribution system and this provision has been made in Clause 11(5) of the Order 2004 in view of the directions in para 5 of the Annex to the Public Distribution System (Control) Order, 2001 made by the Central Government that the responsibilities and duties of fair price shop owner shall include inter alia the sale of essential commodities as per entitlement of ration cardholders at retail issue price fixed by the concerned State Government under the public distribution system. Sub clause (10) of Clause 5 of the Order 2004 further provides as under:

“5. Lifting Storage, Transportation and distribution:-

(1) xxx xxx xxx to (9) xxx xxx xxx

(10) The designated authority of Collectors, District Manager, Chhattisgarh State Civil Supplies Corporation Limited and concerned agencies engaged in transportation of all essential commodities covered under the PDS including foodgrains, kerosene, sugar and salt shall ensure that stocks of essential commodities under the Public Distribution System, as issued from the Chhattisgarh State Civil Supplies Corporation Limited godowns and godowns of other agencies dealing with kerosene are not replaced by stocks of inferior quality during storage, transit or any other stage.”

The aforesaid provision in Sub Clause (10) of Clause 5 of the Order 2004 only provides that the agencies engaged in transportation of all essential commodities covered under the PDS shall ensure that the stocks of essential commodities under the Public Distribution System are not replaced by stocks of inferior quality during storage, transit or any other stage. The aforesaid provision in Clause 5 (10) of the Order 2004, in our considered opinion, is not a provision for regulating by licences, permits or otherwise the transport of any essential commodity within the meaning of Clause (d) of sub-Section(2) of Section 3 of the Act. The aforesaid provision in sub-Clause (10) of Clause 5 of the Order 2004 only provides that the concerned agencies engaged in transportation of all essential commodities under the Public Distribution System would ensure that the essential commodities being transported are not replaced by stocks of inferior quality and does not regulate transportation of essential commodities. This provision in sub-Clause (10) of Clause 5 of the Order 2004 has been made in consonance with the directions in Clause 4(10) of the Public Distribution System (Control) Order, 2001 made by the Central Government that the State Government shall ensure that the stocks of essential commodities under the Public Distribution System, as issued from the FCI godowns, are not replaced by stocks of inferior quality till the delivery of the ration card holder. Mr. Tiwari is thus not right in making the submission that the Order 2004 makes provisions for matters specified in Clauses (c) and (d) of Section 3(2) of the Act for controlling prices at which essential commodities are bought or sold and for regulating transport of essential commodities. There is, therefore, no merit in the contention of Mr. Kanak Tiwari, learned counsel for the petitioner that the Order 2004 required prior concurrence of the Central Government and in the absence of such prior concurrence of the Central Government, the same was illegal and void.

(42) Mr. Kanak Tiwari, learned counsel for the petitioners, submitted that Sub-clause (4)(c) of Clause 9 of the Order 2004 provides that Other Consumer Co-operative Societies shall be registered under Chhattisgarh Co-operative Societies Act, 1960 and Sub-clause (5) of Clause 9 of the Order 2004 further provides that fair price shops shall be allotted to only those other Co-operative Societies which are registered on or before 1st November 2000. He submitted that the effect of these provisions in the Order 2004 is that the Consumer Co-operative Societies and Other Co-operative Societies which have been registered under the Chhattisgarh Swayatya Sahkarita

Adhinyam, 1999 or registered after 1st November 2000 will not be allotted fair price shops under the Order 2004. In this context, he pointed out that the State Government of Chhattisgarh was created on 1st November 2000 and there is absolutely no reason as to why Other Co-operative Societies including the Consumer Co-operatives registered under the said Chhattisgarh Swayatya Sahkarita Adhinyam, 1999 or registered after 1st November 2000 would not be allotted fair price shops by the State Government. He submitted that the petitioners in Writ Petition No.1397 of 2005 were registered after 1st November 2000 under the said Chhattisgarh Swayatya Sahkarita Adhinyam, 1999 and have been allotted fair price shops by the State Government and have entered into agreements with the State Government for running the fair price shops, but on account of the aforesaid provisions in Sub-clauses (4)(c) and (5) of Clause 9 of the Order 2004 the petitioners will not be allowed to run the fair price shops. He pointed out that although the petitioners have challenged the said provisions in Sub-clauses (4)(c) and (5) of Clause 9 of the Order 2004 in para 6: vii of W.P. No.1397 of 2005, no return has been filed by the State Government in the said W.P. No.1397 of 2005.

- (43) We have perused the averments and grounds taken in the aforesaid W.P. No.1397 of 2005 and we find that although the provisions of Sub-clauses (4)(c) and (5) of Clause 9 of the Order 2004 have been challenged in para No.6: vii of the said writ petition as illegal and arbitrary, no reply has been filed on behalf of the State of Chhattisgarh on the said challenge. On a reading of the said Sub-clause (4)(c) of Clause 9 of the Order 2004 it appears that the Consumer Co-operative Societies which would be eligible for allotment of fair price shops under the Order 2004 have to be registered under the Chhattisgarh Co-operative Societies Act, 1960. Hence, Consumer Co-operative Societies which have been registered under the Chhattisgarh Swayatya Sahkarita Adhinyam, 1999 would not be eligible for such allotment of fair price shops under the Order 2004. No reason whatsoever has been indicated by the State of Chhattisgarh in its reply as to why the Consumer Co-operatives which have been registered under the Chhattisgarh Swayatya Sahkarita Adhinyam, 1999 would not be eligible for allotment of fair price shops under the Order 2004. Similarly, on a reading of Sub-clause (5) of Clause 9 of the Order 2004 it appears that the other Co-operative Societies would be eligible for allotment of fair price shops only if they are registered on or before 1st November 2000 but would not be eligible for consideration for allotment of fair price shops under the

Order 2004 if they are registered after 1st November 2000. No reason whatsoever has been indicated by the State of Chhattisgarh in its reply as to why Other Co-operative Societies registered after 1st November 2000 would not be eligible for allotment of fair price shops. There is, therefore, no rational nexus between the differentia adopted in classifying Co-operative Societies in Sub-clauses (4)(c) and (5) of Clause 9 of the Order 2004 for allotment of fair price shops and the said provisions in Sub-clauses (4) and (5) of Clause 9 of the Order 2004 are, in our considered opinion, arbitrary and discriminatory and violative of the equal protection clause under Article 14 of the Constitution.

- (44) In the result, we hold that:
- (i) the provisions in Clause 9(1) of the Order 2004 that fair price shops run by private persons shall not be continued and within six months from the commencement of the Order, fair price shops run by private persons shall be cancelled are not discriminatory and are not violative of Article 14 of the Constitution.
 - (ii) the contract between the petitioners who are private persons and the State Government in so far as it provides for running fair price shops by the petitioners who are private persons

have become unlawful after the expiry of six months' period from the date of enforcement of the Order 2004 and have to be cancelled.

- (iii) The provisions of Sub-clauses (4)(c) and (5) of Clause 9 of the Order 2004 in so far as they provide that Consumer Co-operatives which are not registered under the Chhattisgarh Co-operative Societies Act, 1960 or which are registered after 1st November 2000 will not be allotted fair price shops are ultra vires Article 14 of the Constitution.
- (iv) the provision in Sub Clauses (3) and (4) of Clause 9 of the Order 2004 for allotment of fair price shops to primary Credit Co-operative Societies is ultra vires the Chhattisgarh Co-operative Societies Act, 1960 and only those out of "Other Co-operative Societies" can be allotted fair price shops under the Order 2004 which are permitted under the Chhattisgarh Co-operative Societies Act, 1960 or the Chhattisgarh Swayatya Sahkarita Adhiniyam, 1999 to run fair price shops.
- (v) Co-operative Societies which have been running fair price shops prior to the Order 2004 will continue to run the fair price shops in terms of the agreement between the Co-operative Societies and the State Government for the full period for which the agreement has been made and allotment made in their favour can be cancelled only in terms of the said agreement.
- (vi) the provisions in Sub Clauses (3) and (4) of Clause 9 of the Order 2004 for allotting fair price shops to LAMPS, Gram Panchayats, Women's Self Help Groups and Forest Protection Committees are valid, but the provisions in the said Sub Clauses (3) and (4) of Clause 9 of the Order 2004 providing for reservation and priority in favour of some of the specified agencies in the matter of allotment of fair price shops are ultra vires Article 14 of the Constitution.
- (vii) The agencies specified in the Order 2004 are to be considered for allotment of fair price shops without any priority or reservation in favour of any category of specified agencies and the guideline to be followed for making the allotment of fair price shops as indicated in Section 3 of the Act and the Order 2004 is that fair price shop would be allotted to an agency specified in the Order 2004 which can best distribute essential commodities to the ration cardholders at fair prices in any particular area.
- (viii) Sub clause (3)(c) of Clause 9 in so far as it provides for appointment of all sales persons in the fair price shops operating in ITDP areas from BPL families of local tribal communities is ultra vires Article 14 of the Constitution.
- (ix) Sub clause (7) of Clause 9 of the Order 2004 in so far as it provides for appointment of sales persons in fair price shops in other areas only from among Scheduled Castes and Other Backward Castes is ultra vires Article 14 of the Constitution.

The writ petitions are disposed of with the aforesaid declarations and directions and the interim orders passed by the Court stand vacated. Considering the facts and circumstances of the case, however, the parties shall bear their own cost.

**CHIEF JUSTICE
JUDGE**

06/09/2005 06/09/2005

**PUNJAB & HARYANA HIGH COURT
CASE STATUS INFORMATION SYSTEM**

Case Status : DISPOSED

Status of CIVIL WRIT PETITION 3553 of 2005

VOLUNTARY HEALTH ASSO. OF PUNJAB AND ANR

...PETITIONER

VERSUS

STATE OF PUNJAB AND ORS

...RESPONDENT

Present : Mr. R.S. Bians. Advocate
for the petitioners.

Mr. A.S. Grewal, Addl. AG Punjab
for respondent no. 1.

Mr. Ashish Rawal, Advocate for
Mr. Daya Chaudhary, Assistant Solicitor
General of India, For respondent no. 2.

By this petition, a prayer has been made that the old age pension be released to those who are eligible for the same.

A reply had been filed by respondent no.1- state of Punjab, in which it has been pointed out that the necessary funds have been received from the Government and it was expected that the same would be passed on the Social Security Department.

We also see from the replication filed by the petitioner that these funds have been received by the Department of Social Security.

We accordingly direct that the same shall be disbursed to the eligible persons as per the Scheme, without loss of time.

The writ petition is disposed of as indicated above.

sd/ H.S. Bedi
Acting Chief Justice

11/05/2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Monday, the Twentieth day of March Two Thousand Six

Present

The Hon'ble Mr. Ajit Prakash Shah, The Chief Justice
and

The Hon'ble Mrs. Justice Prabha Sridevan
W.P. Miscellaneous Petition Nos. 38787 & 38788 of 2005
In WPMP 35975/2005

[Petitioners in Both the Petitions]

1. G. Tamilarasan
2. V. Ayyamal
3. P. Balasubramanian

Vs.

[Respondents in both the petitions]

1. State of Tamilnadu
Rep. By its secretary co-operative
food and consumer protective dept.
Govt. of Tamilnadu,
2. District collector,
Tuticorin
3. Joint Registrar
Co-operative Societies, Tuticorin
4. 0.522 Kovilpatti Agricultural
Producers, Co-operative Marketting Society,
Ettaiyapuram Road, Kobilpatti, Tuticorin,
5. The Director
Central Bureau of Investigation, New Delhi

Petitions praying that in these circumstances stated therein and in the respective affidavits filed therewith the High Court will be pleased to (i) direct the fourth respondent to produce the sale registers of the nineteen retain outlets and records of kerosene supplied to these outlets (in WPMP No. 38787/05) and (ii) direct the fourth respondent to produce the list of consumers who come within the jurisdiction of the fourth respondent shop before this Hon'ble Court (in WPMP No. 38788/05) pending WP. No. 35975/2005 respectively.

Order: These petitions coming on for orders upon perusing the petitions and the respective affidavits filed in support thereof and upon hearing the arguments of M/S. D. Geetha, Advocate for the petitioner in both the petitions and of Mr. P.S. Sivashanmuga Sundaram, Addl. Govt. Pleader on behalf of the Respondents the court made the following order:

(Order of the Court was passed by Prabha Sridevan, J.)

1. In this Public Interest Litigation, allegations have been made with regard to some irregularities committed in the supply of Kerosene under the Public Distribution System. It is alleged that many retail shop owners, in collusion with officers of the Civil Supplies Department, have managed to obtain fake ration cards. The petitioners have brought to the notice of this Court some specific instances of fake ration cards.
2. A counter affidavit has been filed by the first respondent denying the allegations. But, in paragraph 9 of the counter, it is admitted that even earlier to the filing of the writ petition, it was found that 16,878 litres of kerosene was found to be billed on cards which were not used by family members and consequently, a fine of Rs. 1,45,150/- was imposed on the salesman of the concerned retail outlet. According to the respondents, there is vigilant supervision by the authorities to prevent misuse of kerosene allocated for supply to eligible ration card holders under the Public Distribution System. In paragraph 7 of the counter, it is stated that action has been taken against the employees concerned on 17.11.2005 on instructions from the Deputy Registrar, Tuticorin Region. The District Collector has also filed a counter affidavit and in paragraphs 8, 9 and 10 thereof, there is a reference to the irregularities.
3. From the above, it is clear that the Public Distribution System which is intended to serve the poor and the needy, is being abused by certain persons. The respondents themselves are aware of it and admit that action is being taken whenever such irregularities are detected.
4. In these circumstances, to ensure that there is a thorough investigation with regard to the issuance of fake ration cards and obtaining kerosene, we appoint the Deputy Inspector General of Police - Southern Zone (C.B.C.I.D.) to conduct an investigation in this matter in respect of the retail outlets referred to by the petitioners in the writ petition and file an action taken report within a period of three months from the date of receipt of a copy of this order. The learned Government Advocate also consents to the entrustment of the investigation to C.B.C.I.D. Post the writ petition after three months.

-sd/-

20/03/2006

/True Copy/

Sub Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

IN THE HIGH COURT OF M.P. JUDICATURE AT JABALPUR
Writ Petition No. 14989/2005
PUBLIC INTEREST LITIGATION

PETITIONER Sanchin Kumar Jain
S/o. Shri. S.C. Jain
Aged about 31 years
R/o. E-7/226, 1st Floor
Opposite Dhanvatri Complex
Bhopal – 542 016 (MP)

VERSUS

RESPONDENTS

1. State of Madhya Pradesh
Through Chief Secretary
Government of Madhya Pradesh
Vallabh Bhawan
Bhopal.
2. Commissioner
Women and Child Development Department
4th Floor, Paryavas Bhawan
Bhopal.

**WRIT PETITION UNDER ARTICLES 226/227 OF THE
CONSTITUTION OF INDIA**

PARTICULARS OF THE PETITIONER

The petitioner is a member of Right to Food Campaign Support Group in Madhya Pradesh and has been working for the rights of the persons in Madhya Pradesh. The petitioner is a trained journalist. He has written more than six hundred articles on the issues of Poverty, Malnutrition, Food Security and other issues of rights of the people which have been published in well known newspaper, Magazines and Social Science Journals such as Dainik Bhaskar, Nav Bharat, Nai Duniya, Hindustan, Rashtriya Sahara, Jan Satta, Dainik Jagaran, Economic and Political Weekly. He has 12 books to his credit on the above mentioned issues.

W.P. No. 14989/2005

21.04.2006

Shri. N.S. Kale, Sr. Counsel with Shri. Raghvendra Kumar for the petitioner.

Shri. Sanjay Yadav, Dy. Advocate General, for the respondents.

This is a Public Interest Litigation in which challenge is made to the alleged distribution of Ready to Eat Energy Food to be supplied to the children of schools between the age of 6 months to 3 years and 3 years to 6 years.

The main grievance of the petitioner is that respondents are taking hectic steps to allot the work of distribution to different contractors, thereby violating the directions of Hon'ble the Supreme Court passed in WP(Civil) No. 196/2001 decided on 7.10.2006.

On this averment being made, respondents were directed to take notice. Pursuant thereto respondents have submitted their reply on 29.3.2006 after serving copy thereof to learned counsel for the petitioner. In the said reply there have made categorical statement that there is absolutely no plan either to violate the directions as contained in the order passed by the Hon'ble Supreme Court or to allot the work of distribution to contractors.

In para 5 of the reply it has been averred as hereunder:

“It is submitted that supply for 4 days has been decided to be made by the self help group and for remaining 2 days has to be made by manufacturer. It is also submitted that if it is experienced by the answering respondents that self-help groups are able to make proper supply of good food, the whole supply would be given to them.”

No coming to the directions as contained in the order passed by the Hon'ble Supreme Court which reads as under:

“The contractors shall not be used for supply of nutrition in Anganwadis and preferably ICDS funds shall be spent by making use of village communities, self-help groups and Mahila Mandals for buying of grains and preparation of meals.”

Apart from the above, it has also been made clear at Bar by learned counsel appearing for the respondents that the submission of the petitioner is highly misconceived and without any foundation. The respondents have already decided to follow the mandate of Hon'ble Supreme Court and, accordingly, the distribution work has already begin and no services of the contractors have either been employed or are likely to be employed. This substantially satisfies the reliefs as claimed by the petitioner.

Thus, presently we are of the opinion that no part of the grievance of the petitioner remains against which any relief can be granted. The petition has been rendered in fruituous. It is, accordingly, hereby dismissed as such.

The security amount, if deposited by the petitioner, be refunded back after due verification. Parties to bear their own respective costs.

(DEEPAK VERMA)
JUDGE

(R.K. GUPTA)
JUDGE

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE**

SUO MOTU WRIT PETITION No. 5629 of 2004

Suo Moto Writ Petition on the reports published
in various Marathi Newspapers about the untimely
death of many children due to malnutrition within
two months in Dhule and Nandurbar District

.....Petitioner

V/S

State of Maharashtra & Ors.

.....Respondents

Mrs. Jyoti S. Pawar, Additional Government Pleader, with Mr. P.N. Patil, Assistant Government
Pleader for the respondent-State.

WITH
WRIT PETITION NO. 1623 OF 2003

Manubhai Paragji Vashi

.....Petitioner

V/s.

The State of Maharashtra & Ors

....Respondents

Mr. Santosh Shetty i/b. Mr. M.P. Vashi for the petitioner.

Mrs. Jyoti S. Pawar Additional Government Pleader, with Mr. P.M. Patil, Assistant Government
Pleader for the Respondent State.

WITH
WRIT PETITION NO. 1623 OF 2003

Manubhai Paragji Vashi

...Petitioner

V/s

The State of Maharashtra & Ors.

...Respondents

Mr. Santosh Shetty i/b. Mr. M.P. Vashi for the petitioner. Mrs. Jyoti S. Pawar, Additional
Government Pleader, with Mr. P.M. Patil, Assistant Government Pleader for respondent nos. 1 to 3.

CORAM: R.M. LODHA & S.A. BOBDE, JJ
DATE : SEPTEMBER 20, 2006

ORAL ORDER (per R.M. Lodha, J)

1. In continuation of various affidavits filed on behalf of the State Government and the directions issued by this Court from time to time, further affidavit has been filed on behalf of the State Government by Dr. Raju Manohar Jotkar, Assistant Director of Health Services on September 20, 2006.
2. It is apparent from the affidavit dated September 20, 2006 that the State Government has failed to combat child deaths within the State, tribal as well as non-tribal areas. In 15 tribal districts of the, in the year 2003-04 the child mortality was 8,321 while in the year 2003-04, the child mortality was

8,321 while in the years 2004-05 and 2005-06, it was 8,003 and 7,700, respectively. That means, there is only a marginal decrease in child death despite the claim of the State Government that various welfare schemes have been launched in the tribal districts. The statement annexed with the affidavit is also revealing and saddens us. It appears that the child death of one to six years of age has been on increase over the years except the marginal decrease last year. It leads us to infer that either the welfare schemes framed by the State Government are not being implemented properly as it should be or that such schemes have failed to have any impact. It is not slur on the society that even after more than eight years and five decades of independence, the State is having large number of independence, the State is having large number of child deaths due to malnutrition as a major contributory factor? In almost all the affidavits filed on behalf of the State Government from time to time the statement has been made that the State Government is doing its best to combat the child deaths and that the welfare schemes are being implemented, but the figures that have come on record belie the claim of the State Government.

3. On 12.12.2003, the State Government constituted Child Mortality Evaluation Committee under the Chairmanship of Dr. Abhay Bang. The Committee comprised of 13 other members and has submitted two reports. The first report dealt with improving registration of the infant deaths and the child deaths in the tribal areas and in the second report measures to be taken for curbing infant mortality, child mortality, maternal mortality and malnutrition in the tribal districts of the State have been recommended. In the affidavits filed by the State Government from time to time, the recommendations made by Dr. Abhay Bang Committee and the actions taken in that regard have been mentioned. The facts and figures of the infant and child mortality that have come on record show that the steps taken by the State Government so far are not adequate and much more effective steps need to be taken.
4. We may also notice here the affidavit filed on 4.10.2005 by one Pranali Praveen Chitnis, Under Secretary in the office of the Secretary, Women and Child Development Department wherein the statement has been made that the additional sanctioned 12,684 Aanganwadi Centres will be made functional by June 2006.
5. To our specific query to the Additional Government Pleader as to whether the sanctioned additional 12,684 Aanganwadi Centres have become functional, the Additional Government Pleader submitted that according to the instructions given by Dr. Prakash Doke, about 80% of the said additional Aanganwadi Centres have come into operation; all the additional 12,684 Aanganwadi Centres have not become functional.
6. It needs no emphasis by us that by such large number of child deaths; malnutrition being major contributory factor, there is wholesome violation of Article 21 of the Constitution of India by the State Government. The salutary directive given in Article 47 of the Constitution of India that the State shall regard the raising of the level of malnutrition and the standard of living of its people and the improvement of public health as among its primary duties appears to be distant dream in tribal areas. If the thousands of children die every year in the State of Maharashtra, more particularly in tribal areas; malnutrition being major contributory factor, the only interference that can be drawn is that the State Government has failed in its primary duty in raising the level of nutrition of feeding mothers and the children.
7. Having “considered the recommendations given in the two reports by Dr. Abhay Bang Committee, the magnitude and seriousness of the matter, the action taken so far by the State Government and the Constitutional provisions, we issue the following directions as of now:-

- (i) The State Government shall make functional additional 12,684 Aanganwadi Centres as per the Government of India guidelines as set out in the affidavit dated 4.10.2005 by 31.10.2006. Failure to do so shall expose the Principal Secretary, Women and Child Development Department, Mantralaya, Mumbai, to an action under the Contempt of Courts Act, 1971.
- (ii) The State Government shall initiate the Mission “Bal Mrutya Mukta Maharashtra’ (by whatever name called) as suggested by Dr. Abhay Bang Committee and accordingly, modify “Rajmata Jijau Maternal Child Health and Nutrition Mission” started from 11.3.2005 to ensure that the infant mortality rate due to malnutrition is reduced to almost nil within five years from today. In other words, the State Government shall ensure that by 30th September, 2011, the infant mortality rate due to malnutrition is brought down to almost nil in tribal as well as non-tribal areas.
- (iii) To begin with, the State Government shall, as suggested by Dr. Abhay Bang Committee, identify malnutrition free villages and maternal death and child death free villages and felicitate such villages. To achieve that more and more villages are malnutrition free and maternal death and child death free, the State Government shall give responsibility and funds to Gram Panchayat and self-help groups.
- (iv) The State Government shall involve the local Gram Panchayats, self-help groups and non-Governmental organisations for control of child death and malnutrition.
- (v) While reviewing the assessment of the officers/workers working in the Health Department, officers and workers who have contributed in controlling child deaths and malnutrition and in prevention of child mortality, adequate incentives shall be given to such officers and workers.
- (vi) The scheme, ‘Rajmata Jijau Maternal Child Health and Nutrition Mission’, be adequately modified by providing more facilities, adequate medicines and kits to Aanganwadi which may help in eradicating malnutrition deaths.
- (vii) The State Government, as far as possible, may involve Tribal Gram Sabha where tribal areas are concerned, for the development programme planning.
- (viii) The Female Pada volunteers who have been appointed in the districts must be suitably trained for management of common childhood problems and also for home-based neonatal care. Training programme must start, if not started so far by 1.1.2007.
- (ix) For emergency referral of pregnant women, transport should be made available or the provision for delivery vans should be made.
- (x) As per infant mortality rate and severe malnutrition, high risk areas should be identified and these areas should be provided with additional budget and requisite resources. If necessary, Nav Sanjivani Programme initiated by the State Government be modified to ensure that it has the desired impact.
- (xi) The State Government shall issue instructions to the Collectors of 15 tribal districts to spend minimum of two days in a month in the tribal villages of the district where there is

high rate of infant mortality and severity of malnutrition and during their stay in the tribal villages the Collectors shall coordinate with all agencies, including N.G.O's involved in the mission. If there is no substantial improvement in combating the child deaths to malnutrition in a particular district, the poor performance in this regard must be reflected in the service record of the concerned Collector.

(xii) The Chief Secretary shall ensure that every single rupee allocated in the State budget to the various schemes for the purposes of combating child mortality and malnutrition, is used for such purpose timely and percolates down to the needy.

(xiii) The State Government shall ensure the availability of the Doctors and the emergency obstetrics Centres not only in district hospitals but also in small places.

8. The Chief Secretary shall submit the compliance report on affidavit by 18.10.2006.

Stand over to 19.10.2006

Sd/-
R.M. LODHA, J
Sd/-
S.A. BOBDE, J

IN THE HIGHT COURT OF JHARKHAND AT RANCHI
W.P. (PIL) No. 7694 OF 2006

RAJMUNIMEHTA

... PETITIONER(S)

VERSUS

THE STATE OF JHARKHAND & ORS.

... RESPONDENT(S)

CORAM

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE AMARESHWAR SAHAY

For the Appellant/Petitioner
For the Respondent/Opp. Party

M/s. R.S. Singh, R.N. Prasad, G. Kumar
Mr. S.B. Gadodia, Advocater General

Dt/- 1.10.2007

The translate copy of the Commissioner's Report has been produced.

A copy of the Commissioner's Report dated 8.7.2006 translated into English. Annexure - C to supplementary counter- affidavit, is directed to be given to the Advocate General. Advocate General will look into it, collect particulars as to the steps taken so far on the basis of the aforesaid report and then file an affidavit containing the aforesaid particulars to enable thie Court to pass further orders.

It is now reported by the counsel for the petitioner that all the Aangan Baris situated in varios districts of Jharkhand are not functioning properly and are running even without supply of food to the children. False records have been created, as if food are being supplied. Earlier an enquiry has been conducted by the Commissioner of Palamau and report has been sent.

In view of the serious nature of allegation made in the affidavit and the statements made by counsel for the petitioner and after hearing Advocate General, we feel that it is appropriate to direct all the District & Session Judges concerned to visit the Aangan Baris situated in their respective districts, verify the functioning of the Aangan Baris, look into their Deputy Commissioners of the Respective Districts to render all help to the respective District & Session Judges to undertake the work of supervision of distribution of food, collection of particulars as to the proper functioning and supply of food and sending reports to this Court. All the District & Sessions Judges and all the Deuputy Commisioners will co-operate with one another in collection of materials by inspection for filing reports. Reports must be sent by the respective District & Sessions Judges within two months.

Advocate General will instruct the respective Deputy Commissioners properly to co-operate with the respective District & Sessions Judges.

Post this case on 3.12.2007

Let copies of this order be given ot the counsel for the parties.

Sd/- (Mr. Karpaga Vinayagam, CJ)

Sd/-

(Amareshwar Sahay, J)

**AKHIL BHARTIYA SAMAJ SEWA SANSTHAN VS. STATE OF U.P.
CIVIL MISC. WRIT PETITION (PIL) NO. 51327 OF 2007**

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

CIVIL WRIT PETITION

AKHIL

... PETITIONER(S)

VERSUS

STATE OF UP

... RESPONDENT(S)

Hon'ble H.L. Gokhale, C.J.

Hon'ble Pankaj Mithal, J.

****Date : 30.11.2007**

1. Heard Mr. K.K. Roy in support of this writ petition. Mr. M.C. Chaturvedi, learned Chief Standing Counsel, appears for the State-Respondents.

2. The State Government is expected to file its Counter Affidavit, to place on record as to when the Planning Committees, which are required to be constituted under mandate of Article 243-ZD of the Constitution of India, are going to be constituted.

Dt/- 30.11.2007

Sd/- H.L. Gokhale, C.J.

(Chief Justice)
Sd/- Pankaj Mithal, J.
(Pankaj Mithal, J).

**AKHIL BHARTIYA SAMAJ SEWA SANSTHAN VS. UNION OF INDIA AND OTHERS.
CIVIL MISC. WRIT PETITION (PIL) NO. 54307 OF 2007**

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

CIVIL WRIT PETITION

AKHIL

... PETITIONER(S)

VERSUS

STATE OF UP

... RESPONDENT(S)

ORDER :

Hon'ble H.L. Gokhale, C.J.

Hon'ble Pankaj Mithal, J.

Date : 30.11.2007

1. Heard Mr. K.K. Roy, in support of this writ petition. Mr. M.C. Chaturvedi, learned Chief Standing Counsel, appears for the State-respondents.

2. The State will file a counter affidavit either of the Commissioner of the concerned division or of a senior officer of the Food and Civil Supply Department, to place on record as to how the identification of the persons of below poverty line is going on, and what are the steps taken in this behalf.

3. On the request of Mr. Chaturvedi, learned Chief Standing Counsel, matter is adjourned to 11.01.2008.

Dt/- 30.11.2007

Sd/- H.L. Gokhale, C.J.

(Chief Justice)
Sd/- Pankaj Mithal, J.
(Pankaj Mithal, J).

**IN THE HIGH COURT OF KARNATAKA, BANGALORE
DATED THIS THE 14th DAY OF FEBRUARY 2007**

PRESENT

**THE HON'BLE MR.JUSTICE V.GOPAU GOWDA
AND THE HON'BLE MRJUSTICE H.BILLAPPA
W.A. No. 1512/2006 (GM-TEN)**

BETWEEN:

1. Shri Laxmi Mahila Mandal,
(a Society listed under the provisions of the
Karnataka Societies Registration Act, 1960)
Society No. BEL-S96-2006-07
Babaladi Galli,
Hukkerl, Taluk Hukkeri,
District Belgaum,
By its President
2. Shri Renuka Mahila Mandal,
(a Society listed under the provisions of the
Karnataka Societies Registration Act, 1960)
Society No. BEL-S97-2006-07
Plot No.190, Sector No.2,
Shiv Basav Nagar, Belgaum,
Tq. & Dist Belgaum,
By its President
3. Shri Lakka Mahsdevi Mahila Mandal,
(a Society listed under the provisions of the
Karnataka Societies Registration Act, 1960)
Society No. BEL-S98-2006-07,
Plot No. 60, Hindwadi, Bdgaum,
Tq. & Dist. Beigaum,
By Its President.

APPELLANTS

(By Sri Jaykumar S. Patil, Sr. Counsel for Sri Veeresh B. Bodihal, Adv.)

AND:

1. Savadatti
The (Saundatti) Taluk,
Agricultural Produce Co-operative
Marketing Society Limited,
(Saundatti) Savadatti,
Dist. Belgaum,
(by its Asst. Manager)

2. The State of Karnataka,
Rep. by its Secretary,
Food & Civil Supplies,
Vidhana Soudha,
Bangalore.
3. The Zilla Panchayat,
Belgaum, by its Chief
Executive Officer,
Zilla Panchayat Office,
Belgaum.
4. The Executive Officer,
Taluk Panchayat,
(Saundatti,) Savadatti
Belgaum.
5. The Child Development
Project Officer (Saundatti) Savadatti,
Belgaum.
6. The Ballhongal Taluk,
Agricultural Produce Co-operative
Marketing Society Limited,
Ballhongal,
Belgaum District,
By its Asst. Manager.
7. The Executive Officer,
Taluk Panchayat,
Ballhongal, Belgaum.
8. The Child Development
Project Officer, Ballhongal,
Belgaum.
9. The Ballhongal Taluk,
Agricultural Produce
Cooperative Marketing Society Limited,
Ballhongal, Belgaum District,
By its Manager.
10. The State of Karnataka,
Rep. by its Secretary,
Vidhana Soudha,
Bangalore.

11. The Executive Officer,
Taluk Panchayat,
Belgaum,
Taluk Panchayat Office,
Belgaum.

12. The Deputy Director,
Women & Child Development Dept.
Belgaum District,
Shivajinagar,
Belgaum.

....RESPONDENTS

(By Sri.Ravi B. Naik, Adv. for R-1, R-6 and R-II and
Sri P.G.C. Chengappa, AGA for R-2 to 5)

This Writ Appeal is filed u/s. 4 of the Karnataka High Court Act praying to set aside the order passed in WP. No. 7242, 7037 and 8048 of 2006 dt. 8.8.2006.

This Writ Appeal coming on for preliminary hearing this day, **GOPALA GOWDA, J.**, delivered the following :

JUDGMENT

This appeal is filed by the Societies registered under the provisions of the Karnataka Society Act 1960, claiming they are all self-help groups entitled to supply the food-grains to the Anganwadi Centre, in the Belgaum District under the scheme formulated by the Hon'ble Apex Court in Writ Petition (Civil) No. 196/2001 disposed of on 7-10-2004. An observation is made at paragraph No.3 which reads thus:

“The contractors shall not be used for supply of nutrition in Anganwadls and preferably ICDS funds shall be spent by making use of village communities, Self-Help Groups and Mahila Mandals for buying of grains and preparation of meals.”

2. The respondents - Societies registered under the Karnataka Co-operative Societies Act, 1959, filed Writ Petitions 7242, 7037 and 8048 of 2006 questioning the correctness of the endorsement issued by the Tender Accepting Authority namely the Executive Officer of Taluk Panchayath of different Taluks in Belgaum District declining to issue tender forms to the TAPCMS Societies for supply of food-grains to the Anganwadi centres and other institutions as they are not entitled to apply for supply of food-grains, urging various legal contentions, placing reliance upon the very judgment of the Hon'ble Apex Court referred to supra, contending that there is no bar for the respondents -Societies herein to apply for awarding contract in their favour for supply of food grains to the Anganawadi Centres in the District in pursuance or' the notification as per the observations made by the Hon'ble Apex Court in its decision referred to supra, the inference is that preference shall be given to the self-help groups to submit tender applications for supply of food-grains. Therefore, there is no monopoly right created by the Hon'ble Apex Court in their order. The learned Single Judge vide order dated 8-8-2006 allowed the writ petitions filed by the respondents -Societies with certain observations after referring to the ICDS scheme and directed

the Taluk Executive Officers of various taluks of Belgaum District to process the applications of the respondents -Societies herein with reference to their offers including the offers of the self-help groups, who are the respondents in the writ petitions.

3. The correctness of the same is questioned by the appellants herein, who are claiming they are all self-help groups entitled to submit their tenders in pursuance of the notification issued by the Executive Officer of the Taluk Panchayaths and in view of the definition of Primary Cooperative Society, Secondary Co-operative Society, Federal Co-operative Society under Section 2 of the Karnataka Cooperative Societies Act, 1959, the respondents -Societies herein are all carrying on the commercial undertaking business and therefore, they will not come within the purview of the self-help groups and therefore, the correctness of the findings and observations made in the order impugned passed by the learned Single Judge at the instance of the respondents -Societies is questioned in these appeals. The learned Senior Counsel Sri Jayakumar S.Patil sought to annul the observations and reasons recorded by the learned Single Judge, placing strong reliance upon the observations of the Hon'ble Supreme Court and also the literature regarding the self-help group's definition as per the Self-Help-S'-Network print taken by the computer which has explained the working definition which reads thus:

“Self-help groups are voluntary, small group structures for mutual aid and the accomplishment of a special purpose. They are usually formed by peers who have come together for mutual assistance in satisfying a common need, overcoming a common handicap or life-disrupting problem and bringing about desired social and/or personal change. The initiators of such groups emphasise face-to-face social interactions and the assumption of personal responsibility by members. They often provide material assistance, as well as emotional support; they are frequently “cause” oriented, and promulgate an ideology or values through which members may attain an enhanced sense of personal identity.”

With reference to the said definition and the definition of the various co-operative societies referred to supra, the learned Senior Counsel contended that the respondent -TAPMS Societies would not come within the purview of self-help groups. Therefore, he submits that the observations made at paragraph 12 and 13 of the impugned order that the respondents are statutory bodies under the provisions of the Karnataka Co-operative Marketing Societies Act and therefore, their exclusion from the zone of consideration for the purpose of tender is not legal is also not correct.

4. The learned Additional Government Advocate sought to justify the impugned order contending that the observations made in the impugned order do not come in the way of Tender Accepting Authority to process the tender forms that will be submitted by the appellants and the respondents -Societies herein after making scrutiny in terms of circular instructions issued by the State Government dated 17-5-2005 on the basis of observation made by the Supreme Court.
5. The learned counsel Mr. Ravi B. Naik sought to justify the order of the learned Single Judge contending that the impugned order does not call for interference for the reason that the respondents have been supplying the food-grains to Anganwadi centres earlier and the respondents are no doubt Secondary Co-operative Societies and their object is to see that scheme of the Government is effectively implemented by supplying the food-grains to the Anganwadi centres to achieve the laudable object of the State Government to supply nutritious food to the children of the suppressed class of people in the village and further contended that

the judgment of the Supreme Court does not exclude the respondents herein to apply and does not prevent the authorities to consider their tender forms for awarding contracts for supplying food-grains to the Anganwadi centres and also contended that to avail the benefit under the scheme, the appellants herein have very recently got registered under the provisions of the Karnataka Societies Registration Act, 1960, and Rules framed therein by producing false documents though they do not have the laudable object of serving the children of rural India.

6. After hearing the learned counsel for the parties and perusing the observations made by the Apex Court, it is clear that the object of the Hon'ble Apex Court is to see that the self-help groups must be encouraged by awarding contracts for supply of food-grains to the Anganwadi centres to achieve the laudable object on the part of the State Government to supply nutritious food to the children of rural India through Anganwadi centers. In this regard, the State Government has issued circular instructions in compliance with the instructions issued by the Hon'ble Apex Court. The guidelines are given to the Tender Accepting Authority to accept the tender applications that will be submitted by the self-help groups. No doubt the respondents -Societies herein certainly will not come within the definition of self-help groups in view of the statutory definition of a Primary Co-operative Society, Secondary Cooperative Society and Federal Co-operative Society under the Karnataka Co-operative Societies Act, 1959. The learned Single Judge no doubt- has made certain observations at paragraph 13 of the order impugned with reference to the rival legal contentions, but that by it does not confer any statutory right that their applications must be considered at the time of processing along with the self-help group societies. In the operative portion of the order, the learned Single Judge had made it clear that applications of both parties may be considered and it will be suffice for us to clarify further that the applications of both the parties shall be examined keeping in view the guidelines contained in the circular instructions issued by the State Government on the basis of the observations of the Hon'ble Supreme Court. The observations made at paragraph 13 of the impugned order passed by the learned Single Judge shall not be construed that it is an indication that respondents' -Societies applications must be considered for awarding contracts for supply of food-grains to the Anganwadi. Centers in the Belgaum District. The claims of either the appellants or respondents -Societies may be considered strictly in conformity with the guidelines issued by the State Government in its circular referred to supra.
7. With the above said observations, this writ appeal is disposed of.

Sd/-
Judge

IN THE HIGH COURT OF KARNATAKA, BANGALORE
DATED THIS THE 23RD DAY OF AUGUST, 2007

BEFORE

THE HON'BLE MR. JUSTICE AJIT J GUNJAL
WRIT PETITION No. 6069 OF 2007 (GM-TEN)

BETWEEN:

1. KARNATAKA STATE CO-OP CONSUMERS
FEDERATION LTD
FEDERATION LTD
NO.4, PAMPA MAHAKAVI ROAD
CHAMARAJPET
BANGALORE 18,, BY ITS MANAGING DIRECTOR

SRI V GOVINDREDDY

... PETITIONER.

(By Ms. VIJETHA R NAIK, ADV.)

AND

1. THE STATE OF KARNATAKA
REP BY ITS SECRETARY
FOOD AND CIVIL SUPPLIES
VIDHANA SOUDHA
BANGALORE

- 2 DIRECTOR
WOMEN AND CHILD
DEVELOPMENT SECTION
MULTI STOREYED BUILDING
BANGALORE 1

....RESPONDENTS.

(By Sri B.N. PRASAD, HCGP.)

THIS WP FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION, PRAYING TO
DIRECTION AND QUASH THE NOTIFICATION /ORDER OF THE R2, DT.29.3.2007 PRODUCED AT
ANN-F.

DIRECT THE RESPONDENTS TO PERMIT THE PETITIONER TO PARTICIPATE IN THE TENDERS
WITHOUT REJECTING THE SAME ON TECHNICAL GROUND THAT THE PETITIONER CANNOT
PARTICIPATE IN THE GROUND THAT THE PETITIONER IS NOT A SELF HELP GROUP.

THIS PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The claim of the petitioner is that the petitioner consumer federation is registered under the Karnataka Co-operative Societies Act. The same was registered on 20.7.1964. It is the case of the petitioner that they have branches all over the State. The primary object of the society is to procure foodgrains and sell to the wholesale stores or such other co-operative societies who are doing wholesale or retail business, consumers, hotels,) restaurants, Government organisations and other institutions. It is their case that they proposed to participate in the tender for supply of foodgrains to the Anganwadis also. However an endorsement is issued, a copy of which is produced at Annexure-F, indicating that the tender forms would be given to those who fall under the parameters of the judgments of the Apex Court as also the Division Bench of this court The apprehension of the petitioner is that in view of the endorsement the tender form is not likely to be entertained. It is brought to my notice that in identical matter the Division Bench of this court in W.A. 1512/06, disposed of on 14.2.2007 has observed thus:

“In the operative portion of the order, the learned single Judge had made it clear that application of both parties may be considered and it will be suffice for us to clarify further that the applications of both the parties shall be examined keeping in view the guidelines contained in the circular/ instructions issued by the State Government on the basis of the observations of the Hon’ble Supreme Court The observations made at paragraph 13 of the impugned order passed by the learned single Judge shall not be construed that it is an indication that respondents’ societies applications must be considered for awarding contracts for supply of foodgrains to the Anganwadi Centres in the Belgaum district.”

2. In view of the observations made by this court in the aforesaid decision, I am of the view that this writ petition is also required to be disposed of in terms of the aforesaid decision. Petition stands disposed of in terms of the aforesaid judgment of the Division Bench. The petitioner is at liberty to participate in the tender, but however subject to the observations made in the above order.

Petition disposed of accordingly.

Mr. B.N. Prasad, learned HCGP is permitted to file memo of appearance within four weeks.

Sd/-
Judge

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3055 of 2008

SUO MOTU - Petitioner(s)

Versus

STATE OF GUJARAT NOTICE SERVED THRO' & 1 - Respondent(s)

Appearance :

SUO MOTU for Petitioner(s) : 1,

MR SUNIT SHAH GOVT PLEADER for Respondent(s) : 1,

None for Respondent(s) : 2,

CORAM:

HONOURABLE THE CHIEF JUSTICE

Y. R. MEEN

and

HONOURABLE MR.JUSTICE J.C. UPADHYAYA

Date : 25/02/2008

ORAL ORDER

Shri Sunit Shah, learned Government Pleader for the State prays time to submit action taken report in the subject matter. Time, as prayed for, is granted. That be done within three weeks. List it on 24th March, 2008.

(Y. R. MEENA, C. J.)

(J. C. UPADHYAYA, J.)

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 3055 of 2008**

SUO MOTU - Petitioner(s)

Versus

STATE OF GUJARAT NOTICE SERVED THRO' & 1 - Respondent(s)

SUO MOTU for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s): 1,
None for Respondent(s) : 2,

CORAM:

HONOURABLE THE CHIEF JUSTICE Y.R. MEENA
HONOURABLE MR. JUSTICE J.C. UPADHYAYA

Date : 27/03/2008

ORAL ORDER

Learned counsel for the State prays time to file reply and also the English translation of the Gujarati documents. Time sought for is allowed. List it on 06.05.2008.

(Y.R. MEENA, C.J.)

(J.C. UPADHYAYA, J.) [sn devu] pps

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 3055 of 2008**

SUO MOTU - Petitioner(s)

Versus

STATE OF GUJARAT NOTICE SERVED THRO' & 1 - Respondent(s)

Appearance :

SUO MOTU for Petitioner(s) : 1,

GOVERNMENT PLEADER for Respondent(s) : 1,

None for Respondent(s) : 2,

CORAM :

HONOURABLE THE CHIEF JUSTICE

Y.R.MEEN

and

HONOURABLE MR.JUSTICE J.C.UPADHYAYA

Date : 06/05/2008

ORAL ORDER

Learned Counsel for the State further prays time.Time, as prayed for, is granted.List it on 14th July, 2008.

(Y. R. MEENA, C. J.)

(J. C. UPADHYAYA, J.)

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CIVIL APPLICATION - FOR JOINING PARTY No. 8230 of 2008 In**

SPECIAL CIVIL APPLICATION No. 3055 of 2008

ANNA SURAKSHA ADHIKAR ABHIYAN (ASAA)- GUJARAT -Petitioner(s)

Versus

SUO MOTU & 2 - Respondent(s)

Appearance :

MS SS RAJPUROHIT for Petitioner(s) : 1,

None for Respondent(s) : 1, 3,

GOVERNMENT PLEADER for Respondent(s) : 2,

CORAM :

**HONOURABLE THE ACTING CHIEF JUSTICE MR. M.S. SHAH
and
HONOURABLE MR. JUSTICE D.H. WAGHELA**

Date : 21/07/2008

ORAL ORDER

**(Per : HONOURABLE THE ACTING CHIEF JUSTICE
MR. M.S. SHAH)**

Leave to amend the cause-title. Rule. Mr Dipen Desai, learned AGP waives service of Rule for the respondents. In the facts and circumstances of the case, the application is taken for final disposal today. The application for joining applicant- Anandi, a registered Non-Governmental Organisation, is granted in terms of para 7(A). Rule is made absolute. The application accordingly stands disposed of.

(M.S. SHAH, Actg. C.J.)

(D.H. WAGHELA, J.)zgs/-

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 3055 of 2008**

SUO MOTU - Petitioner(s)

Versus

STATE OF GUJARAT NOTICE SERVED THRO' & 2 - Respondent(s)

Appearance :

SUO MOTU - MR AMIT PANCHAL for Petitioner(s) : 1,
MR DIPEN DESAI AGP with MR SUNIT SHAH GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2,
MS SS RAJPUROHIT for Respondent(s) : 3,
MR HARIN P RAVAL for Respondent No.4.

CORAM:

HONOURABLE THE ACTING CHIEF JUSTICE
MR. M.S. SHAH
and
HONOURABLE MR. JUSTICE D.H. WAGHELA

Date : 07/08/2008

ORAL ORDER (Per : HONOURABLE THE ACTING CHIEF JUSTICE MR. M.S. SHAH)

In this *suo motu* public interest litigation relating to distribution of food grains to the families below poverty line, as per the directions of the Hon'ble Supreme Court in Writ Petition (Civil) No.196 of 2001, ANANDI, which is a registered Non-Governmental Organisation, has submitted through learned counsel Mr.Amit Panchal that, by order dated 28.11.2001 as modified by order dated 10.01.2008, the Hon'ble Supreme Court has directed that the State Governments shall complete identification of below poverty line families, issue cards and commence distribution of 35 kgs. of food grains per family per month. It is submitted that the State of Gujarat did not comply with the directions as far as the quantity of food grains is concerned. It is submitted that the quantity of food grains being given is much less and what is being supplied is 16.750 kgs. of wheat flour. 2. In reply, Mr.Dipen Desai, Assistant Government Pleader, submits that wheat flour being supplied by the State Government is fortified with micronutrients and 30 ppm iron and 1.5 ppm folic acid. It is also submitted that, as per letter dated 17.01.2008 of the Government of India, Ministry of Consumer Affairs, Food & Public Distribution, Department of Food and Public Distribution, a Central Vigilance Committee, headed by Justice (Retd.) D.P.Wadhwa, was constituted by the Hon'ble Supreme Court and recommended distribution of wheat flour instead of whole wheat to below poverty line householders. As regards quantity, Mr.Desai has invited our attention to the following averments made in the affidavit-in-reply filed by Mr.J.R.Modi, Joint Secretary, Food, Civil Supplies and Consumers Affair Department, Sachivalaya, Gandhinagar:"

13.As regards the contention that the Below Poverty Line families are not being distributed 25 kgs. grain per month per family in spite of the order of the Supreme Court, it is submitted that 35.51 lakh Below Poverty Line families including Antyodaya families are under the TPDS. Although Government of India is making allocation of food grains to only a lesser number of families i.e. 21.20 lakh, Government of Gujarat is covering large families in the Below Poverty Line category for distribution of food grains. Therefore, the ambit of operation of Below Poverty Line Scheme in Gujarat is already much larger than what is stipulated by Government of India. The previous distribution of food grains at 12.5 kg. per card has been increased to 20 kg. per card per family per

month by the State Government. Therefore, the State Government covers much more families under Below Poverty Line than allocated by the Central Government. It is also relevant to note that the Central Government is providing what at Rs.4.15 ps. per kgs. to the State Government. The State Government thereafter incurs expenditure of Rs.0.89 ps. per kg. on the said wheat. Therefore, the cost of procuring the wheat from the Central Government comes to Rs.5.04 ps. However, the State Government provides the said wheat to the people below poverty line at the subsidised rate of Rs.2.00 per kg. whereas in the majority of other States including the neighbouring State of Rajasthan and M.P., the said food grains is being provided at the rate of Rs.5/- per kg. and not at the subsidised rate as provide by the State of Gujarat. Similarly, the cost of procuring rice is Rs.6.64 ps. (Rs.5.65 ps. Central Government issue price plus Rs.0.99 ps. expenses) whereas rice is distributed amongst the card holders at Rs.3.00 per kg. In majority of other States, rice is being provided at the rate of more than Rs.6.00 per kg. By providing food grains at the subsidised rate, the State of Gujarat is taking additional burden of Rs.110 crore every year for Below Poverty Line Scheme as subsidy."Mr.Desai further states that, out of 35.51 lakh below poverty line families identified by the State Government, 8.93 lakh families belong to Antyodaya category, i.e. poorest of the poor, and that remaining 26.58 lakh belong to other below poverty line families. Mr.Desai further states that all families in Antyodaya category are being given 19 kgs. of wheat flour and 16.70 kgs. of rice. It is submitted that the entire quantity of food grains being received by the State Government from the Central Government is being distributed amongst Antyodaya families and below poverty line families in the aforesaid manner and the fact that below poverty line families (other than Antyodaya families) are getting less quantity of wheat flour/rice is on account of the Central Government having curtailed the list of below poverty line families. It is submitted that, if the Central Government were to supply food grains for all below poverty line families as identified by the State Government, there would be no difficulty for the State Government in giving 35 kgs. of food grains per family of below poverty line category. Mr.Desai further states that the Director of Civil Supplies in the State has requested the Central Government to supply larger quantity of food grains so as to enable the State Government to supply 35 kgs. of food grains per family to all below poverty line families as identified by the State Government. However, the Central Government has not acceded to the above request.3. In view of the above stand of the State Government, Union of India, through Secretary, Department of Food and Public Distribution, Ministry of Consumer Affairs, Krishi Bhavan, New Delhi, is joined as respondent No.4.

4. **NOTICE** to the newly added party returnable on **01.09.2008**. Mr.Harin P. Raval, learned Assistant Solicitor General, waives service of notice for the newly added party.5. Office has invited our attention to the letter dated 26.7.2008 received from the Centre Co-ordinator, Saurashtra Voluntary Actions Rajkot (Vichhiya, Tal.Jasdan, Dist. Rajkot) indicating its desire to be joined as a party in the present public interest litigation. Mr.Amit Panchal, learned advocate for ANANDI, which is already joined as respondent No.3, states that the said institution is a member of the association of NGOs on whose behalf ANANDI has been joined as respondent No.3. 6. Mr.Desai, learned A.G.P. states that the following officers are present in the Court:1. Mr.Jayendra R. Modi, Joint Secretary, Food and Civil Supply Department.2. Mr.R.R.Chauhan, Director of Food & Civil Supply Department, Gandhinagar.3. Mr.G.K.Bhatt, General Manager, Quality Control, Gujarat State Civil Supply Corporation, Gandhinagar.4. Mr.J.H.Vasoya, General Manager, Commerce, Gujarat State Civil Supply Corporation, Gandhinagar.5. Mr.S.L.Galchar, Dy.Food & Civil Supply Controller, Ahmedabad City.

Sd/-

(M.S.Shah, Actg.C.J.)

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3055 of 2008

SUO MOTU - Petitioner(s)

Versus

STATE OF GUJARAT NOTICE SERVED THRO' & 3 - Respondent(s)

Appearance :

SUO MOTU for Petitioner(s) : 1,

MR KAMAL B TRIVEDI ADVOCATE GENERAL WITH MS SANGITA VISHEN ASST
GOVERNMENT PLEADER for Respondent(s) : 1,

None for Respondent(s) : 2,

MR AMIT PANDHAL WITH MS SS RAJPUROHIT for Respondent(s) : 3,

MR VD PARGHI for Respondent(s) : 4,

CORAM:

HONOURABLE THE CHIEF JUSTICE

MR. K.S.RADHAKRISHNAN

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 20/10/2008

ORAL ORDER

**(Per : HONOURABLE THE CHIEF JUSTICE
MR. K.S. RADHAKRISHNAN)**

Mr.V.D.Parghi, learned Counsel appears for the Central Government.

Adjourned to enable the learned Counsel for the Central Government to file Counter.

Post this matter on 10th November, 2008.

(K.S. RADHAKRISHNAN, C.J.)

(AKIL KURESHI, J.)

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23144 of 2007

GRAMIN MAJDOOR SABHA, GUJARAT

... PETITIONER(S)

VERSUS

UNION OF INDIA & 5

... RESPONDENT(S)

Appearance :

MR BHUSHAN B OZA for Petitioner(s) : 1, MS E. SHAILAJA for
Petitioner(s) : 1, MR HIMANSHU N BANKER for Petitioner(s) : 1,
MR HARIN P RAVAL for Respondent(s) : 1,
MR MRUGEN K PUROHIT for Respondent(s) : 1,
MR LR PUJARI, AGP for Respondent(s) : 2,
NOTICE SERVED BY DS for Respondent(s) : 3,
MR PV HATHI for Respondent(s) : 4 - 5.
MS KHYATI P HATHI for Respondent(s) : 6,

CORAM:

HONOURABLE MR. JUSTICE JAYANT PATEL

Date : 23/07/2008

ORAL ORDER

1. The petitioner has preferred the petition for appropriate directions to the respondents to provide employment in accordance with the provisions of National Rural Employment Guarantee Act, 2005 (hereinafter referred to as the Act) with the Scheme known as Gujarat Rural Employment Guarantee Scheme, 2006 (hereinafter referred to as the "Scheme") and to provide unemployment allowances to 100 members of the petitioner whose names are mentioned at Annexure G.
2. Heard Mr. Oza, learned Counsel appearing for the petitioner, Mr. Pujari, learned AGP for respondent State Authorities, Mr. Purohit, learned Counsel for respondent No. 1, and Mr. Hathi, learned Counsel for respondents No. 4, 5, and 6.
3. The contention raised on behalf of the petitioner is that the provisions of the Act are not complied with for the purpose of offering employment to the labourers, whose names are mentioned in the list, nor the unemployment allowances have been paid to them. It has also been submitted that the complaints were made to the Project Officer as well as the District Programme Coordinator, but no action is taken and, therefore, this petition.
4. It appears from the statement made in the petition read with the affidavit-in-reply filed on behalf of the Panchayat Authorities that there are allegations and counter-allegations. The claim of the petitioner is that the employment was not offered and, therefore, the members of the petitioner Union would be entitled to unemployment allowances, whereas on behalf of the Panchayat Authorities/Project Coordinator, the contention is that as per the Scheme, the work was offered, but the concerned workmen did not assume the work and in certain cases, wherever the persons were desirous to work, the work has been offered. It has also been submitted that as per the Scheme of the Act, if the work is not available, then only unemployment allowances can be paid.

5. It appears to the Court that it would be required for the appropriate authority to see that the Act is complied with in its letter and spirit for the purpose of offering work in the rural area and upon the failure to offer work, the minimum unemployment allowances are paid to the persons concerned. As it is the grievance of the petitioner that complaints were made and no action was taken, but it appears that in the present proceedings, the affidavit-in-reply has been filed denying the entitlement by the persons on whose behalf the present petition is filed. Therefore, it would be just and proper if the officer at the State level examines the matter and appropriate directions are given to the concerned authorities in the event it is found that the employment could not be provided to the persons and they were entitled for unemployment allowances. However, if ultimately upon verification of record it is found by the concerned authority that the employment was offered and was not accepted by the workmen concerned, it may attract different consideration.
6. This Court in a petition under Article 226 of the Constitution of India cannot conveniently examine the record and it would be just and proper to direct the State authorities to look into the matter and to pass appropriate orders after considering the record of the concerned Panchayat as well as after giving opportunity to the members of the petitioner Union, who are labourers or the persons, who were desirous to get the employment or in alternative, persons, who were desirous to get unemployment allowances as per the Scheme. As the respondent No.3 is an authority constituted at the State level for supervising the implementation of the Scheme read with the provisions of the Act, it would be just and proper to direct respondent No.3 to examine the matter.
7. In view of the above, the following order shall meet with the ends of justice:-
 - (a) Respondent No.3, Gujarat State Coordinator (NREGA) shall examine the grievance of the petitioner as raised in the present petition for non-providing of the employment to the persons concerned or not providing unemployment allowances to such persons.
 - (b) He shall be at liberty to hold any inquiry and call for the record from the Panchayat authorities. The petitioner shall also be at liberty to produce any additional documents, if any, in support of the Scheme.
 - (c) After inquiry and giving opportunity of hearing to the petitioner as well as to the concerned officer(s) of the Panchayat, the respondent No.3 shall take appropriate decision as to whether the employment was provided to the persons concerned and if it is found by him that the employment was not provided to the persons concerned, he shall pass consequential order for payment of unemployment allowances as permissible in law. In the event it is found by him that the employment was offered to the persons concerned and was not accepted by the concerned persons, he shall be at liberty to pass appropriate orders, taking into consideration the said circumstances.
 - (d) The aforesaid exercise shall be completed within a period of four months from the date of receipt of the order of this Court.
 - (e) In the event the respondent No.3 finds that the persons concerned were entitled for payment of unemployment allowances, the actual disbursement shall also be made within a period of one months from the date of the order passed by respondent No.3.
8. The petition is disposed of in terms of the aforesaid directions. No order as to costs.

23.7.2008 (Jayant Patel, J.)

**BEFORE THE HON'BLE DISTRICT CONSUMER DISPUTES REDRESSAL FORUM, IMPHAL,
MANIPUR**

Complaint Case No. 85 of 2008

SHRIELAMMANIMEITEI & ANOTHER

-COMPLAINANT-

-VERSUS-

SHRIATHOKPAMUDOI SINGH AND ANOTHER

-OPPOSITE PARTIES-

IN THE GAUHATI HIGH COURT

(The High Court of Assam, Nagaland, Meghalaya,
Manipur, Tripura, Mizoram and Arunachal Pradesh)

IMPHAL BENCH

Writ Petition (PIL) No. 13 of 2008

BEFORE

**THE HON'BLE MR. JUSTICE T. NANDAKUMAR. SINGH
THE HON'BLE MR. JUSTICE B.D. AGARWAL**

ORDER

21.5.2008

T.N.K.,J

1. Heard Mr. M. Rakesh, learned counsel appearing on behalf of the petitioner.
2. By this writ petition, the petitioner is praying for a direction to the respondents to make available S.K. Oil of Polling Station No. 11/15, Sagolband Assembly Constituency at the rate of 5 liters every month at the price of Rs. 9.52 paise per liter.
3. It is stated that the petitioner is a social worker. On 1.9.1997 the Govt. of Manipur had launched the Targeted Public Distribution System (TPDS) with focus on the poor for distribution of essential commodities to the Ration Cards Holders through fair price shop and S.K. Oil Dealers. The concerned Deputy Commissioner of each District is entrusted for implementation of the TPDS. In the present writ petition it is seriously alleged that the respondent no. 4, Shri N. Gojen Singh, who is the S.K. Oil Sub-Dealer of Poling Station No. 11/15, Sagolband Assembly Constituency had not distributed S.K. Oil to the Card holders as per their entitlements. It is also stated that the petitioner has also made a complaint by filing a representation dated 17.12.2007 to the Deputy Commissioner Imphal West District, Manipur. Admittedly, the said representation dated 17.12.2007 is still pending with the Deputy Commissioner, Imphal West.
4. We are of the considered view that it is the bounden duty of the Deputy Commissioner, Imphal West District, who is the authority responsible for implementation of the TPDS in the Imphal West District, Manipur to consider and dispose of the said representation dated 17.12.2007 by passing reasoned order.

5. In the factual backgrounds, it is directed that the Deputy Commissioner, Imphal West District, Manipur to consider and dispose of the said representation dated 17.12.2007 by passing reasoned orders. Further, the Deputy Commissioner, Imphal West District is directed to see the articles under the TPDS has been properly distributed or not to the Card holders as per the guidelines.
6. It is made clear that the Deputy Commissioner, Imphal West District is to complete the whole exercise within one month from the date of receipt of the judgment and order of this court.
7. Petitioner has to approach the Deputy Commissioner, Imphal West District with a certified copy of the judgment and order of this court along with the copy of the representation dated 17.12.2007 for necessary compliance.
8. With the aforesaid direction, this PIL stands disposed of.

Sd/-
(T.NANDAKUMARSINGH)
JUDGE

Sd/-
(B.D. AGARWAL)
JUDGE

**BEFORE THE HON'BLE DISTRICT CONSUMER DISPUTES REDRESSAL FORUM, IMPHAL,
MANIPUR**

Complaint Case No. 79 of 2008

SHRIL INDRAKUMAR SINGH

-COMPLAINANT-

-VERSUS-

SHRI PHEIROJAM RAJEN SINGH AND ANOTHER

-OPPOSITE PARTIES-

**ORDER
06-11-2008**

The complainant is a regular ration cardholder of Antyodaya Anna Yojana Card No. 42077. A copy of the card is enclosed. The Opposite party No. 1 is authorised fair price shop Agent of Polling Station No. 18/11 of Konthoujam Assembly Constituency, within which the complainant resides. The Opposite Party No. 1 is under an obligation to distribute 35 kilogram of rice at the rate of Rs. 3.37 paise per kilogram to all AAY cardholders. The complainant has drawn our attention to the specific instruction written in the AAY card issued by the Government, to the Complainant.

It is stated that on 14th July 2008 in the morning around 7 a.m., the complainant along with his wife went to the house of the Opposite Party No. 1 to obtain AAY rice. The Opposite Party No. 1 has said to have issued only 10 kilogram of rice and that too at Rs. 7/-per kilogram, in violation of the instruction of the Government. Thus, an unfair trade practice was sought to be made out in the complainant claiming various reliefs including a compensation of Rs. 4,000/- against the Opposite Party No. 1.

The Opposite Parties are summoned before this forum. The Opposite Party No. 2 appeared but inspite of service the Opposite Party No. 1 is absent. The complainant filed an affidavit and another affidavit is also filed on 9-10-2008 sworn by his wife Nandini Devi to be taken as evidence on their behalf to substantiate the Complaint. This forum decides to dispose of this complaint on the basis of the evidence brought on record, by the complainant and we hereby do. The two affidavits by the complainant are scrutinised. They corroborate the statement made the complaint. This forum is of the view that the Opposite Party No. 1 fair price shop Agent, who is given the duty to distribute rice to AAY card holder by specific instruction to charge only Rs. 3.37 paise per kilogram and to make available 35 kilograms a month to each card holder, commits on unfair trade practice as defined under the Consumer Protection Act 1985, when he has issued only 10 kilogram of rice at Rs. 7/- per kilogram.

We allow the complaint with the following directions

- (a) The Opposite Party No. 1 is directed to sell rice to AAY card holders at the rate and the scale as laid down in the AAY card;
- (b) The Opposite Party No. 1 shall refund the excess amount charged i.e. Rs. 43.30 paise to Complainant.
- (c) The Opposite Party No. 1 in future shall make the complainant available his due share as envisaged in the AAY scheme.
- (d) The Opposite Party No. 1 shall pay exemplary cost of Rs. 3,000/- to the complainant for loss and mental pains caused to him due to the negligence of the Opposite Party No. 1.

- (e) The Opposite Party No. 2 the Deputy Commissioner Imphal West is directed to keep strict vigilance on the fair price shop keepers to see that they maintain and keep the instruction contained in the AAY card;
- (f) The Opposite Party No. 1 shall pay litigation cost of Rs. 1000/- in total Rs. 4,000/-, which he shall pay within 30 days of this order.

Allowed.

Send copies of this order to Opposite Party No. 1 and 2 for compliance.

**BEFORE THE HON'BLE DISTRICT CONSUMER DISPUTES REDRESSAL FORUM, IMPHAL,
MANIPUR**

Complaint Case No. 80 of 2008

SHRI KHUNDRAK PAM BIDHAN SINGH AND ANOTHER

-COMPLAINANTS-

-VERSUS-

SHRI KHOMDRAM YAIMA SINGH AND ANOTHER

-OPPOSITE PARTIES-

**ORDER
18-11-2008**

Heard the Ld. Counsel. Th. Premlata Devi, Advocate appearing on behalf of the complainants. The Opposite Party No. 1 is absent. On the previous turn Shri, Prithveichand Advocate appeared on behalf of the Opposite Party No. 1, on 5-8-2008. The Opposite Party No. 2 appeared on 24-7-2008 and filed on the version of the case. The complainant No. 1, is the father and complainant No. 2, is the son and they belong to the class of "Below Poverty Line" and were issued by the Government a ration card entitled AAY. The card is filed.

It is alleged that the courts were issued ration item of rice at the rate of Rs. 7/- per kilogram of a quantity of only 15 kilograms, by the O.P No. 1. Who is the F.P.S Agent of the locality in which the complainants are residing at present. The complainants stated that, by virtue of the instructions contained in the card, they are entitled to 30 kilograms of rice at Rs. 3.37 paise per kilogram. It is also stated that the Opposite Party has weighed the rice by using a can and not by weight, in violation of the mandate of the standard of weights and Measures Act, 1976. Hence, the complainant alleged that the Opposite Party has committed has unfair trade Practice actionable under the Consumer Protection Act, 1986 and claimed compensation for loss caused to them to the negligence of the Opposite Party NO. 1.

This forum proposed to dispose of this complaint by the evidence brought on record by the complainants as the Opposite Parties are absent.

To substantial their case, complainant field a copy of the AAY card issued by the government and also an affidavit sworn by the complainant No. 1 we have carefully sensitisation the evidence and we find that the Opposite Party No. 1 has committed unfair trade practice by charging a price higher than what was fixed by the Government and also using a can to misrepresent a kilogram in defiance to the law of weights and measures. We direct as herewith

- a) The Opposite Party No. 1 shall immediately stop weighing rice by using can and use standard weight approved by the weights and Measure Department Manipur
- b) The Opposite Party No. 1 shall provide rice to AAY cardholders at the price fixed by the government, hence forth;
- c) The Opposite Party No. 1 shall pay Rs. 5000/- as compensation to the complainants for causing loss of Valuable time and energy and for causing mental agony to the complainants and also for commission of unfair trade practice as stated above,
- d) The Opposite Party No. 2 the Deputy Commissioner Imphal West is directed to see that fair price shops conform to the rules and regulations in carrying out their duties keeping in view that Right to be Heard is a precious right of the consumers and their interests must receive due considerations at appropriate levels; and

- e) The Opposite Party No. 1 shall pay cost of Rs 2000/- to the complainant, in total Rs. 7000/- and shall be paid within 30 days of this order.

The complaint is allowed.

3. The Deputy Commissioner, Thoubal District, P.O. & P.S. Thoubal, Thoubal District, Manipur.
-RESPONDENTS-
4. The Union of India represented by the Secretary to the Ministry of Consumer Affairs and Public Distribution, Government of India, New Delhi.
-PERFORMA RESPONDENT-

BEFORE

THE HON'BLE MR. JUSTICE T. NANDAKUMAR SINGH

For the Petitioner: Mr. M. Rakesh, Advocate

For the Respondents: Mr. R.S. Reisang, Addl. G.A.
Mr. Jeeten, CGSC

Date of hearing

Judgment and order: 24-11-2008

JUDGMENT AND ORDER
(ORAL)

Heard Mr. M. Rakesh, Learned Counsel appearing on behalf of the Petitioners as well as Mr. R.S. Reisang, Learned Addl. G.A. appearing on behalf of the Respondent Nos. 1, 2 and 3 and Mr. Jeeten Learned CGSC appearing for Respondent No. 4.

2. By this Writ Petition, the Petitioner 6 (six) in number are praying for a direction to the Respondents to make an arrangement so as to enable the Writ Petitioners to get the monthly quota of all PDS items and also for a direction to the Respondent No. 3 to issue Ration Card to the Petitioners under the Targeted Public Distribution System (TDPS) by disposing of the applications filed by the Petitioners. The Respondent No. 3 filed an affidavit-in-opposition stating that the Writ Petitioners had not enclosed 2 (two) passport photos each while filing the applications for issuing Ration Card. The Respondent No. 3 is now ready to issue the Ration Card on the submission of 2 (two) passport size photos each by the Petitioners.
3. In the above factual backgrounds, this Writ Petition is disposed of by directing that the Respondent No. 3, the Deputy Commissioner, Thoubal District shall issue the Ration Card to the Petitioners on submission of the 2 (two) passport size photographs each by the Petitioners. It is made clear that the Petitioners have to submit the passport photos within 1 (one) week from today, on such submission, the Deputy Commissioner, Thoubal District has to issue the Ration Card within 2 (two) weeks.

With the above observation, direction this Writ Petition is allowed.

Sd/-
Judge

**HIGH COURT OF JUDICATURE IN ASSAM, NAGALAND
ARUNACHAL PRADESH ETC., CIVIL APPELLATE SIDE**

**Appeal from
Writ Petition (Civil)**

No. WP(C) 398 (AP) of 2008

**Appellant
Petitioner
Shri Khedari Mihu**

**Respondent
Opposite Party
State of AP & Ors.**

Appellant for Petitioner Mr. S. Mow
J. Mihu

Respondent for Opposite Party: GA(AP)
For: S/C FCI, CGC

IN THE MATTER OF:

Sh. Khedari Mihu S/o. Late Yuba Mihu aged 40 years resident of Prabaya, Dibang Valley District
A.P.

...Petitioner

Versus

1. The Secretary Civil Supply, Govt of Arunachal Pradesh, Papu Hill, Naharalgun, A.P.
2. The Director of Civil Supply. Govt of Arunachal Pradesh, Papu Hill, Naharalgun, A.P.
3. The Chief Secretary Govt of Arunachal Pradesh, Civil Secretariat, Itanagar, A.P.
4. The Secretary, Ministry of Food and Civil Supply, Govt. of India, New Delhi.
5. The Deputy Commissioner, Anini, Dist Dibang Valley, A.P.
6. The Executive Director, FCI, North East Region, Ulubari, Guwahati, Assam.
7. The Area Manager, FCI Office, Dibrugarh, Assam

.....Respondents

WP(C) No. 398(AP) / 2008
BEFORE THE HON'BLE MR. JUSTICE H.N. SHARMA

24.11.2008

Heard Ms. S. Mow, learned counsel for the petitioner and Ms. G. Deka, learned GA, AP.

No counter has been filed by the State respondents in spite of notice of motion was issued on 20.9.2008 making it returnable within 30 days.

The petitioner prays for interim order referring to Annexure – 3 to the writ petition, which relates to shifting of FCI Depot from Anini to Roing. The said Annexure – 3 is quoted hereinbelow:

No DCS/Estt/FCI(D)/2007 dated Itanagar the

To,

The General Manager (R)
Regional Manager, FCI, Assam
Region, GS Road, Ulbuari
Guwahati – 7

Sub: Shifting of FCI base depot from Anini to Roing

Sir,

In the meeting held in the office of Executive Director, North East Zone, Gauhati, on 16.7.2008, it was agreed to shift the FCI base depot from Anini to Roing as one of the employees are willing to work at Anini because of the remoteness. The proposal has been approved by the State Government. Eventually Anini will continue to remain as PDC only.

Therefore, it is requested that formal requisition for lease of godown at Roing with specification may be given so that suitable godown can be located.

Yours faithfully
(Hage Kojeen) IAS
Secretary, Food & Civil Supplies,
Government of Arunachal Pradesh, Itanagar.

This Court fails to understand the logic behind the proposal for shifting of FCI base depot from Anini to Roing has been taken as indicated in the letter i.e. unwillingness of the employees to serve in the rural areas. This is prima facie against public interest. In that view of the matter, the aforesaid decision as per the letter issued by the respondent no. 1 shall remain suspended. The present arrangement of distributing the food items from FCI base depot at Anini shall continue.

Two weeks time is granted as prayed for by the respondents to file counter and the matter would be listed immediately for hearing upon filing of the counter.

Sd/- H.N. Sarma
JUDGE

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**Seventh Report of
the Commissioners
to the
Supreme Court**

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Antyodaya Anna Yojana
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INTRODUCTION

“Food security is a situation that exists when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life”¹

The right to food is the right of all people at all times to be food secure, and the principal duty bearer for the enforcement of this right is the national (and in federal polities like India sub-national) governments. The right to food as a fundamental human right has a strong foundation in international level and covenants, as well as the constitution and laws of several countries including India.

The contemporary international regime of human rights was established by the problem of the Universal Declaration of Human Rights by the UN General Assembly, 1948 which states that the ‘recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world’ (UDHR, 1948).²

The same declaration recognises national governments to be the principal duty-bearers for the enforcement of these rights. It states that ‘if persons have human rights they are entitled to a fundamental claim that others must do, or refrain from doing, something, since States speaking for States are primarily responsible for order and social justice in their jurisdictions, States are the primary targets of these personal and fundamental claims...’³

The most explicit reference to the right to food can be found in Article 47 of the Indian constitution:

Article 47 (Duty of the State to raise the level of nutrition and the standard of living and to improve public health) directs that ‘The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purpose of intoxicating drinks and of drugs which are injurious to health.’

The limitation has been that unlike the Fundamental Rights, which are unambiguously justiciable, the Directive Principles of state policy (of which Article 47 is a part) have moral rather than legal binding.

However Article 21 included in the chapter on Fundamental Rights Article 21 of the constitution, entitled ‘Protection of life and personal liberty’, says, ‘No person shall be deprived of his life or personal liberty except according to procedure established by law’. Over the years, a series of judicial interventions and interpretations have expanded the frontiers of this right to include several other socio- economic rights, including the right to food, right to housing and right to work. The interpretation is that the right to life implies life with dignity, and the complementary rights that are mandatory for the realisation of this right are also by implication fundamental rights. Since life is biologically impossible without regular nutrition, the right to food has been widely recognised by implication as a fundamental right.

However, in practice, in the past a great deal of ambiguity surrounds the actual justifiability of this right, which depends ultimately on the discretion and interpretation of individual judges. In the event of progressive and responsive judges, judicial intervention has cumulatively strengthened the

1 FAO (2003); “Food Security- Concepts and Measurement”, Trade reforms and food security - Conceptualising the Linkages, Commodity Policy and Projections Service, Commodities and Trade Division, FAO, Rome, 2003, Available at <http://www.fao.org/documents/> . Also see Appendix I for a detailed conceptual review of the terms food security, food rights and food sovereignty.

2 UDHR (1948), “Universal Declaration of Human Rights”, <http://www.unhchr.ch/udhr/index.htm>

3 ibid

realisation of this right. The most significant case in this regard is the Writ Petition (Civil) No. 196 filed before the Supreme Court on 2001, by the People's Union for Civil Liberty (PUCL), Rajasthan.

In this case, the Supreme Court through a series of interim orders, has held both the union and state governments accountable for securing food especially of vulnerable populations. On July 23rd, 2001 the Court observed:

In our opinion, what is of utmost importance is to see that food is provided to the aged, infirm, disabled, destitute women, destitute men who are in danger of starvation, pregnant and lactating women and destitute children, especially in cases where they or members of their family do not have sufficient funds to provide food for them. In case of famine, there may be shortage of food, but here the situation is that amongst plenty there is scarcity. Plenty of food is available, but distribution of the same amongst the very poor and the destitute is scarce and non-existent leading to malnourishment, starvation and other related problems.

The Supreme Court also established its own independent monitoring mechanisms to track both hunger and government's performance across the country, through the device of appointing its independent Commissioners. In more than six years of hearing, the Supreme Court has passed a number of significant orders to advance the right to food of specific populations, especially by creating universal entitlement to all children in government and government aided primary schools to state funded hot cooked nutritious mid- day meals, and supplementary nutrition for all children belong the age of 6 throughout the country. The effectiveness of civil and judicial intervention in securing the people's 'right to food' can be assessed from the range of the interim orders of the court so far.

The Supreme Court Commissioners have submitted a series of six reports so far to assess the functioning of nine food and livelihood schemes and the performance of the central and state governments to the Supreme Court. This is the seventh report of the Commissioners in this series. It assesses based on data generated by various governments, and independent demographic and other data, the performance of state policy for direct interventions for food security of all its citizens, ensuring adequate food at all times for healthy and active life, and the compliance of various governments in complying with the orders of the Supreme Court. These schemes introduce firstly a variety of direct food and income transfers, such as supplementary nutrition to children below six years and expectant mothers, mid-day meals for all primary school, old age pensions and food transfers; death compensation for bread winners and national maternity benefit schemes. Second there is the targeted public distribution scheme, involving procurement, storage and sale of subsidised food grains. Finally, there are programmes of wage employment more recently, work guarantee and public works.

In this report, we have tried to review the strengths of these schemes as well as the gaps. These include low allocation and utilisation, poor coverage, corruption, leakages, low standards of assistance etc. The state also continues to deny the widespread persistence of starvation and destitution. Whereas there is remarkable improvement since the case commenced, the highly uneven performance of the majority of state governments confirms that the achievement of assured food security of all people, especially vulnerable social groups, cannot be left to executive discretion alone. It must become a judicial legal entitlement binding on every government, union, state and local, if the enormous human suffering, indignity, economic and social cost and enduring injustice associated with entirely preventable food denials and malnutrition is to be overcome, and hunger banished from every home in the country.

1 Integrated Child Development Services

1.1 Introduction

The ICDS is the only Government programme in the country that caters to the nutrition requirements and other health, immunisation and early education needs of the most vulnerable groups of population namely children under six years of age, pregnant and lactating mothers and adolescent girls. The recent National Family Health Survey (NFHS III) (2005–2006) shows that there has not been much improvement in the nutrition status of children in the last eight years. While during the NFHS-2 (1998–1999) 47% children under three years of age were found to be underweight this number decreased by only one percent with 46% children under three years of age being underweight according to the NFHS-3.

This corroborates other comprehensive surveys conducted by the Government of India. The latest National Nutrition Monitoring Bureau (NNMB) data (2006–2007) show that there is a deficit of over 500 calorie in the intakes of 1–3 years old and about 700 calorie among the 3–6 years old.

It is therefore extremely important that the ICDS programme reaches out to all the target populations and that there are improvements in the quality and equity aspects of the programme ensuring greater effectiveness in dealing with the problem of malnutrition.

The following report is mainly based on data available with the Ministry of Women and Child Development, Government of India and the affidavits filed in Court by the State Governments in response to the order dated 13 December 2006.

1.2 Universalisation

The instructions of the Supreme Court have been categorical to ensure the coverage of all children below six years, all pregnant and lactating mothers and adolescent girls in all rural habitations and urban slums with all nutritional and health services of the ICDS in a phased manner latest by December, 2008. The order of the court dated 28th November, 2001 stated, “We direct the State Governments/ Union Territories to implement the Integrated Child Development Schemes (ICDS) in full and to ensure that every ICDS disbursing centre in the country shall provide as under:

- (a) Each child up to six years of age to get 300 calories and 8–10 grams of protein;
- (b) Each adolescent girl to get 500 calories and 20–25 grams of protein;
- (c) Each pregnant woman and each nursing mother to get 500 calories & 20–25 grams of protein;
- (d) Each malnourished child to get 600 calories and 16–20 grams of protein;
- (e) Have a disbursement centre in every settlement”

Further, the order dated 13th December, 2006 states that “The universalisation of the ICDS involves extending all ICDS services (Supplementary nutrition, growth monitoring, nutrition and health education, immunisation, referral and pre-school education) to every child under the age of 6, all pregnant women and lactating mothers and all adolescent girls.”

In this section, we will review the progress on coverage of the relevant target groups, and habitations, with operational services of ICDS especially supplementary nutrition and immunisation.

1.2.1 Universal Coverage of Beneficiaries

Supplementary Nutrition Programme

The orders of the Court have stated that the ICDS services must be made available to every child up to six years of age, every adolescent girl and every pregnant woman and nursing mother. Since

projected population figures are not available for these groups of population, the number of present beneficiaries is compared with the population of these groups according to the Census 2001 and also with the population of these groups according to the survey conducted by the Aanganwadi workers.⁴ While the latter is more recent, the drawback is that this only covers settlements where there are existing Aanganwadi centres and therefore misses out on those who are not under the project area of any Aanganwadi. Research has also shown that some of the most vulnerable groups within the project area of the Aanganwadi are socially excluded and therefore not included in the Aanganwadi survey. These include socially ostracised dalit, adivasi, minority and disabled children, and economic groups like minorities.

- a. **Children under six years:** At an all India level only about half the children (56.6%) who have been identified by the Aanganwadi survey are beneficiaries of supplementary nutrition provision. As expected, in comparison with the population of children under six according to the Census (2001) the coverage is even poorer. **While there are about 16 crore children in the 0–6 years age group according to Census 2001, the number of SNP beneficiaries is only 5.8 crores⁵, i.e. only 35.5% children under six years of age in the country are receiving SNP** under the ICDS, , even if there are no leakages, leaving out about 10 crore children (66%). Further, **in the states of Assam, Bihar, Kerala and Rajasthan the percent of children getting the benefit of supplementary nutrition is less than even 40%** of the eligible children who have been identified in this age group by the aanganwadi survey. (As seen in the table below)..

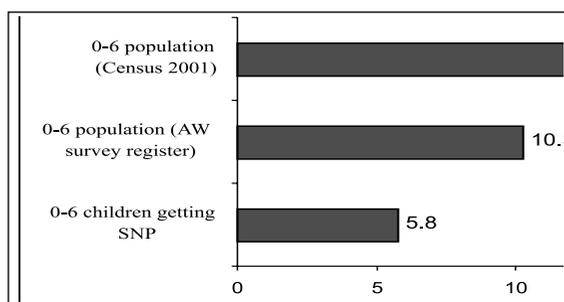


Fig. 1

Table 1.1 Coverage of Beneficiaries under ICDS (0–6 years)

Sl. No.	State/UT	No. of Children 6 months to 6 years getting SNP*	0–6 year population as per aanganwadi survey register**	% children getting SNP (as a % of no. of children as per AW survey)	0-6 year population as per Census 2001	% children getting SNP (as a % of no. of children as per Census)
1	Andhra Pradesh	3255815	5867191	55.5	10171857	32.0
2	Arunachal Pradesh	149241	88841	168.0	205871	72.5
3	Assam	914369	3356205	27.2	4498075	20.3
4	Bihar	3463564	10545140	32.8	16806063	20.6

Contd...

4 As on 31.09.2006, MoWCD Correspondence with Commissioners' Office

5 Status report of the ICDS, DoWCD, Government of India dated 31 March 2007

5	Chhattisgarh	1652830	2349402	70.4	3554916	46.5
6	Delhi	428922	614494	69.8	2016849	21.3
7	Goa	43726	107557	40.7	145968	30.0
8	Gujarat	1741045	3854259	45.2	7532404	23.1
9	Haryana	1119039	1920665	58.3	3335537	33.5
10	Himachal Pradesh	347244	589178	58.9	793137	43.8
11	Jammu & Kashmir	424768	898684	47.3	1485803	28.6
12	Jharkhand	1606592	3321359	48.4	4956827	32.4
13	Karnataka	3075047	4314630	71.3	7182100	42.8
14	Kerala	959868	2742781	35.0	3793146	25.3
15	Madhya Pradesh	3869502	6670504	58.0	10782214	35.9
16	Maharashtra	5108750	8262248	61.8	13671126	37.4
17	Manipur	259997	352352	73.8	308585	84.3
18	Meghalaya	287773	274187	105.0	467979	61.5
19	Mizoram	125681	136185	92.3	143734	87.4
20	Nagaland	301539	284055	106.2	289678	104.1
21	Orissa	3770595	4427112	85.2	5358810	70.4
22	Punjab	864528	1873831	46.1	3171829	27.3
23	Rajasthan	2594188	7093107	36.6	10651002	24.4
24	Sikkim	38620	44570	86.7	78195	49.4
25	Tamil Nadu	1862205	4156309	44.8	7235160	25.7
26	Tripura	233427	280038	83.4	436446	53.5
27	Uttar Pradesh	16041539	20419884	78.6	31624628	50.7
28	Uttaranchal	538644	762747	70.6	1360032	39.6
29	West Bengal	2998314	6966367	43.0	11414222	26.3
30	A & N Islands	21106	27774	76.0	44781	47.1
31	Chandigarh	32958	81300	40.5	115613	28.5
32	D & N Haveli	11935	13394	89.1	40199	29.7
33	Daman & Diu	6694	32302	20.7	20578	32.5
34	Lakshadweep	5758			9091	63.3
35	Pondicherry	29516	66744	44.2	117159	25.2
	All India	58185339	102795396	56.6	163819614	35.5

*Source: 2 Status report of the ICDS as on 31.03.2007, MoWCD, Government of India

**Source: Status report of the ICDS as on 30.09.2006, MoWCD, Government of India

- b. **Pregnant and lactating mothers:** The coverage is even worse if we look at the number of beneficiaries among pregnant and lactating mothers. The number of pregnant women and nursing mothers is estimated to be 4% of the total population at any point in time as per ICDS Scheme guidelines.⁶ Based on 2001 Census data we can assume that there are about 4.1 crore pregnant women and nursing mothers. However, according to the aanganwadi survey register only 2.1

⁶ This is the estimate used under the ICDS scheme itself. Vide para 28 and 29 of the ICDS Scheme quoted in para 2 of DoWCD D. O. No. 4-2/2005-CD-I dated 7 February 2005 to Secretaries in charge of the ICDS in all States/UTs, the number pregnant women and nursing mothers is estimated to be 4 percent of the population. If we estimate the number of pregnant women (roughly the same as number of births) based on the crude birth rate of the population (population * crude birth rate), that would come to around 2 crores. Further, there would be as many lactating mothers.

crore pregnant women have been identified and of these about 1.2 crore women are beneficiaries of the SNP under the ICDS. **Hence, currently only about 25% of the eligible pregnant women and nursing mothers are being reached out to under the SNP of the ICDS, even if there are no leakages.**

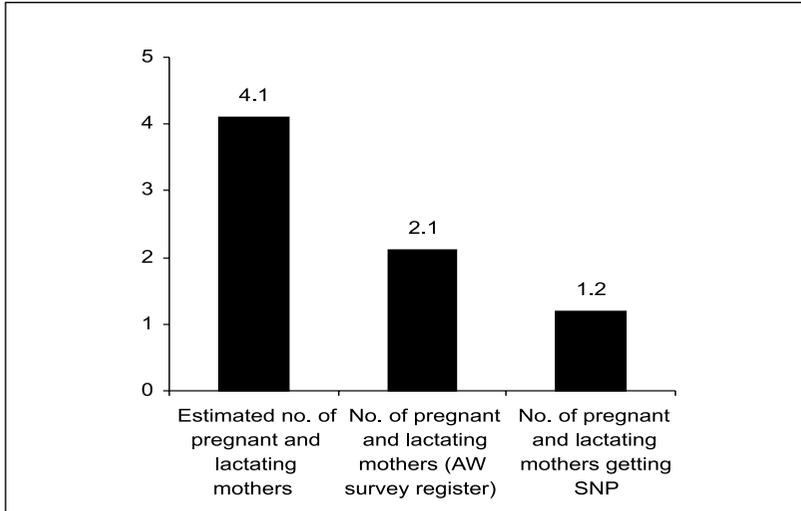


Figure 2

Incidentally, not even all or even the majority of SNP distributed can be assumed to actually be contributing to better nutrition for expectant and nursing women, because the majority is in the form of take-home dry rations, which research shows gets into the common household food pool, rather than be specifically allocated in the household to women.

- c. **Adolescent Girls:** In the case of adolescent girls too the coverage is abysmally poor. The adolescent girls are not part of the main supplementary nutrition programme of the ICDS. The ICDS reaches out to adolescent girls mainly through two programmes—the Kishori Shakti Yojana (KSY) and the Nutrition Programme for Adolescent Girls (NPAG). The KSY has been extended to cover all the blocks in the country. Although data on the number of beneficiaries under this scheme is not available, looking at the financial allocations made for this scheme by the Central Government to the State Governments/UTs for the implementation of this scheme one can make an estimate of how many girls can be covered. Under this scheme, grant-in-aid of Rs. 1.10 lakh per block is released to the States/UTs every year for the implementation of KSY. Given that the programme is implemented in 6108 blocks, the total grant in aid released would be around Rs. 6718.8 lakh. According to the norms for per beneficiary per day allocation of funds the amount to be allocated for adolescent girls is Rs. 2.30 of which the centre’s share would Rs. 1.15. Therefore the budget allocated is sufficient to cover 19.4 lakh girls. In comparison, as per the census of 2001, the total female population in the 11–18 year age group stands at approximately 844 lakhs.⁷ **It is therefore estimated that only 2.3% adolescent girls are being covered under this scheme, even if there are no leakages.** The NPAG programme on the other hand covers

⁷ Sixth Report of the Commissioners to the Supreme Court

undernourished Adolescent Girls in the age group 11–19 years who are underweight (weight < 35 kg.) where free foodgrains at 6 kg. per beneficiary per month are provided to them. However this scheme is currently available in only 51 of the 604 districts in the country.⁸ Adolescent girls continue to be an ignored section under the ICDS scheme.

1.3 Malnutrition Among Children—NFHS 3

The supplementary nutrition programme of the ICDS, along with other services such as nutrition counselling and referral health services are aimed at reducing malnutrition among children under six. The recently released data of the National Family Health Survey (NFHS 3) shows the current status of malnutrition among children under three, measured in terms of weight for age. As seen in the table below almost half (46%) children under three are underweight for their age in the country. Further, there has been almost no improvement in the percent children underweight in the eight years since NFHS 2 when it was about 47%. In **Madhya Pradesh, Jharkhand, Bihar and Chhattisgarh the percent of children malnourished is more than half and in Madhya Pradesh, Bihar and Jharkhand this figure has actually gone up since NFHS-2.** Chhattisgarh on the other hand, although still has a high rate of malnutrition has done comparatively well in the last eight years, with a fall in percent children underweight of nine percentage points. The other states where the situation of malnutrition among children under three has worsened are Arunachal Pradesh, Meghalaya, Haryana, Nagaland, Assam, Gujarat, Kerala, Sikkim and Goa.

Table 1.2 Percent of Underweight Children (under 3 years)

State/UT	Underweight Children (Under 3 Yrs)	
	NFHS-2 (%) (1998)	NFHS-3 (%) (2006)
Andhra Pradesh	38	37
Arunachal Pradesh	24	37
Assam	36	40
Bihar	54	58
Chhattisgarh	61	52
Delhi	35	33
Goa	29	29
Gujrat	45	47
Haryana	35	42
Himachal Pradesh	44	36
Jammu & Kashmir	35	29

Contd...

⁸ All data related to the KSY and NPAG schemes has been quoted from the website of the Ministry of Women and Child Development, <http://wcd.nic.in>

Jharkhand	54	59
Karnataka	44	41
Kerala	27	29
Madhya Pradesh	54	60
Maharashtra	50	40
Manipur	28	24
Meghalaya	38	46
Mizoram	28	22
Nagaland	24	30
Orissa	54	44
Punjab	29	27
Rajasthan	51	44
Sikkim	21	23
Tami Nadu	37	33
Tripura	43	39
U.P.	52	47
Uttaranchal	42	38
West Bengal	49	44
All India	47	46

1.4 Immunisation Coverage

As mentioned above, the Supreme Court in its recent order on 13th December, 2006 directed that ALL the services of ICDS must be universalised. Here we look at the immunisation coverage based on the data of the National Family Health Survey (NFHS-3) of 2005–2006 and also compare it with NFHS-2 (1998–1999) to assess the improvement in coverage in the last eight years. At an all India level the percent of children who have received all recommended vaccines is as low as 44%, showing little improvement of 42% coverage seen during NFHS- 2. Looking at the state-wise performance it is seen that the **coverage is very low in the states like Bihar, Jharkhand, Rajasthan and Uttar Pradesh and the north-eastern states Assam, Meghalaya and Arunachal Pradesh.** What is also worrying is that in better performing states like Tamil Nadu, Kerala, Andhra Pradesh and Gujarat the coverage under immunisation has actually fallen during the eight years since NFHS-2.

Ensuring full coverage of immunisation is a joint responsibility of the ICDS and the health department. While the aanganwadi workers of the ICDS have role in motivating families to get their children immunised, the immunisation will not be possible unless the ANM visits the village regularly and there is adequate supply of the vaccines.

1.5 Universal Coverage of Habitations

Table 1.3 Immunisation Coverage

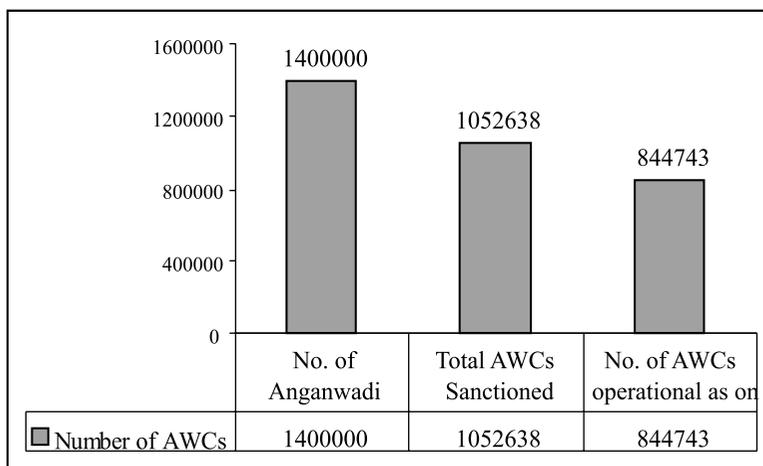
State/UT	Immunization Coverage (% of 12–23 months children who have received all recommended vaccines)	
	NFHS-2 (%) (1998)	NFHS-3 (%) (2006)
Andhra Pradesh	53	46
Arunachal Pradesh	21	28
Assam	17	32
Bihar	12	33
Chhattisgarh	22	49
Delhi	-	63
Goa	83	79
Gujrat	53	45
Haryana	63	65
Himachal Pradesh	83	74
Jammu and Kashmir	57	67
Jharkhand	9	35
Karnataka	60	55
Kerala	80	75
Madhya Pradesh	23	40
Maharashtra	78	59
Manipur	0	47
Meghalaya	-	33
Mizoram	-	46
Nagaland	-	21
Orissa	44	52
Punjab	72	60

Contd...

Rajasthan	17	27
Sikkim	47	70
Tamilnadu	89	81
Tripura	-	50
Uttar Pradesh	20	23
Uttranchal	41	60
West Bengal	44	64
All India	42	44

The Supreme Court in various orders directed the Government of India and the State/UT governments to ensure not only that every child, adolescent girl and woman of required eligibility be covered, it also requires the scheme to be geographically universalised, or in other words that there is an aanganwadi centre in every habitation.⁹ Accepting the submissions to the Supreme Court by the Commissioners that this would require at least 14 lakh aanganwadi centres,¹⁰ in the judgement of 13th December 2006 it was stated that “Government of India shall sanction and operationalise a minimum of 14 lakh AWCs in a phased and even manner starting forthwith and ending December 2008. In doing so, the Central Government shall identify SC and ST hamlets/habitations for AWCs on a priority basis.” However, the progress on the ground has been slow and unsatisfactory.

Table 1.4: Status of the Operation of AWCs—All India



Source: Status report of the ICDS as on **31.03.2007**, MoWCD, Government of India

Currently, the Government of India has sanctioned 10.5 lakh aanganwadi centres, of which 1.02 lakh centres were sanctioned in December 2006. Therefore, an additional 3.5 lakh centres have to be sanctioned for the Court order of 14 lakh aanganwadi centres to be implemented. With the latest budget (2007–2008) not making an allocation for these additional centres, it is impossible for 14 lakh centres to be sanctioned and made operational by the end of 2008, as directed by the Court.

⁹ See order dated 28.11.2001 and order dated 13.12.2006

¹⁰ 6th report of Commissioners and Letter to the Supreme Court from the Commissioners dated 19 July 2006 give details of how the figure of 14 lakh was arrived at.

While there has been an increase in the number of anganwadi centres in the last two years, albeit not at a sufficient rate, the process of operationalising these centres has been very slow. Further the Supreme Court in its order dated 9th July 2007 directed that, “The backlog has to be cleared immediately and the centres which have been sanctioned up to September, 2006 shall be made operational and functional by 15th July, 2007 in the case of all States except the State of U.P. where the last date is fixed to be 31st July, 2007. Those centres which have been sanctioned up to January, 2007 shall be made functional by September 30th 2007.”

The table below therefore looks at the status of operationalisation of anganwadi centres that were sanctioned up to September 2006. The 1.2 lakh anganwadi centres that were sanctioned after this period are not looked at here as the deadline for operationalisation of these as set by the Supreme Court is September 30th 2007, and therefore there is still time.

Table 1.5 Status of Operationalisation

S.no	State/UT	No. of anganwadi centres sanctioned as on September 2006 (Phase I expansion)	No. of anganwadis operationalised	% of anganwadis operationalised	Source	
1	Andhra Pradesh	66101	61761	93.4	As on March 2007*	
2	Arunachal Pradesh	3037	3037	100.0		
3	Assam	32075	31796	99.1	As per Affidavit filed in July/Aug 2007	
4	Bihar	80528	80101	99.5		
5	Chhattisgarh	29437	28498	96.8	As per Affidavit filed in July/Aug 2007	
6	Goa	1012	1012	100.0		
7	Gujarat	41484	40888	98.6		
8	Haryana	16359	16359	100.0		
9	Himachal Pradesh	18248	18248	100.0		
10	Jammu & Kashmir	18772	17767	94.6		
11	Jharkhand	30854	30854	100.0		
12	Karnataka	51614	51478	99.7		
13	Kerala	28651	27980	97.7		As on March 2007*
14	Madhya Pradesh	59324	59324	100.0		As per Affidavit filed in July/Aug 2007
15	Maharashtra	74990	73996	98.7		
16	Manipur	4501	4501	100.0		
17	Meghalaya	3179	3162	99.5	As on March 2007*	
18	Mizoram	1592	1592	100.0	As per Affidavit filed in July/Aug 2007	

19	Nagaland	3035	2770	91.3	As on March 2007*
20	Orissa	37480	36527	97.5	
21	Punjab	17421	17216	98.8	As per Affidavit filed in July/Aug 2007
22	Rajasthan	46862	46809	99.9	
23	Sikkim	988	988	100.0	As on March 2007*
24	Tamil Nadu	45726	45726	100.0	
25	Tripura	6094	6122	100.5	As per Affidavit filed in July/Aug 2007
26	Uttar Pradesh	137557	137798	100.2	
27	Uttaranchal	7792	7747	99.4	As on March 2007*
28	West Bengal	74640	70230	94.1	As per Affidavit filed in July/Aug 2007
29	A & N Islands	621	621	100.0	As on March 2007*
30	Chandigarh	329	329	100.0	As per Affidavit filed in July/Aug 2007
31	Delhi	4428	4425	99.9	As on March 2007*
32	Dadra & N Haveli	215	138	64.2	
33	Daman & Diu	97	97	100.0	
34	Lakshadweep	74	74	100.0	
35	Pondicherry	688	688	100.0	

* From Status of ICDS Report, March 2007, Ministry of Women and Child Development, Government of India. *Note: Some states are showing more than 100% operationalisation because these have already started the process of operationalising the anganwadi centres that were sanctioned after September 2006.*

As seen in the table above all the states have complied with the orders of the Supreme Court and have almost completed the process of universalisation. This is also the case with the states of Bihar, Orissa, Rajasthan, Himachal Pradesh and Kerala, states to which, notice of contempt was issued by the Supreme Court in the order dated August 25th 2007.

However, the problem now remains at the level of the Government of India, which has to sanction another 3.5 lakh AWCs (up to now 10.5 lakh AWCs have been sanctioned) to comply with the order of the Court (dated December 13th 2006) that at least 14 lakh anganwadi centres must be operationalised by December 2008. **The Government of India must be asked to present to the Supreme Court a detailed roadmap, along with time frame on how it proposes to sanction and operationalise 14 lakh anganwadi centres. It is also important that the Government of India allocate the required amount of funds for the universalisation of ICDS to 14 lakh centres and for all services to be provided to all the eligible beneficiaries.**

According to an estimation made in the Sixth Report of the Commissioners, the procedures adopted for the recruitment of personnel, finalisation of locations of anganwadi centres and training of staff alone are anticipated to take over a year to complete. It was hence recommended that to the extent possible, administrative procedures be taken up simultaneously rather than sequentially to prevent delays in the expansion of the ICDS. The Government must seriously consider this recommendation in order to comply with the order of the Supreme Court to sanction and operationalise 14 lakh anganwadi centres by December 2008.

1.6 Finances for ICDS

ICDS is a Centrally-sponsored Scheme implemented through the State Governments/UT Administrations with 100% financial assistance for inputs other than supplementary nutrition which the States were to provide out of their own resources. From 2005–2006, it has been decided to extend support to States up to 50% of the financial norms or 50% of expenditure incurred by them on supplementary nutrition, whichever is less. This Central assistance has been proposed to ensure that supplementary nutrition is provided to the beneficiaries for 300 days in a year as per nutritional norms laid down under the scheme.¹¹

The cost of supplementary nutrition varies depending upon recipes and prevailing prices. However, the Central Government issues guidelines regarding cost norms from time to time. The latest (since October 19th 2004) are as under:¹²

	Revised Rates
(i) Children (6 months to 72 months)	Rs. 2.00 per child/ per day.
(ii) Severely malnourished Children (6 months to 72 months)	Rs. 2.70 per child/ per day.
(iii) Pregnant women and Nursing mothers/Adolescent Girls (under KSY).	Rs. 2.30 per beneficiary per day.

Further, the Supreme Court in its order dated 13th December 2006 states that:

“All the State Governments and Union Territories shall fully implement the ICDS scheme by, inter alia,

- (i) allocating and spending at least Rs. 2/- per child per day for supplementary nutrition out of which the Central Government shall contribute Rs. 1/- per child per day.
- (ii) allocating and spending at least Rs. 2.70 for every severely malnourished child per day for supplementary nutrition out of which the Central Government shall contribute Rs. 1.35 per child per day.
- (iii) allocating and spending at least Rs. 2.30 for every pregnant women, nursing mother/adolescent girl per day for supplementary nutrition out of which the Central Government shall contribute Rs. 1.15.”

Expenditure for SNP under ICDS: in relation to present beneficiaries

Since the central government releases funds to the states for SNP based on the expenditure of states for this purpose, it is more important to look at expenditure rather than allocations on SNP. In this section we look at the actual amount that was spent on SNP in the year 2006–2007.

Table 1.6 Per beneficiary per day expenditure on SNP: 2006–2007

State/ Union Territory	Total no. of SNP beneficiaries (women and children)*	Expenditure on SNP in 2006–2007 (Rs. in crores)**	Per beneficiary per day expenditure***
Andhra Pradesh	20830.23	4103963	1.69
Chandigarh	211.75	40345	1.75
Chhattisgarh	7017.56	2096058	1.12

Contd...

11 <http://wcd.nic.in/>

12 *ibid.*

Dadra & N Haveli	88.43	13955	2.11
Daman & Diu	63	8392	2.50
Goa	303.58	54485	1.86
Gujarat	7781.86	2042347	1.27
Hary'ana	7273.83	1405833	1.72
Jammu & Kashmir	2811.91	522958	1.79
Karnataka	19116.76	3752367	1.70
Lakshadweep	77.64	7516	3.44
Madhya Pradesh	17159.58	4724630	1.21
Manipur	1778.5	314597	1.88
Meghalaya	2092.65	341873	2.04
Mizoram	1365.21	154963	2.94
Nagaland	1798.71	349376	1.72
Orissa	7977.99	4494394	0.59
Rajasthan	15722.1	3252132	1.61
Sikkim	521.77	46182	3.77
Tamil Nadu ^	6235	2384946	0.87
Tripura	1711.9	271947	2.10
Uttar Pradesh	79421.07	19345747	1.37

*Source: Status report of the ICDS as on **31.03.2007**, MoWCD, Government of India

** Source: MoWCD Correspondence with Commissioners Office

*** Per beneficiary per day expenditure is calculated as (total expenditure on SNP#/no. of beneficiaries)/ 300 since SNP is to be provided for 300 days in a year.

this is figure in column 3 * 10000000

^ The figure for Tamil Nadu is misleading because this state spends on SNP also from a separate programme called the Puratchi Thalaivar M.G.R Nutritious meal programme under which cooked noon meal is provided for children in the age group of 2+ to 4+ for which Rs. 10756.21 lakh was spent in the year 2005–2006

As can be seen in the table most states (for which data is available) are spending less than the norm of Rs. 2/- per beneficiary per day. (the actual amount would be even lower considering that the norm for SNP for pregnant and lactating mothers is Rs. 2.30 per day). Orissa is spending the least i.e. Rs. 0.59 per day per beneficiary. Uttar Pradesh, Madhya Pradesh, Gujarat and Chhattisgarh are also spending much lower than the norm (less than Rs. 1.50 per day per beneficiary). Since the expenditure data up to March 2007 is not available for all the states, the average spending at an All India level cannot be estimated with respect to 2007–2008. However looking at the previous year it is seen that the total expenditure reported by the States on SNP for the year 2005–2006 was Rs. 2142.70 crores, while the total number of beneficiaries as on 31.3.06 was 5.6 crores. Therefore, it is seen that on an average only Rs. 1.27 was spent per beneficiary per day on SNP in the year 2005–2006 while the norms for spending on SNP is Rs. 2 per beneficiary (Rs. 2 for children under 6 and even more for pregnant and lactating mothers, adolescent girls and malnourished children). (for state wise details of expenditure in 2005–2006 see Annexure 2). This low expenditure on SNP per beneficiary per day could mean one or more of the following: (1) the actual number of beneficiaries are lower than what is being reported by official statistics, (2) the quality of SNP being supplied is poor, (3) there are gaps in the supply of SNP; SNP is not being supplied regularly everyday.

1.6.2 Utilisation of SNP funds

This dichotomy between allocation and expenditure obviously means that the amount allocated for SNP is actually not being utilised. In the year 2005–2006 of the Rs. 2818.63 crores allocated by states/UTs and the Government of India for the provision of supplementary nutrition Rs. 2142.7 crores was spent, i.e. **about 76% of the funds were utilised**. (Such an analysis could not be done for the year 2006-07 because data was available only on expenditure and not allocation). The states of Chhattisgarh, Bihar, Delhi, Tripura, Kerala, Punjab, Uttaranchal, Gujarat and Arunachal Pradesh utilised even less than 60% of the funds that were allocated for SNP. The states/UTs that spent all the amount allocated (or even more) were the states (UTs) of Lakshadweep, Nagaland, Manipur, Tamil Nadu, Chandigarh, Mizoram, Himachal Pradesh, Pondicherry, Haryana, A & N Islands, Karnataka, Dadra & N.Haveli, Daman & Diu and Sikkim.

Table 1.7 Status of Utilisation of SNP Funds 2005–2006

States/UTs	Allocation (Rs. in crores)	Expenditure (Rs. in crores)	% Utilisation
Lakshadweep	0.08	0.60	802.66
Nagaland	9.53	20.08	210.72
Manipur	6.70	13.29	198.48
Tamil Nadu	35.70	57.78	161.85
Chandigarh	1.41	2.17	154.15
Mizoram	6.65	10.06	151.28
Himachal Pradesh	10.50	14.54	138.48
Pondicherry	2.51	3.35	133.44
Haryana	30.56	40.46	132.38
A & N Islands	3.11	4.01	129.06
Karnataka	109.79	127.19	115.85
Dadra & N Haveli	0.69	0.69	100
Daman & Diu	0.57	0.57	100
Sikkim	5.44	5.44	100
Uttar Pradesh	494.45	459.16	92.86
West Bengal	132.32	118.45	89.52
Maharashtra	249.64	206.77	82.83
Jammu & Kashmir	26.92	21.90	81.34
Jharkhand	157.12	127.11	80.9
Assam	66.00	53.38	80.87
Rajasthan	159.52	123.32	77.31
Andhra Pradesh	117.95	88.46	75

Contd...

Meghalaya	32.01	22.79	71.19
Goa	4.46	3.15	70.74
Orissa	121.78	76.22	62.58
Madhya Pradesh	154.20	94.58	61.34
Chhattisgarh	119.46	71.30	59.69
Delhi	15.34	8.40	54.72
Bihar	347.80	189.89	54.6
Tripura	14.47	7.84	54.15
Kerala	89.27	47.03	52.69
Punjab	47.06	24.36	51.76
Uttaranchal	33.66	15.23	45.25
Gujarat	200.41	81.99	40.91
Arunachal Pradesh	11.56	1.13	9.81
Total	2818.63	2142.70	76.02

Apart from actual expenditure, committed liability of Rs. 1032.59 Lakh in the year 2005–2006 has been reported by Arunachal Pradesh.

Source: MoWCD Correspondence with Commissioners Office. (See available data for 2006–2007 in Annexure 4)

1.6.3 Allocations Required

While the data on state/UT contributions is not available for 2006–2007, the budget released by Government of India for this year is about Rs. 1520 crore works out to a contribution of Rs. 0.71 per beneficiary per day, still below the norm of Re. 1 per beneficiary per day¹³. Further, considering that according to the norms of the government each Anganwadi centre is to cater to a total of 100 beneficiaries comprising of 80 children and 20 pregnant and lactating mothers the following calculation is made:¹⁴

- No. of operational centres: 8.4 lakh
- No. of beneficiaries to be catered to (according to norms):¹⁵
8.4 lakh×100 = 8.4 crore
- No. of days SNP is to be provided: 300 days
- Required minimum allocation by Government of India for SNP (in 2006–2007):
8.4×300 = **Rs. 2520 crores**
- Required allocation in 2007-08 if 10.4 lakh AWCs are operationalised: 10.5×300 = **Rs.3150 crores**
- Required if 14 lakh AWCs are operationalised according to Court orders:
14×300 = **Rs. 4200 crores**

¹³ Here, the per day per beneficiary allocation is calculated on the basis of 7.05 crore beneficiaries which is the no. of beneficiaries (children + women) as on 31.03.2007

¹⁴ The Supreme Court in its order dated October 2004 states that “all the State Governments/Union Territories shall allocate funds for ICDS on the basis of norm of one rupee per child per day, 100 beneficiaries per AWC and 300 days feeding in a year, i.e., on the same basis on which the Centre make the allocation”. (7 Oct 2004).

¹⁵ If the ICDS were to be universalised to cover all children under 6, all pregnant and lactating mothers and all adolescent girls, then the norm of 100 beneficiaries per anganwadi centre would be an underestimate, and the required funds for SNP would be even higher.

Further, each state government would have to spend an equal amount to be able to eligible for such a contribution from the Government of India. (See Annexure 4 for state-wise details)

While the previous sections look at the allocation and expenditure of funds in relation to the existing number of beneficiaries, there is also a need to estimate the amount of funds required should the ICDS services be universalised to cover every child under six. The funds allocated by State/UT Governments for supplementary nutrition are hugely inadequate to cover all children under six years of age. It may be noted that the amounts allocated are nowhere near adequate even for the 0–6 year old population of the States, which is only one of the 4 broad groups of beneficiaries that the ICDS is intended to cater to. If, for the purpose of analysis, the entire fund for SNP is regarded as an SNP fund for 0–6 year old alone, then the **shortfall of funds** is to the tune of **71% of funds** that should have been allocated as per norms. It may be emphasised that if allowance is made for rightful beneficiaries of the other three categories, namely pregnant women, nursing mothers and adolescent girls, the magnitude of the shortfall will shoot up further by several counts.

Table 1.8 Shortfall of SNP funds with reference to the 0–6 population

	0–6 population as per 2001 Census (figures in crores)	Amount required to be allocated for the 0-6 population (in Rs. crores) [#]	Amount allocated in 2005-06 (in Rs. crores) (Centre + State) [*]	% Shortfall
Total	16.38	9829.17	2818.63	71.3

[#] Required funds = (total 0-6 year old population) (Rs.2 per child per day) (300 days).

^{*} **Source:** MoWCD Correspondence with Commissioners Office

(See Annexure 5 for state-wise details)

1.7 Banning Of Contractors for SNP

The October 7th 2004 order of the Supreme Court states, "...contractors shall not be used for supply of nutrition in Anganwadis and preferably ICDS funds shall be spent by making use of village communities, self-help groups and Mahila Mandals for buying of grains and preparation of meals."

In terms of the supply of supplementary nutrition, it is to be observed that widely varying systems of procurement and supply of supplementary nutrition are adopted by different States. Broadly, there are three kinds of sources of supply of SNP (or raw material for SNP) that is seen – (1) Contractors/Manufacturers/Wholesale Dealers who are given contracts based on open tenders, (2) Self Help Groups or procuring through locally formed committees at the level of the AWC, block or district and (3) co-operative societies or government undertakings such as state Civil Supply Corporations. Some states such as Maharashtra, Sikkim and Uttar Pradesh have indicated that they are working towards a system where contractors are not used for the supply for SNP in compliance with Supreme Court orders. Of the 25 states/UTs for which data is available, Chandigarh, Daman & Diu, Madhya Pradesh, Mizoram, Orissa, Rajasthan, Tamil Nadu, Uttar Pradesh and Uttaranchal are still using private traders/contractors for the supply for SNP, in defiance of the Supreme Court orders.

Table 1.9 System of Procurement, Storage And Distribution Of SNP

State/UTs	Contractors/Manufacturers/Wholesale Dealers	SHGs/Local Procurement	Co-operative Societies/Govt. Undertakings/Marketing Federations
Andhra Pradesh		✓	✓(in 159 projects)
Assam		✓	
Bihar		✓	
Chandigarh	✓		
Chhattisgarh		✓w.e.f 1.4.2007	
Daman & Diu	✓		
Delhi		✓	
Goa			✓
Gujarat			✓
Haryana		✓w.e.f 31.12.2006	
Jharkhand		✓	
Lakshadweep			✓
Madhya Pradesh	✓ directed districts to stop using contractors once existing contracts expire	✓	✓
Maharashtra		✓	✓
Manipur		✓w.e.f 29.12.2006	
Meghalaya		✓district level committees	
Mizoram	✓		
Orissa	✓	✓	
Punjab		✓	✓
Rajasthan	✓	✓	
Sikkim			✓
Tamil Nadu	✓35% weaning food outsourced on annual tender basis		✓
Uttar Pradesh	✓	✓in 20 blocks, to be expanded in a phased manner	
Uttaranchal	✓		✓WFP
West Bengal		✓	✓

*Source: MoWCD correspondence with Commissioners Office and affidavits of State Governments to Supreme Court

1.8 Coverage of SC/ST hamlets

Supreme Court order dated 7th October, 2004 states that “all SC/ST habitations should have an anganwadi as early as possible. Further, until the SC/ST population is fully covered, all new anganwadis should be located in habitations with high SC/ST populations”. The ICDS guidelines envisage that in the selection of projects in rural areas priority consideration will be given, inter-alia, to areas predominantly inhabited by SC and ST populations. Further, in response to the order of the Supreme Court letters have been sent to all state governments from the Government of India instructing them to adhere to these guidelines and ensure that areas with majority SC/ST populations be selected for setting up of new AWCs. (Letters No. 4-2/2005 CDI dt. 4 July 2005; D.O. No. 4-2/2005-CD-1 dt. 7 February 2005; No. 14-1/2004-CD-1 (VoL II), dt. 10 January 2007). However there is no system of verifying this as the data is not disaggregated on caste basis.

In the order of 13th December 2006 it was stated that “the Central Government shall identify SC and ST hamlets/habitations for AWCs on a priority basis”. Further this order also stated, “Chief Secretaries of all State Governments/UTs are directed to submit affidavits with details of all habitations with a majority of SC/ST households, the availability of AWCs in these habitations, and the plan of action for ensuring that all these habitations have functioning AWCs within two years.”

However, only some of the state governments had this information in the affidavits submitted to the Court (as seen in the Table no. 1.11).

Table 1.11 Coverage of SC/ST habitations

State	No. of SC/ST habitations	No. with AWC	No. without AWC
Bihar	25522	22289	3233
Uttar Pradesh	31808	28482	3326
Tamil Nadu	9760	8817	943
West Bengal	13993	9367	4626
Madhya Pradesh	17153	12985	4168
Gujarat		10026	
Goa		251	
Assam		8818	
Orissa		4167 (in 9 districts)	

From the table above it seems that in the states for which data is available majority of SC/St habitations have been covered under the ICDS scheme. However, this data is insufficient and in future data must be collected by the governments to understand the availability of AWCs in SC/ST habitations and also the no. of SC/ST beneficiaries among all beneficiaries. (Not for this report, but a small research project should be undertaken to verify that in fact the centres are in SC ST hamlets. The experience with handpumps is that they are often physically still located in upper caste hamlets, although they are on paper in SC ST hamlets).

1.8.1. Coverage of Girls

Similarly disaggregated data on the basis of the sex of the beneficiaries of SNP must also be collected. Currently this is available only for pre-school beneficiaries, and this shows that 49% of the pre-schoolers under ICDS are girls. (for details see Annexure 6)

1.9 Summary of Compliance

The table below summarises the status of compliance vis-à-vis some of the important orders of the Supreme Court in relation to ICDS. The Hon'ble Court passed orders in relation to the ICDS on 28th November 2001, 29th April 2004, 7th October 2004 and 13th December 2006 are looked at. Based on the report above, the following table summarises the status of compliance vis-à-vis each of the major orders that were passed.

Table 1.12 Status of Compliance

Order	Status of Compliance
Have a disbursement centre in every settlement (Nov. 2001); Increase the no. of AWCs to 14 lakh (Oct. 2004 and Dec. 2006)	Presently 10.4 lakh AWCs sanctioned. An additional 3.5 lakh centres must be sanctioned and operationalised by December 2008
Operationalise all AWCs immediately (April 2004), Operationalise 14 lakh AWCs by December 2008 (Dec 2006)	Currently most of the sanctioned anganwadis have been operationalised. In order to meet the deadline set by the Court to sanction and operationalise 14 lakh AWCs by December 2008, 3.5 lakh more anganwadis must be sanctioned and the process of operationalisation of new centres needs to be quickened.
All SC/ST habitations to have an AWC; (Oct 2004) SC/ST habitations to be given priority, (Dec 2006)	SC/ST Habitation survey is yet to be conducted in most states. Field reports suggest that many SC/ST habitations do not have an AWC.
Cover every child, pregnant and lactating mother and adolescent girl (Nov. 2001; Dec 2006)	Presently, One-third of children under-6, one-fourth of pregnant and lactating mothers and only 2.3% adolescent girls being covered under SNP.
All the State Governments/Union Territories shall allocate funds for ICDS on the basis of norm of one rupee per child per day, 100 beneficiaries per AWC and 300 days feeding in a year, i.e., on the same basis on which the Centre make the allocation. (Oct. 2004). Allocations later increased to Rs. 2 per day for children under-6 (Dec 2006) The Dec 2006 order also states that the allocated amount must be spent.	Shortfall to the tune of Rs. 1200 crore (to be shared on a 50-50 basis between Government of India and State Governments) for SNP based on the norm of 100 beneficiaries per AWC, this increases manifold when estimates are made for universalisation to cover every child (as directed by the Court in other orders). Further, utilisation of funds in 2005-06 has been 76% and the amount actually spent per day per beneficiary is Rs. 1.27. (against the norm of Rs. 2)
ICDS services not be restricted to BPL families (Oct. 2004)	Instructions to this effect sent to all state governments from MoWCD vide letter no: 19-5/2003-CD-1 (Pt) dated 29.11.2005 and again reiterated in letter dated 7.3.2006.
The vacancies for the operational ICDS shall be filled (Oct 2004)	As on 30.09.2006, of the 8048 CDPO posts sanctioned, only 5406 were in position (37.3% positions vacant); of 41739 sanctioned posts of supervisors, only 25085 were filled (39.9% posts vacant) and of the 946060 posts of AWWs sanctioned, 769582 were in position (18.6% vacant) ¹⁶ .
Cover Slums under ICDS (Oct. 2004)	Presently, One-third of children under-6, one-fourth of pregnant and lactating mothers and only 2.3% adolescent girls being covered under SNP.
Contractors not to be used for supply of SNP (Oct 2004)	Contractors still in use openly or indirectly in many states

¹⁶ Comparative Statement for the Performance of ICDS Projects as on 30 September 2006, MoWCD, Govt. of India

1.10 Quality of ICDS

While the above sections look at the outreach of ICDS services in terms of number of habitations and beneficiaries reached and the financial allocations and expenditures on ICDS, it is also important to look at the quality of the provision of these services. Extending coverage under ICDS is not enough and a radical improvement in the quality of ICDS services is also required. The real objective should be “universalisation with quality and equity”. The quality of ICDS varies a great deal between different states, and sometimes even between different Anganwadis within the same state. The quality of AWCs is seen on the basis of reports of some field studies.

1.10.1 Physical Infrastructure

It is seen that in terms of physical infrastructure such as the buildings AWCs are located in, availability of toilet and drinking water facilities, weighing scales, medicine kits, pre-school education material etc. the anganwadi centres in the country are very poorly equipped. For instance, according to a Rapid Facility Survey of ICDS conducted by NCAER, more than 40 percent AWCs (Anganwadi Centres) across the country are neither housed in ICDS building nor in rented buildings. Only one-third of the anganwadis are housed in ICDS building and another one-fourth are housed in rented buildings. As regards the status of anganwadi building, irrespective of own or rented, more than 46 percent of the anganwadis were running from pucca building, 21 percent from semi-pucca building, 15 percent from kutcha building and more than 9% running from open space¹⁷. Further, the survey data reveals that more than 45 percent anganwadis have no toilet facility and only 39 percent anganwadis reported availability of hand-pumps.

1.10.2 Outreach to Children under 3¹⁸

The ICDS has been weak in addressing the needs of children below the age of three years, when this is exactly that stage of the life-cycle where malnutrition is most likely to set in, and its consequence most grave and enduring and in many cases irreversible. If ICDS is to seriously impact on child malnutrition, it needs to focus on management of severe malnutrition in the 0–3 age group. Supplementary nutrition, for this age group, should be not just foodgrain, as is the case in many parts of the country, but specially prepared weaning foods made from nutritious locally grown food appropriate for this age-group.

This in turn means that the bulk of the activities of the AWC should focus on the families in the community. The training and supervision of the AWW should prepare her to make regular, focused, structured home visits. These visits would be to homes with expectant mothers, infants and young children, especially in critical periods such as the last trimester of pregnancy, the day of delivery, the first month after birth, 6–9 months and 9–12 months. In these visits, she would attempt to educate and build capacities of families regarding infant and young feeding practices, newborn care and the nutrition needs of women. To be able to make such regular home visits and provide breastfeeding support and nutrition counseling, there should be two anganwadi workers in every anganwadi centre. Then one anganwadi worker would be able to provide the much needed focus on children under three, pregnant and lactating women which are mainly community based services while the other can provide pre-school education and other centre based services required for children in the 3–6 years age group.

1.10.3 Preschool

The Supreme Court in order dated 13th December 2006 states that *all* services of the ICDS are to be universalised. This includes pre-school for children in the age group of 3–6 years. According to the

¹⁷ Main results of the Rapid Facility Survey of Infrastructure at Anganwadi Centres conducted by NCAER is available at <http://wcd.nic.in>

¹⁸ This section draws heavily from “Promises to Keep: ICDS at Crossroads”, Harsh Mander

Status Report of the ICDS as on 30.09.2006 (MoWCD) enrolment in pre-school at the anganwadi is on an average 36.4 children per centre. This would roughly be around 50% of eligible children under an AWC (since each AWC would cover about 150 children under six, it is assumed that those in 3–6 age group would be around 75). Even in centres where pre-school is supposed to be provided, field studies show that in reality nothing much happens. For instance, the FOCUS report states that “The FOCUS survey suggests that, where early childhood education is provided at the anganwadi, such activity is sporadic and limited. Tamil Nadu and Himachal Pradesh were the only states with a fairly active educational component in ICDS...86% of the mothers in Tamil Nadu, and 74% in Himachal Pradesh, said that educational activities were taking place at the Anganwadi. In the sample as a whole, however, the corresponding proportion was only 47%.” Here again the presence of two anganwadi workers becomes crucial to ensure that both the age groups of children under three and children in the 3–6 years age group are provided essential services.

1.10.4 Training

The Nationwide Evaluation of ICDS Survey by NCAER showed that though about 84% of the functionaries reported to have received training, the training was largely pre-service training. In-service training remained largely neglected. The current training given to the anganwadi worker does not equip her to perform the multiple (all equally important) tasks of growth monitoring, nutrition counseling, pre-school education etc.

1.10.5 Exclusion

There are very few systematic studies of the precise degree of social exclusion, the groups that tend to be structurally excluded, and the reasons and barriers that result in these denials. There is rich anecdotal data, including that which is reported to the Commissioners, such as of dalit children being refused access to ICDS feeding, or the boycott by upper-caste families of ICDS centres run by dalit AWCs or even helpers. Further, certain categories of children such as disabled children or migrant children do not figure in the design of the ICDS programme. These groups obviously need special provisions and there is no mention of this in any guidelines. There hasn't even been a disability survey conducted by most anganwadi centres.

Evaluation of ICDS by NIPCCD, Ministry of Women and Child Development Infrastructure

Availability of sanitation facilities is most crucial for reducing mortality and morbidity in rural and tribal areas. Data from the study showed that only 31% of the households had toilet facilities. Sewage/drainage system was reported in 30% of villages under regular ICDS Projects whereas 27% of villages of those projects, which were assisted by World Bank, were having such facilities. Out of ten villages, 4 (40%) of projects covered by NGOs had these facilities also. While around 41% of Anganwadis had toilet facilities, 17% of these facilities were not found to be in good condition and 59% AWCs were even deprived of this amenity.

It was found that educational facility of lower primary school (class I-V) existed in nine out of 10 villages (90%). Middle school (VI-VIII) facility was available in 61% of villages whereas high schools were functioning in 39% of sample areas.

About 97% Anganwadi Centres in urban areas, 93% in rural areas and 74% in tribal areas were connected by roads. Primary Health Centres and sub-centres were available in 29% and 43%, respectively, in Anganwadi areas. Data thus reveals that accessibility to important services of health was limited. Data also revealed that around 89% of rural project areas,

94% urban and 68% of the tribal project areas had telephone facilities. Another interesting information was availability of LPG in 72% of the Anganwadi areas.

Hand pumps and tap water were the main sources of water in majority of the Anganwadi Centres, thereby bringing home the point that ICDS programme has succeeded, to a large extent, in arranging safe drinking water for the children attending Anganwadis in collaboration with Public Health Engineering Department of State Governments.

It was gratifying to note that majority of the Anganwadi Centres were located in pucca buildings. It reflects that efforts have specially been made in housing Anganwadi Centres in pucca buildings. However, space was found to be a problem in most of the Anganwadi Centres in urban areas. Adequate outdoor and indoor space and separate space for storage was available in only 44, 36% and 39% Anganwadi Centres. This situation was found to be little better in rural and tribal areas. Overall, about 49% of the Anganwadi Centres had inadequate space for outdoor and indoor activities and 50% had no separate space for storage of various materials. Around half (49.0%) of the rural and tribal (50.6%) projects and 40% of urban projects had adequate cooking space separately.

Most of the AWCs (60.3%) were found to be easily accessible to children as they were brought either by their parents/siblings/older ladies of the locality to the Anganwadi Centres. Helpers mainly concentrated in bringing newly admitted children to Anganwadis.

Weighing scales were available in 97% Anganwadis of World Bank-assisted ICDS Projects, followed closely by NGO run projects (95.3%) and 85% of regular ICDS projects. Around 89% of them were in working condition also.

Non-availability of the kits in 44% of the Centres is a matter of concern and this aspect needs to be looked into by the programme implementers carefully. Availability of adequate number of cooking and serving utensils in the Anganwadi Centres is of paramount importance for the success of the nutrition programme. The study revealed that cooking utensils were available in 61.8% of rural, 49.2% of urban and 65.9% of tribal projects.

Profile of Functionaries

It was gathered that 15% positions of Child Development Project Officers (CDPOs), 48% of Assistant Child Development Project Officers (ACDPOs) and about 18% of Supervisors were vacant in the surveyed projects. However, the position with regard to the appointment and availability of AWWs and Helpers has been quite satisfactory. The training status has been quite satisfactory. It was observed that Arunachal Pradesh was the only State where 50% CDPOs were untrained. In other states, by and large, training of functionaries has been highly satisfactory.

Selection of AWWs

It was found that around 80% of the Anganwadi Workers belonged to the same village/locality. However, wide variations were observed on this aspect between projects supported by World Bank, NGO operated and regular ICDS.

Data on age of AWWs depicts that about 66% of AWWs were 35 years and above. Percentage of AWWs in regular and World Bank assisted ICDS projects was evenly divided in the age-group 35–45 years while 30% of AWWs were in the age-group 25–35 years.

62% of the AWWs had work experience over 10 years whereas 28% of them had experience of more than five years. Majority (43.2%) of the AWWs were matriculate, 23% Higher Secondary and about 10% graduates. There were hardly any illiterate workers, their percentage being around one only.

Supervisors

It was found that direct, promotion from amongst AWWs and deputation from line departments and contractual appointment of Supervisors under World Bank Scheme was

carried out in States like Uttar Pradesh. In 25 States of India, supervisors were promoted to the post of CDPO/ACDPO. Policy of reservation of seats was existing in 21 States and seven States did not adopt any such policy. A large majority of the supervisors were above the age of 35, either graduates or post graduates and possessed experience of more than 10 years. This is a positive sign as ICDS seems to be managed by experienced and qualified supervisors.

Child Development Project Officers (CDPOs)

xiv) Data show that 21 states had exclusive cadre of CDPOs whereas 10 states had a joint cadre comprising deputation, promotion and contract. In all, 25 states had adopted the policy of promotion of Supervisors to the post of CDPOs/ACDPOs. Mode of recruitment in terms of reservation was reported to be followed as per orders of State Governments issued from time to time.

Though the guidelines of the scheme envisages that CDPO should preferably be a female, yet it was observed that about one-third (32.7%) of CDPOs were males.

Most of the CDPOs (48.3%) were in the age group 45–55, followed by 33% in the age group 35–45. It was found that 57% CDPOs were post graduate with only 6% being undergraduates. About 31% of CDPOs were having less than 3 years of experience which was reflective of frequent transfers of this category of functionary in some States.

Profile of Beneficiaries

Expenditure on different services has gone up more than three times (from 144.00 crore during 1990–1991 to 452.36 crore during 2004–2005) in 15 years. The scenario is similar to the number of beneficiaries under various services—all categories of beneficiaries have gone up three times during the period under reference.

Target Population in Sample Households

Data indicate that 0.83% of children in households covered under the study are handicapped. Out of these children, 55.56% children have been receiving benefits from ICDS programme.

Maximum percentage of beneficiaries were from backward classes (29.6%) followed by scheduled castes (26.3%). Differences between representation of other castes and that of scheduled tribes was meagre (21.4% and 20.4%, respectively).

It was found that 55% of them were landless while another 28% owned land which was less than one hectare. It was found that less than 8% possessed land holding between one and two and above two hectares. Those who possessed land more than four hectares were residing in hilly, desert and tribal areas.

Six out of ten families of beneficiaries were nuclear while joint family constituted one-third of all types of families. Data demonstrated that in urban areas 62% families were nuclear while this type of family constituted almost similar percentage in rural (59.0%) and tribal (59.8%) projects. Increasing trend of extended families was seen in regular ICDS projects (7.03%) and drastic reduction in other categories of projects (4.12% in World Bank projects and 4.80% in NGO-run projects).

Six out of ten families (59.7%) conformed to the national figure in respect of size of families (up to 5 persons), followed by 36% of households having family members between six and ten. Another interesting finding is that households with 11 and above family members constituted 4%. Normal belief is that urban households are nuclear and smaller in family size but the data revealed that even urban ICDS projects also recorded family size between six and ten (32.7%).

A little over 60% families under World Bank assisted ICDS projects (62.48%) had monthly income less than Rs. 2000/- per month, followed by NGO-run projects (51.41%) and

regular ICDS projects had this share with 47% of households. Income of households was analysed as per location of projects in rural, tribal and urban areas. It revealed that a little over half (52.8%) tribal families had income less than Rs. 2000/-, followed by rural families (49.5%). Forty percent urban families belonged to this income group. Four out of ten families in urban projects had also income ranging between Rs. 2000/- and Rs. 4000/- per month, followed by rural (32.1%) and tribal projects (30.4%).

Main Occupation of Sample Households

One-fourth of heads of households (25.7%) had non-agriculture labour as main occupation, maximum being in urban areas (36.4%), followed by heads of households in rural areas (24.2%) and tribal areas (21.9%). It was interesting to know that a little over one-third of respondents of tribal projects (34.3%) were cultivators who constituted 27% in rural ICDS projects. Cultivators in urban projects were those who lived on fringe of urban areas and went to adjoining villages for cultivation were of negligible percentage (3.4%). Percentage of self employed and agricultural labourers was almost equal (16.0%). Self employed were mostly blacksmiths, carpenters, cattle grazers, potters, shoe makers, weavers, petty shop keepers etc. Around 12% were in service—Government, semi-government, private companies etc.

Coordination in ICDS

Project level Coordination Committee

More than 70% projects of rural and tribal areas were having Coordination Committee at the project level, whereas urban projects (83%) were having Coordination Committee at project level. So far as existence of Coordination Committee at project level by type of management is concerned, regular ICDS projects and projects supported by World Bank were having lesser number of Coordination Committees as compared to the projects run by NGOs. In urban regular ICDS projects more than 80% CDPOs, Supervisors and health functionaries reported adequate coordination at their level. In NGO-run projects, coordination at CDPO level was somewhat adequate but at the field/village level, it was not up to the mark. The situation is similar to tribal projects too. Coordination with health department was somewhat lacking at field/village level especially in tribal areas. By and large coordination at project level was found to be satisfactory. A little over two-third (68%) CDPOs were of the view that meeting of Coordination Committee was effective whereas about one-fifth (21%) found it very effective. The Research team found that around 73 percent CDPOs had reported adequate coordination between ICDS and health functionaries. But remaining 27% mentioned inadequate coordination.

Source: "Three Decades of ICDS – An Appraisal", Ministry of Women and Child Development, Government of India, 2007 available at www.wcd.nic.in

1.11 Recommendations

a) *Universalisation:*

- ❖ Government of India must operationalise at least 14 lakh anganwadis by Dec 2008 and present to the Supreme Court a plan for putting up these additional centres. This plan should include details of how *all* rural habitations *and* urban slums are proposed to be covered.
- ❖ A simple procedure for setting up an "anganwadi on demand" must be put in place so that an AWC is sanctioned and operationalised within three months of such a demand being made, in accordance with the order of the Supreme Court dated 13th December 2006.

b) *Equity*

- ❖ AWCs in SC / ST hamlets – Universalisation must ensure that all habitations with majority SC/St population are provided with an anganwadi centre on a priority basis. The state governments must get conducted through District Collectors a survey of habitations with majority SC/ST population and ensure availability of anganwadi centres in all of these.
- ❖ Special provisions should be made for the inclusion of marginalised children in ICDS, including differently-abled children, street children, and children of migrant families. For instance, migrant children should be entitled to admission at the nearest Anganwadi without any requirement of permanent residence in that area. Simply the presence of a child of the appropriate age group should be sufficient to qualify the child for admission to all services of the anganwadi.
- ❖ Monitoring data of the ICDS should be disaggregated on the basis of sex, SC, ST and disability. A disability survey must be conducted at regular intervals and ways of including disabled children in the ICDS programme must be worked out. The data should also be provided separately for urban and rural areas.
- ❖ **Severe malnutrition:** Rehabilitation facilities (e.g. Nutrition Rehabilitation Centres) should be available at the PHC level for children suffering from Grade 3 or 4 malnutrition, and their mothers. Anganwadi workers should be responsible for identifying such children and referring them to rehabilitation facilities. Financial provision should be made to support these children's families during the period of rehabilitation. Also, these children should be entitled to enhanced food rations under the Supplementary Nutrition Programme. ICDS and the Health Department should be jointly responsible for the prevention of severe malnutrition and hunger deaths.

c) *Supplementary Nutrition Programme*

- ❖ Make adequate budget allocations for the ICDS programme so as to be able to provide SNP to every child under six, every pregnant and lactating mother and every adolescent girl.
- ❖ **Cost norms:** A provision of at least Rs. 3/- per child per day (at 2006–2007 prices) should be made for SNP in the 3–6 age group. This is similar to the current norms for mid-day meals in primary schools (two rupees per child per day, plus 100 grams of grain). To achieve this norm, central assistance of at least Rs 1.50 per child per day would be required. The cost norms should be adjusted for inflation every two years using a suitable price index.
- ❖ Children under three should be provided with take-home rations (or hot cooked and mashed food where they are able to come to the centre every day)
- ❖ **Hot cooked meal for children in the 3–6 year old age group:** Children in the 3–6 year age group should be provided a hot cooked meal at the anganwadi centre everyday. The SNP so provided should be age-appropriate, culturally appropriate, nutritious and locally procured.

d) *Second Anganwadi Worker:* A major effort should be made to extend ICDS services to all children under the age of three years, without affecting the entitlements of children in the 3–6 age group. In particular, this would involve posting a second Anganwadi worker in each Anganwadi (see below). Her primary responsibility would be to take care of children under three as well as pregnant or nursing mothers. This new focus would also involve giving much greater attention to “infant and young child feeding”, nutrition counselling, ante-natal care and related matters.e) *Right to information:* All ICDS-related information should be in the public domain. The provisions of the Right to Information Act, including proactive disclosure of essential information (Section 4), should be implemented in letter and spirit in the context of ICDS. All agreements with private

contractors (if any) and NGOs should be pro-actively disclosed and made available in convenient form for public scrutiny. All AWCs should be sign-posted and the details of ICDS entitlements and services should be painted on the walls of each Anganwadi. Social audits of ICDS should be conducted at regular intervals in Gram Sabhas and/or on “health and nutrition day”.

Note: For Commissioners’ recommendations on ICDS also see special report on ICDS “Update on compliance of orders related to ICDS and some further recommendations”, from Commissioners to the Supreme Court, dated 30 August 2007.

2 Mid Day Meal Scheme

2.1 Introduction

The National Programme of Nutritional Support to Primary Education (**NP-NSPE**), commonly known as the Mid Day Meal Scheme (MDMS) provides a free cooked meal to every child children in classes I-V of government, government aided and local body schools, and also children studying in centres run under the Education Guarantee Scheme (EGS) and Alternative and Innovative Education (AIE) Scheme. This is a primarily a centrally assisted scheme with the state governments contributing partially towards the cooking costs.

Under the Mid Day Meal Scheme that was launched by the Central Government in 1995, the Government of India provided only free foodgrains while the cooking costs were entirely borne by the state governments. It was seen however that, many State Governments/ UT Administrations resorted to distribution of food grains, rather than providing cooked mid day meals because they were unable to provide adequate funding for meeting the cooking costs. The Planning Commission requested State Governments in December 2003 to earmark a minimum of 15% of Additional Central Assistance under the Pradhan Mantri Gramodaya Yojana (PMGY) towards cooking cost under the mid day meal scheme. Nonetheless, the programme continued to suffer on account of budgetary constraints in the States and UT Administrations. The mid-day meal scheme was therefore revised in September 2004 to provide cooked mid day meal with 300 calories and 8–12 grams of protein to all children studying in classes I – V in Government and aided schools and EGS/ AIE centres wherein in addition to free supply of food grains, the revised scheme provided Central Assistance for the following items:

- Cooking cost at Rs. 1/- per child per school day
- Transport subsidy was raised from the earlier maximum of Rs. 50/- per quintal to Rs. 100/- per quintal for special category states, and Rs. 75/- per quintal for other states
- Management, monitoring and evaluation costs at 2% of the cost of foodgrains, transport subsidy and cooking assistance
- Provision of mid day meal during summer vacation in drought affected areas.

It was later found that even this amount was not adequate to provide a nutritious meal for children and therefore the scheme was further revised with effect from June 2006.

It is appreciated that the Government of India in the revised norms for mid-day meal scheme has taken steps towards improving the scheme by increasing the amount of central assistance towards cooking costs. This report looks at the implementation of the scheme in relation to the orders of the Supreme Court and also the guidelines for the scheme. The analysis in the report is primarily based on data available in the Annual Work Plan and Budget (AWP&B) documents submitted to the Government of India by the state/UT governments for the years 2006–2007 and 2007–2008.

National Programme of Nutritional Support to Primary Education, 2006
[Mid Day Meal Scheme]

Guidelines

The revised norms for mid-day meal as shown in the table below increased the calories to be provided through the meal from 300 to 450.

Nutritional Content	Norm as per NP-NSPE, 2004	Revised Norm as per NP-NSPE, 2006
Calories	300	450
Protein	8–12	12
Micronutrients	Not prescribed	Adequate quantities of micronutrients like iron, folic acid, Vitamin A etc.

Further, the assistance from Central Government under NP-NSPE, 2006 will be as under:

- (i) Supply of free food grains (wheat/rice) at 100 grams per child per School Day from the nearest FCI godown;
- (ii) Reimburse the actual cost incurred in transportation of food grains from nearest FCI godown to the Primary School subject to the following ceiling:

Rs.100 per Quintal for 11 special category States viz. Arunachal Pradesh, Assam, Meghalaya, Mizoram, Manipur, Nagaland, Tripura, Sikkim, J&K, Himachal Pradesh and Uttaranchal, and Rs.75 per quintal for all other States and UTs.

Provide assistance for cooking cost at the following rates:

- (a) States in North-Eastern Region at Rs. 1.80 per child per school day, provided the State Govt. contributes a minimum of 20 paise
- (b) For Other States & UTs at Rs. 1.50 per child per school day provided the State Govt./ UT Admn. Contributes a minimum of 50 paise

State Governments/UT Administrations will be required to provide the above minimum contribution in order to be eligible for the enhanced rate of Central assistance mentioned above.

- Provide assistance for cooked Mid-Day Meal during summer vacations to school children in areas declared by State Governments as “drought-affected”.
- Provide assistance to construct kitchen-cum-store in a phased manner up to a maximum of Rs. 60,000/- per unit. However, as allocations under MDMS for construction of kitchen-cum-store for all schools in next 2–3 years may not be adequate, States would be expected to proactively pursue convergence with other development programmes for this purpose.
- Provide assistance in a phased manner for provisioning and replacement of kitchen devices at an average cost of Rs. 5,000/- per school. States/UT Administration will have the flexibility to incur expenditure on the items listed below on the basis of the actual requirements of the school (provided that the overall average for the State/ UT Administration remains Rs. 5000/- per school):
 - ❖ Cooking devices (Stove, Chulha, etc)
 - ❖ Containers for storage of food grains and other ingredients
 - ❖ Utensils for cooking and serving.
- Provide assistance to States/ UTs for Management, Monitoring & Evaluation (MME) at the rate of 1.8% of total assistance on (a) free food grains, (b) transport cost and (c) cooking cost. Another 0.2% of the above amount will be utilised at the Central Government for management, monitoring and evaluation.

2.2 Coverage

The Supreme Court in its order dated 28th November 2001 directed that “The State Governments / Union Territories to implement the Mid Day Meal Scheme by providing every child in every Government and Government assisted Primary Schools with a prepared mid day meal with a minimum content of 300 calories and 8–12 grams of protein each day of school for a minimum of 200 days”. Although the states were initially slow in implementing this order, it is seen that presently in all the states provision of a cooked mid-day meal for primary students has become the policy. Some states have also extended the scheme to cover children in the upper primary schools. Seeing that the 28th November 2001 order of the Court had not been implemented, in the order dated 17 October 2004, this Court directed that every child eligible¹⁹ for the cooked meal under the Mid-Day Meal Scheme in all States and Union Territories, shall be provided with the said meal immediately and, in any case, **not later than the month of January, 2005.**

The table below looks at coverage of children under the mid-day meal scheme vis-à-vis enrolment of children in government schools.

**Table 2.1 Percentage of Children enrolled in Government Schools
(including private-aided and EGS/AIE centres) who are beneficiaries of Mid Day Meal scheme
2006–2007**

State/UT	Enrolment	MDM Beneficiaries	% enrolled children who are beneficiaries
Andhra Pradesh*	6700878	6700878	100.0
Arunachal Pradesh	218905	218905	100.0
Chandigarh*	59993	59993	100.0
Chhattisgarh*	3104573	3104573	100.0
Delhi*	1142020	1142020	100.0
Himachal Pradesh	530016	530016	100.0
Jammu & Kashmir	975954	975954	100.0
Manipur*	299859	299859	100.0
Meghalaya	627596	627596	100.0
Mizoram	93192	93192	100.0
Orissa*	5002269	5002269	100.0
Punjab*	1466299	1466299	100.0
Rajasthan*	7335359	7335359	100.0
Sikkim	102520	102520	100.0
Uttar Pradesh*	18644467	18644467	100.0
Uttaranchal*	779826	754785	96.8
Gujarat*	5278984	5036021	95.4
Haryana	1573698	1443761	91.7
West Bengal	10205750	9195381	90.1
Kerala	2160354	1909491	88.4
Karnataka	4413471	3852508	87.3

Contd...

¹⁹ All children enrolled from class I to V in Government, Government aided or local body schools or in EGS or AIE school are eligible for the mid day meal.

Madhya Pradesh	8914634	7611372	85.4
Maharashtra*	9440846	8054552	85.3
Assam	4700623	3525467	75.0
Tamil Nadu	4968668	3647086	73.4
Jharkhand	5200283	3597579	69.2
Bihar	12638427	8581264	67.9

Source: Annual Work Plan and Budget (AWP&B) of State Governments submitted to MoHRD for 2007–2008

*For these states the figures are for the year 2005–2006 taken from AWP&B for 2006–2007

As seen in table 1, most states reported full coverage of enrolled children under the mid-day meal scheme. The states that did not report full coverage are Uttaranchal, Gujarat, Haryana, West Bengal, Kerala, Karnataka, Madhya Pradesh, Maharashtra, Assam, Tamil Nadu, Jharkhand and Bihar. Jharkhand and Bihar reported coverage of a little less than 70% of the children who were enrolled in primary schools in government or private-aided schools and EGS/AIE centres. In the Annual Work Plan documents the common reasons given by the state governments for non-coverage of some children are as follows:

- Children refuse to eat/ parents prevent children from eating
- Private aided schools have not yet started provision of mid-day meal schemes

2.3 Utilisation of foodgrains

In the table below, we look at the allocation and offtake of foodgrains under the mid-day meal scheme. At an all-India level it is seen that in the year 2005–2006, only 76.8% of the grain allocated for the mid-day meal scheme was actually lifted by the state governments. Since the allocations are based on estimates of enrolments and attendance, this means that either not all institutions/children were covered under the mid-day meal scheme or that the quality of the mid-day meal was compromised in the sense that not enough quantity of food was given to the children or that mid-day meal was not provided on all working days.

Table 2.2 Statewise Allocation and Offtake under Mid Day Meals Scheme (2005–2006)

(In ' 000 Tonnes)							
State/UTs	Rice		Wheat		Total		% Offtake
	Allocation	Offtake	Allocation	Offtake	Allocation	Offtake	
Mizoram	1.84	2	0	0	1.84	2	108.7
Uttaranchal	14.18	14.69	0	0	14.18	14.69	103.6
Andhra Pradesh	114.1	115.4	0	0	114.1	115.4	101.1
Kerala	28.22	27.62	0	0	28.22	27.62	97.9
Himachal Pradesh	11.45	10.85	0	0	11.45	10.85	94.8
Meghalaya	10.04	9	0	0	10.04	9	89.6
Tamil Nadu	76.59	68.42	0	0	76.59	68.42	89.3
Sikkim	2.13	1.89	0	0	2.13	1.89	88.7
Gujarat	33.96	30.3	33.96	29.59	67.92	59.89	88.2
Tripura	9.88	8.46	0	0	9.88	8.46	85.6
Madhya Pradesh	46.46	37.66	144.62	125.24	191.08	162.9	85.3

Contd...

Uttar Pradesh	225.1	190.6	110.87	95.61	335.97	286.21	85.2
Delhi	10.08	9.36	10.08	7.25	20.16	16.61	82.4
Orissa	104.11	85.57	0	0	104.11	85.57	82.2
Haryana	14.34	16.21	14.34	6.93	28.68	23.14	80.7
Manipur	6.54	5.24	0	0	6.54	5.24	80.1
West Bengal	205.42	161.99	0	0	205.42	161.99	78.9
Jharkhand	82.69	64.16	0	0	82.69	64.16	77.6
Pondicherry	0.88	0.65	0	0	0.88	0.65	73.9
Assam	92.13	67.54	0	0	92.13	67.54	73.3
Karnataka	107.83	79.91	5.03	2.55	112.86	82.46	73.1
Nagaland	3.76	2.75	0	0	3.76	2.75	73.1
Bihar	218.07	157.02	0	0	218.07	157.02	72.0
Maharashtra	207.81	149.59	0	0	207.81	149.59	72.0
Arunachal Pradesh	4.54	3.13	0	0	4.54	3.13	68.9
Rajasthan	58.83	31.93	137.28	90.4	196.11	122.33	62.4
Jammu and Kashmir	18.76	8.77	0	0	18.76	8.77	46.7
Andaman and Nicobar Islands	0.67	0.25	0	0	0.67	0.25	37.3
Punjab	12.8	3.05	15.26	5.71	28.06	8.76	31.2
Daman and Diu	0.3	0.09	0	0	0.3	0.09	30.0
Dadra and Nagar Haveli	0.61	0.17	0	0	0.61	0.17	27.9
Goa	1.41	0.11	0	0	1.41	0.11	7.8
Chandigarh	0	0	1.01	0	1.01	0	0.0
Chhattisgarh	52.35	0	0	0	52.35	0	0.0
Lakshadweep	0	0	0	0	0	0	
India	1777.88	1364.38	472.45	363.28	2250.33	1727.66	76.8

Source: Ministry of Consumer Affairs, Food & Public Distribution, Govt. of India

Looking at state-wise variations states that lifted less than even 50% of the foodgrain allocated them for the purpose of mid-day meal provision are Jammu and Kashmir (46.7%), Andaman and Nicobar Islands (37.3%), Punjab (31.2%), Daman and Diu (30%), Dadra and Nagar Haveli (27.9%) and Goa (7.8%). Further, Chandigarh, Chhattisgarh and Lakshadweep show zero offtake. Of these Chhattisgarh being a rice producer, it is known that uses grain from the state for mid-day meal.

2.4 Percent of children covered under MDMS based on offtake of foodgrain

In this section we look at the offtake of food grains in the year 2005–2006 and estimate the number of children this would be sufficient for if children were provided 100 grams a day for 220 days in the year. While providing 100 grams a day is the norm, 220 working days is considered as the average number of working days in a year accounting for school holidays etc. and is the figure used by the education departments in the various states to estimate requirements.

Table 2.3 Estimate of no. of children who could have been provided 100 grams a day under MDMS for 220 days in a year based on offtake of foodgrains for MDMS

State/UTs	Offtake of foodgrain (in '000 tonnes)*	No. of children who could have been provided MDM based on offtake of foodgrain (in lakhs)**	No. of children enrolled in primary schools and being provided mid-day meal according to Government of India [#]	% of enrolled children who could have been covered based on offtake of foodgrains***	% of enrolled children who could have been covered based on offtake of foodgrains (assuming 80% attendance) ^{##}
	1	2	3	4	5
Sikkim	1.89	0.86	0.98	87.66	109.6
Mizoram	2	0.91	1.04	87.41	109.3
Uttaranchal	14.69	6.68	7.80	85.61	107.0
Madhya Pradesh	162.9	74.05	86.65	85.45	106.8
Himachal Pradesh	10.85	4.93	5.78	85.33	106.7
Andhra Pradesh	115.4	52.45	63.62	82.45	103.1
Manipur	5.24	2.38	2.95	80.74	100.9
Karnataka	82.46	37.48	49.63	75.52	94.4
Orissa	85.57	38.90	51.56	75.44	94.3
Tamil Nadu	68.42	31.10	41.52	74.90	93.6
Tripura	8.46	3.85	5.26	73.11	91.4
Nagaland	2.75	1.25	1.74	71.84	89.8
Jharkhand	64.16	29.16	41.02	71.10	88.9
Uttar Pradesh	286.21	130.10	186.44	69.78	87.2
Maharashtra	149.59	68.00	97.79	69.53	86.9
Meghalaya	9	4.09	5.98	68.41	85.5
West Bengal	161.99	73.63	108.86	67.64	84.5
Kerala	27.62	12.55	19.07	65.83	82.3
Arunachal Pradesh	3.13	1.42	2.19	64.96	81.2
Assam	67.54	30.70	47.96	64.01	80.0
Haryana	23.14	10.52	16.46	63.90	79.9
Delhi	16.61	7.55	12.38	60.99	76.2
Pondicherry	0.65	0.30	0.51	57.93	72.4
Bihar	157.02	71.37	126.38	56.47	70.6
Rajasthan	122.33	55.60	102.16	54.43	68.0
Gujarat	59.89	27.22	51.33	53.03	66.3
Jammu & Kashmir	8.77	3.99	10.28	38.78	48.5
Andaman & Nicobar Islands	0.25	0.11	0.35	32.47	40.6
Daman & Diu	0.09	0.04	0.15	27.27	34.1
Punjab	8.76	3.98	15.52	25.66	32.1
Dadra & Nagar Haveli	0.17	0.08	0.33	23.42	29.3
Goa	0.11	0.05	0.67	7.46	9.3
India	1727.66	785.30	1193.81	65.78	82.2

* Ministry of Consumer Affairs, Food & Public Distribution, Govt. of India

** (Calculated on the basis of no. of grams of foodgrain offtake)/(220days)/(100gms per child). No. of children is then presented in terms of no. of lakhs of children.

Status of implementation of mid-day meal scheme, 2005-06 available at <www.education.nic.in>

*** Col. 2/Col.3 * 100

Col.4/0.8

Based on this calculation it is estimated that had children been given 100 grams of foodgrain a day for 220 days in a year, then only 65.7% of the enrolled children in primary schools would have been covered. It must be mentioned that this assumes that all children attend schools on all days of the year, which is not realistic. On the other hand, it is also seen that in most states the number school working days is more than 220 days. To some extent these two effects may balance out. While it is not fully accurate, this analysis does indicate that the amount of foodgrain that is being lifted for the purpose of mid-day meal is less than what is required to provide an adequate meal for the number of children that the government statistics show are beneficiaries of mid-day meal scheme. Therefore, either fewer numbers of children than is claimed are being provided with the mid-day meal or the meal is being provided to as many children but in smaller quantities.

The states where the coverage calculated on the basis of foodgrain offtake is less than 60% are Pondicherry, Bihar, Rajasthan, Gujarat, Jammu and Kashmir, Andaman and Nicobar Islands, and less than even 30% are Daman and Diu, Punjab, Dadra and Nagar Haveli and Goa.

A calculation was also made to look at the number of children who would have been covered assuming an average attendance of 80%. Even then most states show less than full coverage on the basis of offtake of foodgrain. Only Sikkim, Mizoram, Uttaranchal, Madhya Pradesh, Andhra Pradesh, Himachal Pradesh and Manipur show 100% coverage.

2.5 Per child per day offtake of foodgrain

Looking at it the other way round, we see how much foodgrain each beneficiary would have got based on the foodgrains that were allocated for mid-day meals and the number of beneficiaries as reported by the Ministry of Human Resource Development, Government of India.

Table 2.4 Per child per day allocation and offtake of foodgrain

State/UTs	Allocation (In '000 tonnes)	Offtake (In '000 tonnes)	No. of beneficiaries (In lakhs)	Quantity of foograin per day per child (in gms.)*	
				Allocation	Offtake
Sikkim	2.13	1.89	0.98	98.79	87.66
Mizoram	1.84	2	1.04	80.42	87.41
Uttaranchal	14.18	14.69	7.8	82.63	85.61
Madhya Pradesh	191.08	162.9	86.65	100.24	85.45
Himachal Pradesh	11.45	10.85	5.78	90.04	85.33
Andhra Pradesh	114.1	115.4	63.62	81.52	82.45
Manipur	6.54	5.24	2.95	100.77	80.74
Karnataka	112.86	82.46	49.63	103.36	75.52
Orissa	104.11	85.57	51.56	91.78	75.44
Tamil Nadu	76.59	68.42	41.52	83.85	74.90
Tripura	9.88	8.46	5.26	85.38	73.11
Nagaland	3.76	2.75	1.74	98.22	71.84
Jharkhand	82.69	64.16	41.02	91.63	71.10
Uttar Pradesh	335.97	286.21	186.44	81.91	69.78

Contd...

Maharashtra	207.81	149.59	97.79	96.59	69.53
Meghalaya	10.04	9	5.98	76.31	68.41
West Bengal	205.42	161.99	108.86	85.77	67.64
Kerala	28.22	27.62	19.07	67.26	65.83
Arunachal Pradesh	4.54	3.13	2.19	94.23	64.96
Assam	92.13	67.54	47.96	87.32	64.01
Haryana	28.68	23.14	16.46	79.20	63.90
Delhi	20.16	16.61	12.38	74.02	60.99
Pondicherry	0.88	0.65	0.51	78.43	57.93
Bihar	218.07	157.02	126.38	78.43	56.47
Rajasthan	196.11	122.33	102.16	87.26	54.43
Gujarat	67.92	59.89	51.33	60.15	53.03
Jammu & Kashmir	18.76	8.77	10.28	82.95	38.78
Andaman & Nicobar Islands	0.67	0.25	0.35	87.01	32.47
Daman & Diu	0.3	0.09	0.15	90.91	27.27
Punjab	28.06	8.76	15.52	82.18	25.66
Dadra and Nagar Haveli	0.61	0.17	0.33	84.02	23.42
Goa	1.41	0.11	0.67	95.66	7.46
Chhattisgarh	52.35	-	28.89	82.37	-
Chandigarh	1.01	-	0.57	80.54	-
India	2250.33	1727.66	1193.81	85.68	65.78

* Quantity of foodgrain per day per child (in gms.) = (Allocation or Offtake in gms)/(number of children)/220

Here again it is seen that none of the states are lifting grain that is sufficient to provide 100 grams of foodgrain per child per day. The per child per day offtake of foodgrain for mid day meal scheme ranges from 87.6 grams in Sikkim to 7.46 grams in Goa. The states/UTs that seem to be providing even less than 60 gms of foodgrain per child per day are Pondicherry, Bihar, Rajasthan, Gujarat, Jammu and Kashmir, Andaman and Nicobar Islands, Daman and Diu, Punjab, Dadra and Nagar Haveli and Goa.

2.6 Mismatch between utilisation of cooking cost and utilisation of foodgrains

In table 5 it is seen that many states are not utilising the cooking cost that has been allocated to them for the provision of mid-day meals. States that have performed particularly badly on this front are Assam and Jammu and Kashmir.

Table 2.5 Mismatch between utilisation of cooking cost and utilisation of foodgrains

		Utilization of cooking cost (%)	Utilization of food grains (%)
1	Andhra Pradesh	100.0	101.1
2	Bihar	75.0	72.0
3	Chhattisgarh*	73.2	58.0
4	Delhi	100.0	82.4

Contd...

5	Gujarat	85.1	88.2
6	Himachal Pradesh*	50.0	75.3
7	Karnataka	100.0	73.1
8	Kerala*	88.6	68.2
9	Madhya Pradesh	90.0	85.3
10	Maharashtra	103.4	72.0
11	Manipur	126.1	80.1
12	Mizoram	89.4	108.7
13	Punjab*	68.0	52.0
14	Rajasthan	83.2	62.4
15	Sikkim	100.0	88.7
16	Uttar Pradesh	82.2	85.2
17	West Bengal*	71.0	66.0
18	Assam*	27.0	39.4
19	Tamil Nadu*	100.0	64.1
20	Jammu & Kashmir*	37.0	58.0

* Figures are for the year 2006–2007, up to 31 Dec 2006. Considering that three-fourths of the year is over by 31.12.2006, the States should have utilised at least 75% of the foodgrains and the cooking costs by then. The rest of the figures are for the year 2005–2006 Source: Annual Work Plan and Budget documents 2006–2007 and 2007–2008

As can be seen in the table above in most of the states there is a mismatch between the percentage utilisation of foodgrains and the percentage utilisation of cooking costs. Ideally the percentage utilisation of cooking costs and foodgrains should tally with each other. Higher utilisation of cooking cost without concomitant utilisation of foodgrains could be because of misuse of the cash component of the programme. On the other hand, higher utilisation of foodgrains than cooking cost utilisation could be because cash flow to the schools are not regular, and this could actually be leading to interruptions in the feeding programme or forcing the school authorities to take credit, sometimes even on interest.

This discrepancy between utilisation of foodgrains and cooking costs is revealed even further if the analysis is carried out at a district level. For example, in Valsad district of Gujarat foodgrains utilisation was 39% whereas cooking cost utilisation was 64%. Similarly in Shimla district of Himachal Pradesh it was 91% and 44%. In Jharkhand Palamu district shows foodgrains utilisation and cooking cost utilisation of 100% while in Jamtara district foodgrains utilisation was 100% whereas cooking cost utilisation was 36%.

2.7 Utilisation of Funds

Further, one can also look at the utilisation of funds allocated under the state-budget for mid-day meals. As seen in table 6 below, while the utilisation of funds under the MDMS is overall better than the utilisation seen in other welfare schemes, some funds are still going unused in many states. As can be seen below among the states for which data is available; Bihar, West Bengal, Uttar Pradesh, Rajasthan, Chhattisgarh, Andhra Pradesh and Karnataka have not fully utilised the amount allocated under state budgets for mid-day meal scheme.

Table 2.6 Utilisation of State Budget Provisions for Mid-day meal

States/UTs	State Budget Provisions for MDM (2005–2006)		
	Allocation	Expenditure	Utilisation
Maharashtra	15614.36	24486.04	156.8
Tamil Nadu	22375.60	23157.59	103.5
Kerala	10200.00	10200.00	100.0
Manipur	860.00	860.00	100.0
Sikkim	90.00	90.00	100.0
Uttaranchal	4543.00	4543.00	100.0
Chandigarh	312.00	312.00	100.0
Haryana	5568.38	5568.00	100.0
Bihar	13933.80	12608.44	90.5
West Bengal	24000.00	20570.69	85.7
Uttar Pradesh	33387.94	28036.24	84.0
Rajasthan	10000.00	8000.00	80.0
Chhattisgarh	14432.36	11205.00	77.6
Andhra Pradesh	24000.00	18000.00	75.0
Karnataka	28683.00	21362.52	74.5

2.8 Cooking Costs

According to the revised guidelines of 2006, the cooking cost to be allocated per child per day is Rs.2/- with the centre contributing Rs.1.50/- subject to the state government spending Rs.0.50/-. Looking at the data available for 15 states for the year 2006–2007, from the Annual Work Plan & Budget documents of 2007–2008, all of these states have claimed to have allocated to Rs. 2 per child per day or even more. (Kerala, Tamil Nadu, Uttaranchal, West Bengal, Karnataka, Haryana, Bihar, Himachal Pradesh, Tripura, Sikkim, Delhi, Manipur, Rajasthan, Arunachal Pradesh and Jharkhand)

2.9 Appointments of cooks and helpers under the MDMS

A clear order was passed by the Supreme Court on 20 April 2004 stating that preference must be given to dalits, SCs and STs in the appointment of cooks and helpers. The table below gives the proportion of SC/ST cooks in some states.

Table 2.7 Percent of SC/ST cooks appointed for provision of Mid-day meals

States /Uts	SC/ST Cooks (%)
Bihar	65.0
Andhra Pradesh	57.9
Manipur	55.0
Haryana	42.3
Kerala	35.0
Gujarat	33.5
Karnataka	33.3

Contd...

Chattisgarh	25.8
Uttaranchal	19.7
Tamil Nadu	14.9
Arunachal Pradesh	89.8

Only ten states provided information on the percent of SC/ST cooks among all cooks appointed for provision of mid-day meals, as seen in the table above. Of these Bihar had the highest percent of cooks belonging to the SC/ST category with 65% of the cooks being SC or ST followed by Andhra Pradesh where 57.9% cooks were from SC/ST categories. This figure was the least in Tamil Nadu with only 14.9% of cooks belonging to SC/St categories and in Uttaranchal where it was 19.7%.

2.10 Varied Menu

15 states mentioned that they were providing a varied weekly menu in the mid-day meal for the children. These are Bihar, Gujarat, Haryana, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Manipur, Orissa, Rajasthan, Tamil Nadu, Uttaranchal, Uttar Pradesh and Delhi.

2.11 Infrastructure for Mid-Day Meal

Two orders were passed by this court on 20 April 2004 directing that infrastructure for the implementation of the MDMS be developed. The Central Government was directed to make provisions for the construction of cooking sheds and further directions were made to ensure better attempts towards provision of drinking water facilities etc.

Looking at the data available for the states on the availability of kitchen sheds, cooking utensils and drinking water, it is seen that other than in the states of Tamil Nadu, Kerala and Karnataka, in all other states less than even half the schools have a kitchen shed. This obviously affects the quality of the meal provided considering that the mid-day meal scheme aims at providing a cooked meal to all children. Himachal Pradesh, Punjab, Rajasthan and West Bengal have reported that none of the schools providing mid-day meals have a kitchen shed. The data on cooking utensils and drinking water is available for a fewer number of states. Even here it is seen that in states like Maharashtra (8.0%) and Rajasthan (48.1%) a very low percent of schools have cooking utensils. It is hard to imagine how a cooked meal is being provided to children in these states without the availability of cooking utensils.

Table 2.8 Infrastructure for Mid-day meals

States/Uts	% Schools with Kitchen Sheds	% Schools with Cooking Utensils	% Schools with Storage for Drinking Water
Andhra Pradesh*	19.9		
Arunachal Pradesh	30.7		
Assam	27.6		
Bihar	25.6		
Chhattisgarh	27.6	100.0	100.0
Gujarat*	32.4	93.2	0.5
Himachal Pradesh	0.0		

Contd...

RIGHT TO FOOD

Jharkhand	12.9		
Karnataka*	54.5	All the kitchen centers are provided cooking and storage utensils at the rate of Rs 5000/centre and Rs 6000/centre for permanent drinking water facilities.	
Kerala*	88.2	100	
Madhya Pradesh*	7.4		
Maharashtra*	3.9	8.0	70.9
Manipur*	21.0	100.0	12.7
Meghalaya*	0.7	100.0	19.3
Mizoram	27.1	0.0	14.5
Punjab*	0.0	0.0	0.0
Rajasthan*	0.0	48.1	65.2
Tamil Nadu	96.3	80.8	83.7
Tripura	32.3	0.0	0.0
Uttar Pradesh*	6.5	88.6	12.0
West Bengal	0.0	92.9	68.4
Chandigarh*	Since meals are cooked at Govt. accredited food institute so kitchen sheds are not required in schools.	1.0	100.0
Delhi*	In Delhi state cooked mid-day meal is out sourced. so kitchen sheds are being maintained by the NGOs/ suppliers themselves.	In Delhi state cooked mid-day meal is out sourced. So the expenses on utensils for cooking & serving service are being managed by the NGOs/suppliers themselves.	

Source: Annual Work Plan & Budget documents, 2007–2008. * AWP&B of 2006–2007

* AWP&B of 2006-2007

With respect to drinking water Uttar Pradesh (12.0%), Gujarat (0.5%) and the north-eastern states of Manipur (12.7%), Meghalaya (19.3%) and Mizoram (14.5%) are providing very poorly for children in primary schools.

The Mid Day Meals guidelines, 2006 also raise this concern and observe that “Absence of kitchen sheds in schools had emerged as a critical factor impacting the quality of the programme. Though convergence with other centrally assisted programmes was envisaged for construction of kitchen sheds, progress in construction has been poor. Consequently, classrooms tend to be used for storage and cooking purposes, which is not only undesirable, but also fraught with risk. In the alternative, cooking is done in the open, which is unhygienic & hazardous.” Therefore it makes the following provision for the construction of kitchen sheds “Provide assistance to construct kitchen-cum-store in

a phased manner up to a maximum of Rs. 60,000/- per unit. However, as allocations under MDMS for construction of kitchen-cum-store for all schools in next 2–3 years may not be adequate, States would be expected to proactively pursue convergence with other development programmes for this purpose.” It also provides assistance in a phased manner for provisioning and replacement of kitchen devices at an average cost of Rs. 5,000/- per school.

2.12 Key Issues

- a) **Enrolment:** Many field studies have been conducted to assess the impact of mid-day meals²⁰. Most of these studies show an increase in the enrolment and attendance of children in primary schools after the introduction of Mid Day meals.
- b) **Quality:** While the studies found that the mid-day meal was being provided in most places, quality of the meal remains a concern. Many places still don't have a varied menu, with very little vegetables, fruits etc. served. Further, the nutritional effect of the meal has not been studied enough. Expressing concern over the quality of the mid-day meal the parliamentary standing committee on HRD states, “The Committee however, is apprehensive of the quality, variety and hygiene of the food served under the scheme in view of the fact that there are many reported and unreported cases of children falling ill after taking their mid-day meal. Such incidents take away the spirit out of the scheme. On a specific query about cases of irregularity notice in MDM scheme, the Department has given details of instances which have taken place in some states during 2005–2006. All these cases indicate diversion misuse of foodgrains by those very authorities which were responsible for implementation of the scheme.”²¹
- c) **Equity:** Another issue of concern in the implementation of mid-day meals is the continued reports of caste-based discrimination during the serving of the meals, where children are made to sit separately or served in different plates, smaller quantities and so on. Such discrimination is also seen in the appointment of cooks where in spite of an order from the Supreme Court that preference should be given to SC/ST cooks, it is seen that in majority of places this is not so. Instances of upper caste children refusing to eat when the cooks belong to dalit communities have also been reported.
- d) **Administration:** Problems such as irregular supplies, inadequate monitoring, incomplete reimbursement of fuel or transport costs, low and delayed remuneration of cooks and helpers, etc. have also been found in the studies. Teachers also complain about too much of their time being wasted in the preparation and monitoring of the meals thereby affecting their teaching and academic activities.
- e) **CAG findings:** The CAG report of 2006 states that, “In the rural areas of Chandigarh (84.23%) and Mizoram (80.85%), an overwhelming majority of the children reported not receiving the mid-day meals. On the contrary, a very high proportion of the children in the rural areas of Tamil Nadu (89.42%) and Dadra & Nagar Haveli (81.03%) had reported receiving the mid-day meals. A substantially higher proportion of the children in the urban areas of Arunachal Pradesh (86.92%), Chandigarh (94.79%), Mizoram (84.37%) and Punjab (88.33%) reported not receiving the mid-day meals. The findings of the survey conducted at the instance of audit indicated that there were large difference in the figures of schools serving mid-day meals and those emerging from the survey of schools and households. This pointed to the possibility of false reporting by schools and misappropriation or diversion of funds allotted to schools for mid-day meals.”

²⁰ See Reetika Khara (2006), “Mid-day Meals in Primary Schools: Achievements and Challenges”, Economic and Political Weekly, November 18 2006 for a comprehensive review of recent studies on the mid-day meal scheme.

²¹ Department-related Parliamentary Standing Committee on Human Resource Development, 173rd report on Demands for grants 2006-2007 (demand no.55) of the Department of Elementary Education and Literacy (Ministry of Human Resource Development), May 2006

- f) **Centralised Kitchens:** In many urban areas, the preparation of mid-day meals is being contracted out to either NGOs or contractors who prepare the meals in centralised kitchens and supply it to many schools. There have been newspaper reports that such food is stale, quantities are either inadequate or in excess leading to wastage etc. On the other hand it is also argued that in urban areas due to lack of space and infrastructure facilities, it makes sense to have centralised kitchens. The pros and cons of this model needs to be further studied before any conclusion can be arrived at on which is the better system for provision of a cooked meal in urban areas. Like in the ICDS scheme, one could probably still say that private contractors should be banned in the supply of mid-day meals irrespective of whether it is in rural or urban areas.

**Summary of Observations of
Monitoring Institutions for Mid Day Meal
Ministry of Human Resource Development, Government of India**

Andhra Pradesh

- 98.7% schools were found to be serving 'hot food'.
- 83.7% schools serve the same menu (rice, dal, sambhar, khichari); 88.4% schools were providing green vegetables.
- Overall satisfaction level on quality and quantity was appreciative.
- In 56% schools, cooks were from the under privileged social communities from the respective villages; majority were women.
- In 56.3% schools payment to cooks was quite regular; in the other schools the frequency of payment was not regular.
- In 83.7% schools there was no discrimination in serving MDM on basis of gender, caste and class.

Assam

No uniformity in the implementation of the mid day meal scheme. Many schools are serving cooked meal, and many schools are distributing uncooked rice. Fruits, eggs and green vegetables are rarely served.

Bihar

- 80% sampled schools served hot cooked meals—generally khichari.
- Almost 70% students, teachers and parents stated that there is a weekly menu, but there is limited variety.
- 60% students reported that green vegetables are included.
- 70%–80% children were found happy with the quality of the meal; but only one-third found the quantity adequate.
- In almost 90% of the cases cook / helper is an under privileged person, preferably woman.
- Schools engage the cook/helper on the basis of a monthly remuneration of 0.50 paise per child or a monthly remuneration of Rs 1500/-. Remuneration is generally paid regularly.
- In almost half the cases pucca sheds are available for cooking; in the rest it is cooked in the open.

- Generally foodgrains are kept at safe places in the village either in the CRC building or at the residence of the Mukhiya.
- Hygiene and cleanliness among students varies from village to village; in most cases (80%) they are encouraged to wash hands, conserve water and collect and eat meal in an orderly manner.
- Generally (95%) no discrimination is observed.

Chhattisgarh

- Hot cooked meal is served daily; Almost 100% children take MDM in school
- The Menu has been standardised by the SPO and followed in each school: Green vegetables and fruits are part of the meal
- Children are happy with the quality and quantity.
- In some schools iron and vitamin tablets are provided by the Health Centre to those children who are deficient.
- Cooks are appointed by Nagar Palika and Self Help Groups and in most cases they are women of SC/ OBC category.
- Kitchen shed are under construction; the quality of design and construction needs to be looked into.
- Facilities for storage of grains are satisfactory and utensils are available in most schools.
- Most schools use firewood as fuel; only 15%–20% use gas.
- Children wash their hands before and after eating.
- No discrimination was observed.

Gujarat

- Meals were served hot and were cooked well
- All schools had a menu for the entire week which included different combinations of wheat and pulses Brinjals and potatoes were the only vegetables served; no other green vegetables were served.
- Children were happy with the quality and quantity of meals, but some children took the meals home in the afternoon.
- Cooks and helpers were appointed by the Department; Dang district has 100% tribal population and cooks and helpers belonged to the underprivileged group.
- Kitchen sheds were available in most schools visited.
- Utensils were adequate and procured from MDM funds.
- Drinking water is a major problem in Dang.
- Safety arrangements were very good; discipline was good and hygiene and cleanliness was fair.
- Participation of parents, VEC, panchayat members and school teachers was negligible in regard to the daily supervision of the MDM programme.

Himachal Pradesh

- 100% sample schools serve hot cooked meals to children on a daily basis.
- Food items served include rice, dal, potatoes, nutrela and green vegetables.
- Children's reaction to mid day meal is positive.
- Cooks are appointed by the SMC—mostly women from deprived categories; cooks are paid Rs 400 per month.
- All schools have potable water for cooking and drinking.
- 100% schools use LPG for cooking; If LPG is not available fire wood is used.
- All children are encouraged to wash hands before and after meals.
- No discrimination on the basis of gender, caste or class in the school; there is need to ensure that there is no discrimination against children in EGS centres too.

Karnataka

- 94 % of schools were serving a variety of MDM.
- 96 % of schools include green vegetables in the MDM.
- In 93% schools in Yelandur, 100% children avail of the MDM, but in Chamarajanager only 56% children avail of the MDM.
- 56% schools have a pucca kitchen shed and over 80% have a bore well or a water tank in the school premises.
- Large majority of the schools were found to be using cooking gas for MDM preparation.
- Large majority also reported that the overall environment in which MDM is served is good.
- In Yelandur block, issues of caste discrimination give cause for concern.

Madhya Pradesh

- Meal of different variety is served for which the school maintains a day wise calendar.
- All schools serve dal, chapatti and sabji daily.
- Children are happy with the quantity and quality of food; children do not bring tiffins from home.
- Health workers administer micronutrients.
- Cooks are appointed as per the guidelines issued by the Department; they are paid honorarium of Rs 20 per day.
- Foodgrains and other items are stored in a safe place.
- Potable water is available for cooking and drinking purpose.
- Utensils are purchased from SSA funds.
- All schools were rated as 'fair' on the criteria of safety, hygiene, and cleanliness.
- No caste or gender discrimination was observed in partaking MDM.

- Children wash their hands before and after eating; eat in an orderly manner.
- Daily supervision of MDM was rated as good in 18 out of 21 schools visited; inspection is conducted by BRC, CRC and BAC.

Maharashtra

- Almost all schools visited provided mid day meals to their children
- In most cases cooked rice or khichari was provided; some schools also serve bananas
- Some schools were reported to have been serving biscuits, rather than cooked meals
- In a majority of schools students were happy about the quality of food, but in a few cases students were dissatisfied with the quality.
- Most schools (60%) have appointed a cook or helper for cooking, but in some schools teachers are involved in cooking.
- In 70% of the schools, the remuneration of the cook ranges from Rs 1.50–1.75 per student; 10% schools give a monthly remuneration in the range of Rs 1600–2000.
- SHG and Mahila Bachat Gat have also been involved in the cooking

In most schools MDM is inspected regularly either by the teachers and/or principal. In some schools VEC also inspect.

Orissa

- In all schools in the sample districts, except Dhenkanal same food items (rice and dal) are provided to children everyday. In Dhenkanal rice and dal is served in 69.4% schools. In other schools Khichari, saga, aalu bharata, rice, dal etc. is given on different days.
- Green vegetables is provided as follows:
 - ❖ Dhenkanal, Khordha and Nayagarh Districts: **100%** of the sampled schools
 - ❖ Angul and Cuttack Districts: **80%** of the sampled schools
 - ❖ Deogarh and Jharsuguda: **20-40 %** of the sampled schools
- All districts except Sundargarh have appreciated both the quantity and quality of MDM.
- Micronutrients and de-worming tablets are not given in any of the sample schools.
- The average percentage of the children taking MDM widely vary in the sample Districts, ranging from 63.2% in Cuttack District to 95% in Sundargarh District.
- MDM preparation and distribution is managed by the VEC, NGO or SHG; cooks and helpers are not regularly paid by these agencies.
- In majority (>83%) of the sample schools, water is available at a close proximity for cooking.
- In almost all (92% to 100%) of the sample schools, MDM programme has been regularly inspected by teachers and parents.

- The children wash hands both before and after taking in most of the sample schools in all the sample Districts. Similarly, the children also take and eat MDM in an orderly manner and there exists no caste / gender / disability based discrimination among children while eating MDM in a majority of the sample schools in the sample Districts.

Rajasthan

- Mid day meal was available in all schools barring one or two where there was a temporary delay in getting supplies or cook.
- Menu was changed on a daily basis in all schools.
- Supply of green vegetables and fruits was reported to be regular.
- Children were generally satisfied with the quantity and quality of mid day meal.
- Medicines and deworming tablets were also supplied regularly in most schools.
- A majority of children are reported to be receiving meals; however, only in 30% schools, all 100% children have meals.
- Pucca sheds for cooking are available in 54% schools.
- Water for cooking was easily available in 85% schools and pots for cooking in 92% schools.
- Wood is used as fuel in 88% schools.
- Quality of MDM was described as good in 65% and average in 32%.

Uttar Pradesh

- MDM was served in 57 out of 64 sampled schools in Auraiya, in 75 out of 78 schools in Bareilly and 75 out of 77 sampled schools in Unnao.
- About 90% students were satisfied with the quality and quantity of meals served in Auraiya and 70% found it satisfactory in Unnao. The level of satisfaction in Bareilly district was lower.
- In Bareilly, 87% cooks were from the OBC category, 7% represented the SC category and 5% from other. In Unnao 59% belonged to OBCs, 14% to SC and 26 from others.
- In Varanasi district, the menu was displayed in 88% of the schools, and 76% of the schools were serving food according to the menu displayed.
- In about 80% of the cases in Varanasi and 70% in Bareilly, the food grains were stored in the house of the pradhan. This is expected to change as the kitchen-cum-stores are constructed.

West Bengal

- Hot cooked meal was served in all, except one school visited.
- Class V is part of the middle school (Classes V–X) in West Bengal. Only 7 schools visited served the mid day meal to children in class V
- The menu included rice, dal, sabji/ Egg/fish.
- Children were happy with the quality and quantity served.

- However, health check ups were not conducted and micro-nutrients not provided.
- Cooking was largely managed by SHG, identified by the local self government and VEC. Majority of the SHG members belonged to weaker sections.
- Storage space is a common problem.
- The general impression on safety, hygiene and cleanliness is good.
- Participation of parents and VECs in MDM is very good, but there is lack of supervision from members of the community.
- Drinking water is by and large available at school or a nearby place. In respect of six schools visited drinking water had to be fetched from a distant place.
- Schools use firewood and soft coal for cooking.
- There was no gender or caste difference observed in the serving of the meal.
- Some problems have been observed:
 - Some school discontinue classes after serving the mid day meal.
 - In some places there is lack of coordination among the SHG members and schoolteachers.
 - There are underage and overaged children in the primary schools due to the attraction of MDM.
 - Food grains mainly rice supplied by local ration shop in bad quality.
 - Schoolteachers find it hard to settle bills of mid day meal.
 - SHGs sometimes purchases rotten vegetables for mid day meal.

Source: Commissioners' Correspondence with MoHRD, GOI

2.13 Recommendations

1. Currently the mid-day meal is provided only to children who are attending schools, whereas the most vulnerable children in the school going age are out of schools working as child labour, street children etc. The mid-day meal should be expanded to cover all children in the school-going age, irrespective of whether they are enrolled in school. The location of the meal served can continue to be the school, this might further encourage those out of school to join schools.
2. In the budget of 2007–2008, the Finance Minister made an announcement expanding mid-day meal provision to upper primary schools in EBBs. The MDMS should be expanded to cover upper primary schools all across the country.
3. The provision for cooking costs under the mid-day meal should be increased to Rs. 3/- per child per day (not including foodgrains costs) from the current Rs. 2/- per child per day in order to be able to provide a nutritious and filling meal to the child. Further this norm should be inflation-linked, in the sense that it is constantly reviewed based on the price indices.
4. Mid-day meals should be linked with nutrition education and related educational activities. State governments should be encouraged to adapt their textbooks for this purpose, as the NCERT has already done for some textbooks.
5. Nutritious items such as eggs and green leafy vegetables should be provided regularly.

6. Proper infrastructure for mid-day meals should be mandatory, including cooking sheds, storage space, drinking water, ventilation, utensils, etc.
7. Serious action should be taken in the event of any form of social discrimination in mid-day meals, such as discrimination against Dalit children or Dalit cooks.
8. Priority should be given to disadvantaged communities (especially Dalits and Adivasis) in the appointment of cooks and helpers. All cooks and helpers should be paid no less than the statutory minimum wage.
9. Community participation in the monitoring of mid-day meals should be strengthened, particularly to prevent corruption and ensure quality.
10. Mid-day meals should be integrated with school health services, including immunisation, deworming, growth monitoring, health checkups and micronutrient supplementation.

3 National Maternity Benefit Scheme

3.1 Introduction

The National Maternity Benefit Scheme (NMBS) was launched in the year 1995 as part of the National Social Assistance Programme (NSAP) and later transferred to the Health Ministry in the year 2001. **Under NMBS, pregnant women from BPL families were entitled to lump-sum cash assistance of Rs. 500, up to two live births, 8–12 weeks before delivery.** This scheme was entirely sponsored by the Central Government. Right from the beginning the implementation of this scheme has been in a bad shape characterised by low allocations, under-utilisation, long delays and procedural complications.

The National Maternity Benefit Scheme was modified into a new scheme called Janani Suraksha Yojana (JSY) and launched w.e.f 12th April, 2005. The objectives of the JSY are reducing maternal mortality/infant mortality through increased delivery at health institutions while the focus of the NMBS was provision of maternity benefits. As mentioned in the guidelines for implementation of JSY, “While NMBS is linked to provision of better diet for pregnant women from BPL families, JSY integrates the cash assistance with antenatal care during the pregnancy period, institutional care during delivery and immediate post-partum period in a health centre by establishing a system of coordinated care by field level health worker.”²² Further the scheme was envisaged in a manner where the cash assistance would be linked to availing ante-natal check ups and having an institutional delivery. The guidelines did not retain the objective of ensuring food security for all pregnant BPL women unencumbered by any other conditionalities.

This would entirely defeat the purpose of the NMBS as it was initially thought of, which was to provide social security to pregnant women. Linking the accruing of benefits of the scheme with various conditions would severely undermine the rights of a woman to use the social assistance under NMBS to access food and nutrition, rest and regain her strength and not have to labour immediately or soon after delivery and also the rights of the child to breast feeding and be cared. Calculations in the Sixth Report of the Commissioners showed that on an average nearly 65.5% of the eligible beneficiaries under NMBS would get zero direct cash assistance under JSY, because they would be debarred by the eligibility requirements introduced by JSY.

The Commissioners reacted to this proposal by writing to the Ministry of Health (and having a series of meeting with the GOI) reminding them of the Court order of April 27th 2004 whereby it was directed

²² Guidelines of JSY

that no scheme covered by the orders of the Court shall be discontinued or restricted in any way without the prior approval of this Court and that until further orders, the schemes would continue to operate and benefit all those who are covered by the schemes.

In response to the intervention by the Commissioners, a letter communicating the following modifications to the Janani Suraksha Yojana was sent to the Commissioners:²³

- Rs. 500/- will be paid to all pregnant eligible BPL women irrespective of place of delivery under JSY and also it is not mandatory that the benefits are given only after ante-natal check ups.
- Women who have institutional delivery will be paid a higher amount.
- In low performing states, the age bar and restriction of number of births for which assistance is provided under NMBS, have been removed. For institutional delivery BPL criteria has been removed.

Therefore, in a positive development the newly modified Janani Suraksha Yojana would ensure that all those who would have benefited under the NMBS would continue to benefit under this scheme, while those who meet the conditionality of institutional delivery would be eligible to get additional cash assistance.

However, given the frequent changes and low priority of the scheme to many state governments, the scheme had become almost non-functional in many states. It is now being revived, but as JSY and not NMBS, with the focus largely on institutional deliveries and not nutritional security for women. The government's own documents indicate that the reason why the Rs. 500/- for women having home deliveries is being continued is because of compulsions of having to obey orders of the Supreme Court.

Although the scheme was modified in consonance with the Supreme Court's mandate that no existing eligibilities for food rights can be abridged without the consent of the court²⁴, this did not permeate down to many of the states, where it appears that this revised guideline has not been communicated adequately to or been sufficiently internalised by the state governments. The Supreme Court took notice of this and ordered all the state governments and the Government of India to file an affidavit in the court within four weeks. **While this order was passed on 1st February, 2007 only five states have filed their affidavits in Court until June 2007.**

Affidavits submitted by State Governments in Response to order dated 01.02.2007			
S.No.	State	Date when affidavit filed	Remarks in Affidavit on benefit to women having home deliveries
1	Madhya Pradesh	01.03.2007	Rs. 500 being given in case of home deliveries. 1687 women who had home deliveries given Rs. 500 in 2006-07. Letter directing disbursement of cash assistance for home delivery under JSY sent to all Chief Medical and Health Officers in the state on 20 July 2006
2	Mizoram	24.01.2007	No mention specifically on home deliveries. Only says that benefits under JSY are being given according to guidelines and instructions from Government of India.

Contd...

²³ Letter No. D.O. No. Z. 14012/39/2001-NMBS, dt: July 13th 2007 from Secretary, Health & family Welfare, Govt. of India to Dr. NC Saxena, Commissioner to the Supreme Court

²⁴ As per the order of the Court dated 27th April 2004, it is explicitly stated that, "till further orders, the schemes would continue to operate and benefit all those who are covered by the schemes."

3	Punjab	09.03.2007	6128 women who had home deliveries have been given benefit.
4	Uttar Pradesh	27.06.2007	72888 women who had home deliveries given benefit under JSY up to the quarter ending March 2007
5	Himachal Pradesh		The affidavit says that instructions given by Government of India are being carried out and implemented in the State and suggests that Rs. 250 should be given in first trimester and another Rs. 250 in 2 nd trimester for nutritional support.

Assistance for Home Delivery

In LPS and HPS States, BPL pregnant women, aged 19 years and above, preferring to deliver at home is entitled to cash assistance of Rs. 500/- per delivery. Such cash assistance would be available only upto 2 live births and the disbursement would be done **at the time of delivery or around 7 days before the delivery by ANM/ASHA/ any other link worker**. The rationale is that beneficiary would be able to use the cash assistance for her care during delivery or to meet incidental expenses of delivery. It should be the responsibility of ANM/ASHA, MO PHC to ensure disbursement. It is very important that the cash is disbursed in time. Importantly, such woman choosing to deliver at home should have a BPL certificate to access JSY benefits.” (JSY Guidelines).²⁵

3.2 Coverage

The Supreme Court in its order dated 28 November 2001 directed the State Governments/ Union Territories to implement the National Maternity Benefit Scheme (NMBS) by paying through the Sarpanch or elected head of the village panchayat, to *all* BPL pregnant women a maternity allowance of Rs.500, 8–12 weeks prior to delivery for each of the first two births. In other words, the most important feature of this order of the Supreme Court of India is to convert the scheme into a universal entitlement of all BPL pregnant women.

To arrive at the number of beneficiaries under the scheme, the Government of India uses the following formula:

No. of beneficiaries = population*poverty ratio*CBR*proportion of first two births in total live births

Based on this formula the government set a numerical ceiling of 57.5 lakh beneficiaries as the annual target for NMBS. However, the number of beneficiaries under JSY, as reported by the Government of India, in 2006–2007 was only 26.2 lakh i.e. 44.2% and in the year 2005–06 this was as low as 5.7 lakh i.e. 10%. While there has been an improvement in the last one year, the coverage under this scheme is still way below the target number of women to be covered by the NMBS.

The Government of India calculations were done only once, when the scheme was launched in 1995. In order to look at the state-wise performance, a fresh calculation is made here based on latest available data on the number of women who would be eligible for the NMBS.²⁶

The table below looks at the number of beneficiaries under JSY (according to the Government of India, this figure includes those who had home deliveries as well as those who had institutional deliveries. However the amount given was different based on the place of delivery) vis-à-vis the annual targets set by the Government of India for NMBS.

²⁵ Janani Suraksha Yojana, Features and Frequently Asked Questions and Answers, Government of India, October 2006, available at mohfw.nic.in

²⁶ The Government of India figures are also incomplete because they do not take into account union territories such as Andaman and Nicobar Islands and Pondicherry. Further, these figures consider the erstwhile undivided states of Madhya Pradesh, Bihar and Uttar Pradesh.

Table 3.1 Percentage of Eligible Beneficiaries Covered Under NMBS

State/UT	No. of Women eligible for NMBS*	No. of Beneficiaries of JSY in 2006–2007 as reported by Government of India	Percentage of Eligible Beneficiaries Covered
Andhra Pradesh	296033	457000	154.4
Rajasthan	280123	387648	138.4
J & K	50494	57798	114.5
Assam	182894	183231	100.2
Orissa	264249	227204	86.0
Madhya Pradesh	472840	401184	84.8
Mizoram	4429	3330	75.2
Chattisgarh	148876	74778	50.2
Uttaranchal	37117	18614	50.1
West Bengal	425520	199000	46.8
Tamil Nadu	301676	136091	45.1
Karnataka	289339	81152	28.0
A & N Islands	2295	600	26.1
Kerala	107602	27683	25.7
Bihar	732891	171352	23.4
Puducherry	6446	1315	20.4
Gujarat	212845	42373*	20.0
Punjab	41297	8276	20.0
Maharashtra	529777	97390	18.4
Tripura	20601	3203	15.5
Manipur	11112	1684	15.2
Goa	3188	483	15.1
Lakshadweep	333	42	12.6
Sikkim	4598	446	9.7
Meghalaya	22768	2031	8.9
Himachal Pradesh	29222	2508	8.6
Uttar Pradesh	1073341	71456	6.7
Haryana	92856	3294	3.5
D & N Haveli	3850	76	2.0
Chandigarh	2108	0	0.0

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Delhi	42447	20	0.0
Arunachal Pradesh	10399	NR	NR
Daman & Diu	632	NR	NR
Jharkhand	208592	NR	NR
Nagaland	12763	NR	NR
Total India	5925554	2618889	44.2

*Calculation of eligible beneficiaries based on projected population for 2006 (from Census of India), crude birth rate for 2006 (SRS Bulletin October 2006), poverty ratio for 93-94 (Report of the Expert Group on Estimation of Proportion and Number of Poor, Planning Commission) and proportion of first two births for the year 2002 (SRS Statistical Report, 2002).

As can be seen in the table above the NMBS/JSY scheme has virtually not taken off in many states. Delhi has given the benefit under the NMBS to only 20 women in 2006-07, while in Chandigarh the number of beneficiaries is 0. In **Sikkim, Meghalaya, Himachal Pradesh, Uttar Pradesh, Haryana and Dadar & Nagar Haveli** less than even 10% of the eligible beneficiaries have been covered under the NMBS. Except for the states of Andhra Pradesh, Jammu & Kashmir, Rajasthan, Madhya Pradesh, Assam, Orissa and Mizoram where more than 75% of the eligible beneficiaries seem to have been reached out to, the performance of this scheme has been very poor in all other states.

3.3 Coverage of Home Deliveries

Reports from the field indicate that with the introduction of the modified JSY in place of the NMBS, in most states it is mainly those women who are having an institutional delivery who are receiving benefit, while the ground level functionaries function on the premise still that women having home deliveries are not eligible for any cash assistance. We regret the conclusion that this amounts to an acceptance of the orders of the Supreme Court only in letter but not in spirit, enabling or even facilitating its subversion in practice. The Government itself states that it is continuing with the assistance to women having home deliveries due to compulsions of the Court order and not out of any serious consideration for the nutrition requirements of pregnant women. This attitude of the government can be seen in the following lines from the 'Frequently Asked Questions' document of the JSY (<http://health.nic.in>) "*Q.8 If the focus of the scheme is to promote institutional delivery, why should there be a provision for home delivery? (Ans.) It is true that we have to discourage home delivery. However, in view of the Hon'ble Supreme Court's direction, it is mandatory to provide for home delivery. In case of home delivery, cash benefits of JSY are as provided under NMBS. It would be the responsibility of the ANM, ASHA to counsel the pregnant woman to deliver in a health institution.*"

If in fact the scheme was reaching out to women having home deliveries as much as those having institutional deliveries, then it is reasonable to expect that this should be reflected in trends among the beneficiaries of the JSY which should show that the proportion of beneficiaries who had a home delivery among all beneficiaries should be roughly corresponding to the proportion of home deliveries in the state. (In fact it should be even higher because the scheme reaches out to only BPL women and it is seen that proportion of institutional deliveries is lower among BPL women). In the table below we compare the % of beneficiaries among JSY who had home deliveries with the proportion of home deliveries in the state from the National Family Health Survey 3 (2004-2005). It can be seen that in 12 out of the 20 states the proportion of home deliveries in the state is higher than the proportion of women who got benefit under the JSY after having a home delivery.

**Table 3.2 Percentage of Home delivery among JSY beneficiaries
(as reported by Government of India)**

State/UT	No. of beneficiaries as reported by the State	Institutional delivery reported out of JSY beneficiaries	% Institutional delivery reported out of JSY beneficiaries	% Home delivery reported out of JSY beneficiaries	% Home delivery in the state (NFHS 3)
Andhra Pradesh	457000	650000			31
Assam	183231	175113	95.6	4.4	77
Bihar	171352	41222	24.1	75.9	78
Chhattisgarh	74778	30531	40.8	59.2	84
Delhi	20	20	100.0	0.0	39
Goa	483	155	32.1	67.9	7
Haryana	3294	3294	100.0	0.0	61
Karnataka	81152	50640	62.4	37.6	33
Kerala	27683	26248	94.8	5.2	0
Madhya Pradesh	401184	397442	99.1	0.9	70
Maharashtra	97390	13676	14.0	86.0	34
Manipur	1684	1684	100.0	0.0	51
Meghalaya	2031	1190	58.6	41.4	70
Mizoram	3330	1862	55.9	44.1	35
Orissa	227204	151452	66.7	33.3	61
Punjab	8276	1412	17.1	82.9	47
Rajasthan	387648	335300	86.5	13.5	68
Sikkim	446	246	55.2	44.8	51
Tamil Nadu	136091	128367	94.3	5.7	10
Tripura	3203	1265	39.5	60.5	51
Uttar Pradesh	71456	7009	9.8	90.2	78
Uttaranchal	18614	580	3.1	96.9	64

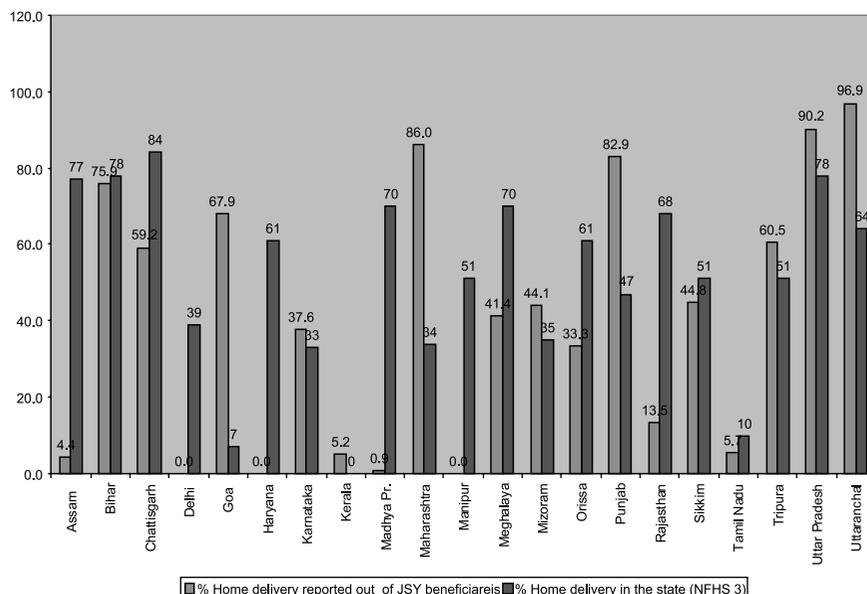


Figure 3.1: Comparison of percent of home deliveries among JSY beneficiaries with percent of home deliveries in state (according to NFHS 3)

In the states of Madhya Pradesh, Haryana, Manipur and Delhi there are almost no JSY beneficiaries who had a home delivery. This indicates that in these states the scheme’s focus continues to be only on institutional deliveries and not all deliveries. Even in the states of Assam, Rajasthan, Meghalaya, Orissa and Chhattisgarh the JSY has been disproportionately given to only those who have had institutional deliveries.

3.4 Financial Performance

The Janani Suraksha Yojana is a centrally-sponsored scheme with the centre providing 100% of the funds. Some states such as Andhra Pradesh make their own contribution thereby increasing the amount of cash assistance for institutional deliveries. Tamil Nadu has introduced a separate scheme for providing mothers with Rs. 1000/- per month for six months, three months prior to the delivery and three months after. Here, we look at the allocation and utilisation of the funds provided by the Central Government.

3.4.1 Utilisation

In this section we look at the utilisation of the funds vis-à-vis the allocation made for Janani Suraksha Yojana in 2006–2007. Overall 71.2 % of the funds allocated under JSY has been utilised in the year 2006–2007.

Table 3.3 Utilisation of funds allocated under JSY*

Name of the State/UTs	Funds released in 2006-2007	Expenditure Reported by States	% Utilisation
Andaman & Nicobar Islands	10.00	1.99	19.9
Andhra Pradesh	4073.20	4550.00	111.7
Arunachal Pradesh	26.20	0.31	1.2
Assam	1300.00	1331.32	102.4
Bihar	610.00	190.00	31.1
Chandigarh	5.23	0.00	0.0
Chattisgarh	513.00	516.55	100.7
D & N Haveli	9.17	0.73	8.0
Daman & Diu	5.23	0.00	0.0
Delhi	65.49	0.20	0.3
Goa	7.86	3.38	43.0
Gujarat	851.85	185.56	21.8
Haryana	350.00	39.11	11.2
Himachal Pradesh	100.00	20.66	20.7
J & K	138.33	123.84	89.5
Jharkhand	392.89	64.67	16.5
Karnataka	916.00	594.02	64.8
Kerala	511.94	284.45	55.6
Lakshadweep	4.38	0.31	7.1
Madhya Pradesh	4261.00	2482.00	58.2
Maharashtra	785.79	209.07	26.6
Manipur	78.57	13.45	17.1
Meghalaya	39.29	42.75	108.8
Mizoram	78.57	37.27	47.4
Nagaland	65.49	0.00	0.0
Orissa	1600.00	1571.31	98.2
Puducherry	19.64	6.10	31.1
Punjab	145.37	56.84	39.1
Rajasthan	4085.00	3056.35	74.8
Sikkim	13.10	7.46	56.9
Tamil Nadu	1827.00	1441.00	78.9
Tripura	117.86	43.70	37.1
Uttar Pradesh	1375.00	436.80	31.8
Uttaranchal	79.56	56.06	70.5
West Bengal	1678.99	1233.67	73.5
Total	26141.00	18600.93	71.2

*Rs. In Lakhs

Looking at the state-wise break-up it is seen that states like **Delhi, Nagaland and Arunachal Pradesh, and union territories of Chandigarh and Daman & Diu** have not at all utilised the funds allocated to them for the purpose of JSY. Among other states, **Manipur, Jharkhand and Haryana** utilised less than 20% of the funds released to them. Only 10 states spent more than 70% of the funds allocated to them under JSY.

3.5 Required Funds to Cover Present Number of Beneficiaries

According to the guidelines of the Janani Suraksha Yojana, the scale of cash assistance is as follows:

Category	Rural Area		Total	Urban Area		Total
	Mother's Package	ASHA's Package	Rs.	Mother's Package	ASHA's Package	Rs.
LPS (Low Performing States)	1400	600	2000	1000	200	1200
HPS (High Performing States)	700		700	600		600

Further, all those BPL women aged 19 years and above, preferring to deliver at home are entitled to cash assistance of Rs. 500/- per delivery. Such cash assistance would be available only up to 2 live births.

In this section a calculation is made based on these guidelines to see **how the allocation and expenditure of funds compare with what is required if cash assistance is truly given to all the beneficiaries reported, on the basis of the above guidelines.** The table below shows those states where the allocation turns out to be less than the required funds to cover reported beneficiaries. It is seen that all the states here are those that come under the category of "Low Performing States" i.e. where the programme is most needed.

Such low allocation and expenditure probably means that either fewer women than reported actually benefited from the scheme or that the women received cash assistance of an amount less than they were entitled to.

Table 3.4 Funds required to cover beneficiaries vis-à-vis actual allocation and expenditure

(Rs. in lakhs)

State/UTs	Required Funds to cover reported beneficiaries* (assuming they were ALL paid the ENTIRE amount according to the JSY guidelines)	Funds released in 2006–2007	Expenditure Reported by States	% of required funds allocated	% of required funds utilised
Assam	2492.2	1300.00	1331.32	52.2	53.4
Bihar	1227.8	610.00	190.00	49.7	15.5
Chattisgarh	648.7	513.00	516.55	79.1	79.6
Madhya Pradesh	5582.9	4261.00	2482.00	76.3	44.5
Orissa	2499.1	1600.00	1571.31	64.0	62.9
Rajasthan	4955.9	4085	3056.35	82.4	61.7
Uttaranchal	98.3	79.56	56.06	80.9	57.0

* Calculated as (no. of **beneficiaries reported** for 2006–2007 who had institutional delivery)* Rs.1400 + (no. of beneficiaries reported for 2006–2007 who had home delivery)* Rs. 500/-

3.6 Funds required to cover all eligible beneficiaries (only for NMBS)

Here we make an estimation of the funds required to cover ALL the eligible beneficiaries under NMBS. The calculation is made on the basis of an allocation of Rs. 500/- per pregnant woman irrespective of place of delivery. The additional funds that would be required for covering the benefits under JSY for institutional delivery are not calculated here. It is seen that in order to cover the estimated number of eligible women under NMBS, an amount of Rs. 296.3 crore would be required, while the amount allocated under JSY for the year 2006–2007 was only Rs. 261.4 crore and this amount was supposed to cover both the benefits under NMBS and JSY. A calculation is also made to see the amount required for NMBS if the restriction on birth order is removed for eligibility to get benefit under the scheme. Here it is seen that the allocation required would be about Rs. 494 crores.

Table 3.5: Funds required to cover all eligible beneficiaries (only NMBS component i.e. Rs. 500 per pregnant woman)

States/UTs	Estimated no. of eligible beneficiaries*	Required Funds to cover all eligible beneficiaries	Funds released for 2006-07 under JSY
Andaman & Nicobar Islands	2295	0.1	0.1
Andhra Pradesh	296033	14.8	40.7
Arunachal Pradesh	10399	0.5	0.3
Assam	182894	9.1	13.0
Bihar	732891	36.6	6.1
Chandigarh	2108	0.1	0.1
Chhatisgarh	148876	7.4	5.1
Dadra & Nagar Haveli	3850	0.2	0.1
Daman Diu	632	0.0	0.1
Delhi	42447	2.1	0.7
Goa	3188	0.2	0.1
Gujarat	212845	10.6	8.5
Haryana	92856	4.6	3.5
Himachal Pradesh	29222	1.5	1.0
Jammu & Kashmir	50494	2.5	1.4
Jharkhand	208592	10.4	3.9
Karnataka	289339	14.5	9.2
Kerala	107602	5.4	5.1
Lakshadweep	333	0.0	0.0
Madhya Pradesh	472840	23.6	42.6
Maharashtra	529777	26.5	7.9
Manipur	11112	0.6	0.8
Meghalaya	22768	1.1	0.4
Mizoram	4429	0.2	0.8
Nagaland	12763	0.6	0.7
Orissa	264249	13.2	16.0
Pondicherry	6446	0.3	0.2
Punjab	41297	2.1	1.5
Rajasthan	280123	14.0	40.9
Sikkim	4598	0.2	0.1
Tamil Nadu	301676	15.1	18.3
Tripura	20601	1.0	1.2
Uttar Pradesh	1073341	53.7	13.8
Uttaranchal	37117	1.9	0.8
West Bengal	425520	21.3	16.8
India	5925554	296.3	261.4

3.7 Key Issues

This section looks at some of the key issues of concern that emerge in relation to the implementation and design of the National Maternity Benefit Scheme. It must be mentioned here, that there are many concerns regarding the Janani Suraksha Yojana – its design, goals, effectiveness and the availability of public health services – which are not addressed here. In this report, we are only interested in the NMBS as a scheme to provide nutritional support to pregnant women. There cannot be any debate that such support is required. The results of the National Family Health Survey III show how poor the nutritional condition of women in our country is and also that this is not showing any signs of improvement.

1. **NMBS and JSY:** The National Maternity Benefit Scheme has been replaced now by the Janani Suraksha Yojana. The objectives of both these schemes are very different. While the aim of the NMBS was to provide nutritional support to pregnant women, the JSY is towards encouraging women to have institutional deliveries. There is no doubt that institutional deliveries will help improve maternal health; however this does not mean that women no longer require nutritional support. Further, the Government of India is continuing with the benefit for those having home deliveries because of the Court orders, but within the larger framework of the JSY. This is causing a lot of confusion in the field with the focus of cash assistance being on only those having institutional deliveries. Although the scheme has been amended information regarding this amendment has not been sent to various states as a result of which the NMBS benefits continue only on paper and lakhs of poor women in the rural areas have been denied the benefit. The Government of India on its part has failed to effectively monitor the scheme.

NMBS in Madhya Pradesh*: A study was conducted on the implementation of the NMBS in four districts of Madhya Pradesh—Bhopal, Seoni, Barwani, and Sheopur during March 2007. This report finds that the government has failed to clearly communicate to the people the different schemes available to pregnant women causing confusion around these schemes and resulting in widespread underutilisation. Women do not know the eligibility criteria, benefits, and implementing agency for the scheme. It was also found that in many cases women were not getting correct amount that they were entitled to under the scheme and also that they reported inconvenience in getting money related to JSY. The corruption seemed to be less in areas where the payment was made by cheque. Further it was found that although many women reported that the money was being used for food and medicine, it was often the husbands, brothers or fathers who took the money received under JSY or NMBS and decided what to use it for. Further the amount of money given was frequently cited as being too low to adequately meet the nutritional and other needs of pregnant women.

* Based on “A Report on the implementation of The National Maternity Benefit Scheme & JSY in Four districts of Madhya Pradesh”, Nick Robinson, April 2007.

2. **Lack of Awareness:** The NMBS scheme has always been poorly publicised. Further, with the repeated modifications to the scheme recently, there has not been clear communication to the people who the eligible beneficiaries under the scheme are. The advertisements on Janani Suraksha Yojana focus only on the cash benefits for institutional delivery without even mentioning the benefit available to all BPL women under the NMBS, irrespective of place of delivery, and the objective of strengthening the nutritional status of pregnant and nursing women. The publicity of the programme could also be an opportunity for nutritional education, and promoting intra family equity within families.

3. **Timing of Payment:** The order of the Supreme Court clearly states that the cash assistance must be given 8 – 12 weeks prior to the delivery. This is so that the woman has some money available with her for additional nutrition etc. during the crucial third trimester of pregnancy. However the guidelines of the Janani Suraksha Yojana state that assistance for home delivery is to be given “at the time of delivery or around 7 days before the delivery by ANM/ASHA/ any other link worker. The rationale is that beneficiary would be able to use the cash assistance for her care during delivery or to meet incidental expenses of delivery.” This is in violation of the orders of the Court. Further, it is seen how the nutrition focus of the NMBS has been completely neglected and replaced only by concerns for safe delivery. (We are not saying that safe delivery is not important, it is an equally crucial right of all women. The point being made is that there cannot be a trade-off between nutrition and safe delivery, and facilities must be provided to ensure that women have access to both.)
4. **Requirement of BPL certificate:** Another case of discrimination against women having a home delivery is the insistence on a BPL certificate of receiving cash assistance. This is again a requirement that has been exempted for those having an institutional delivery. In case of home delivery it is stated, “Importantly, such woman choosing to deliver at home should have a BPL certificate to access JSY benefits”. The responsibility of ensuring all the paper work for receiving benefits under the scheme must of the government and not of the pregnant women. Further, there should be a database of BPL families in each village available in the public domain so that no certificate is required.
5. **Low Cash Assistance:** The financial assistance under NMBS, as provided by GoI is very low. In the year 1995, Rs. 300/- was fixed as the cash entitlement under NMBS, which was raised to Rs. 500/- in year 1998. Since then there has been NO increase in the amount paid under NMBS. Considering that a woman would have to stay away from work for at least three months (to ensure exclusive breastfeeding for six months, the woman might have to stay away from work for six months unless creche facilities are provided at the workplace), this amount is neither enough to compensate her for the loss of wages nor enough to help her access additional nutrition during pregnancy and lactation. In fact, taking this into account, the Tamil Nadu Government has introduced a Maternity Benefit Scheme (Dr. Muthulakshmi Reddy Maternity Benefit Scheme) where pregnant women are paid Rs. 1000/- per month for six months, three months before delivery and three months after. The amount being paid under NMBS must therefore be raised, if not to Rs.6000 then at least to Rs. 1600 which is what it would be if the amount was raised in line with the increase in pay for the lowest paid employee of the Central Government in the Fifth Pay Commission²⁷.

3.8 Recommendations

There is a need to estimate the food security requirements of pregnant women and also to account for inflation and raise the cash assistance of NMBS accordingly. The NMBS amount should be raised to at least Rs.1600 and then must be pegged to the Consumer Price Index for Agricultural Labour (so that it becomes inflation adjusted).

The Government of India must allocate resources for NMBS to cover all beneficiaries, and the state governments must be directed to utilise the entire resources.

The Government of India must regularly advertise the revised National Maternity Benefits Scheme and Janani Suraksha Yojana on All India Radio and Doordarshan at primetime so that the beneficiaries may become aware of and understand the two schemes. This should be pegged on the themes of nutritional education, and promoting intra family equity in food and health rights.

²⁷ The basic pay was revised from Rs.750/- to Rs. 2400/- for the lowest paid employee of the Central Government. This amounted to 3.2 times increase for a period of 10 years. Rs. 1600/- was arrived at as 220 times of Rs. 500/-.

The details of NMBS and JSY schemes must be pasted on all Panchayat buildings, ICDS centres, public health centres, public health sub-centres, and block & district hospitals. Further, a regularly updated list of selected and rejected applicants should be displayed quarterly at the Panchayat Bhavan and ICDS centres. This should be pegged on the themes of nutritional education, and promoting intra family equity in food and health rights.

The states of Jharkhand, Delhi, Haryana and Uttar Pradesh are the worst performers (excluding union territories and north eastern states, except Assam) in terms of coverage and expenditure. These states must be asked to explain the reasons for the poor performance and also present an action plan to the Court on how they intend to increase coverage and improve implementation of the NMBS and JSY.

Note: On the 20th of November 2007, the Supreme Court passed a new order on the NMBS directing the Government of India and the State governments to continue the NMBS in such a manner that all BPL pregnant women are paid Rs. 500/-, 8–12 weeks prior to delivery, irrespective of number of children and age of the woman. This is a highly significant order, clarifying once again that the NMBS is a separate scheme which must be continued. The future reports of the Commissioners will be presented in the context of this order.

4 Targeted Public Distribution System *and* Antyodaya Anna Yojana

4.1 Introduction

The Public Distribution System (PDS) is one of the oldest food subsidy programmes in the country. Rationing was introduced in 1939 by the British Government and the basic framework for the PDS was firmed up in 1942. Since then, this programme has seen many changes with the most recent change being the introduction of the Targeted Public Distribution System (TPDS) in 1997 which made a distinction between households below the poverty line and those above it and provided for a major proportion of the subsidy to be transferred only to those households who are below the poverty line (BPL). Foodgrains are also provided to families above the poverty line (APL) but the quantum of subsidy is very low as compared to that for the BPL families.

The TPDS, is also one of the largest food schemes that was brought under the ambit of Supreme Court orders in the case PUCL v. UoI, CWP 196/ 2001. It is also the largest scheme in terms of the coverage with over 500 million of the population, receiving benefits under the scheme.

At present, 35 kgs of rice or wheat, sugar and kerosene are provided at subsidised rates to families below the poverty line. The BPL families are identified by the State Governments and about 40% of these families receive an additional subsidy under the Antyodaya Anna Yojana which entitles them to the same quantity of food grains but at roughly half the price of that which is sold to the other BPL families.

The Targeted Public Distribution System is arguably also one of the worst performing schemes amongst those being monitored by the Commissioners appointed by the Supreme Court. All the evidence, from the field reports, observations by the Commissioners team during field visits as well as the evaluations of the Planning Commission of the Government of India seem to support this view. Large-scale corruption, improper targeting, faulty design, leakages at all levels and weak monitoring have ensured that the TPDS has not achieved the potential that it had. We will look at some of these problems more closely in the section on problem analysis. The observations made by the Supreme Court (vide interim order dated July 12, 2006) while appointing the Central Vigilance Committee on the PDS that “...*We are giving this unusual direction in view of the almost accepted fact that large scale corruption is involved and there is hardly any remedial step taken to put an end to this. The ultimate victim is the poor citizen who is deprived of his legitimate entitlement of food grains...*” reflect adequately the extent of the problem.

Since many of the issues which are affecting the smooth functioning of the PDS are the subject of the Central Vigilance Committee (CVC) on the PDS appointed by the Supreme Court, we will restrict ourselves here to the some key issues that of the CVC has dealt with.

4.2 Number of families living below the poverty line (BPL)

The CVC has rightly observed that the number of BPL cards is completely inadequate and has questioned the basis of the poverty line that has been set. In fact the poverty line, drawn up by the Planning Commission is very low and in terms of per capita income, stands at approximately Rs. 17 per day for urban areas and Rs. 11 per day for rural areas. Even a person earning Rs. 12 per day in a village is not considered BPL as per the current BPL norms. The current BPL norms leave a large proportion of the deserving poor outside the safety net. The recommendation of the CVC therefore to enhance the number of BPL families is appropriate.

Even if we accept the extremely low figures for defining the poverty line used by Government of India, we find that the rural per capita monthly income that was taken in 1999–2000 as the cut-of line for defining BPL was Rs. 327.56. For 2004–2005 it was raised to only 358.03, an increase of only 9.1%, whereas prices increased during that period by about 25%. Had it been taken at Rs. 410 or so, at least 40% people would have been shown as below poverty line. For urban India, although the increase was slightly better at 19% (from Rs. 454.11 to Rs. 540.40), even this increase did not fully reflect the changes in prices for the poor during the above period.

The logic of enhancing the number of families under the poverty line also emerges from multiple sources of information and data sources of the Government of India. That the Government has chosen not to act on this data and enhance the poverty line is a matter of deep concern to us.

The data from the third round of the National Family and Health Survey (NFHS 3), released in 2007 shows that the rate of child malnutrition in India is a staggering 46%. The fact that half of the children in the country are underweight is serious enough. But what is even more disturbing is that there has been virtually no change in the rate of malnutrition since the NFHS 2 survey of 1999 which estimated the percentage of malnourished children at 46%. This is completely unacceptable since it is double the rate of malnutrition for Sub-Saharan Africa.

Absolute Weights – A 25 year trend (Mean in Kg)

Age	Rural 1977		Rural 1996		Rural 2003		NCHS Median Values	
	F	M	F	M	F	M	F	M
01+	7.5	8.1	8.1	8.7	8.1	8.6	9.5	10.2
5	13.7	14.1	13.6	14.4	14.1	14.6	17.7	18.7
10	22.0	21.6	22.4	22.6	23.1	23.1	32.5	31.4
20-24	42.9	48.1	43.5	50.3	43.8	50.9	56.6	68.9
>70**	-	-	39.1	47.3	41.5	49.2		

Source:** Quoted by Arvind Wadhwa et al, from NNMB 1990-91.

- I. National Nutrition Monitoring Bureau Report, 1977
- II. National Nutrition Monitoring Bureau Report, 1996, 2002
- III. WHO, 1983, Quoted by Hanumanth Rao & Vijayaraghavan, 1996.

An age wise distribution of absolute weights for the population as compared to the international norms (NCHS Median Values) shows that for every age group the weight is much lesser than the international norms. At the age of one, male children in India are 1.4 kg. less than the international norm and girl

children are 1.6 kg. less than the international norm. This increases to gaps of 3.6 kg. and 4.1 kg. respectively for boys and girls by the age of five. In the age group of 20–24 the difference in weight of Indian adult males as compared to the international average is 12.8 kg. and it is 18 kg. for women.

This represents a situation of alarming proportions since the difference with regard to the international standards is so high.

This trend is evident for heights as well. While it is well known that weights represent a robust indicator of nutritional status, it is now scientifically established that heights also represent nutritional status similarly. The table below shows us that the difference in heights, as compared to the international standards has also remained largely unchanged over the decades. From a difference of 5.9 cm. for male children and 6.7 cm. for girl children, at the age of five, the difference in heights of the Indian population as compared to the International standard by the time they reach adult hood becomes 15.2 cm. for adult males 13.5 cm. for adult females.

These figure show that the average Indian population is not only underweight but also stunted and that there has been no significant increase in the weights or the heights of the Indian population over a period of time.

Absolute Heights – A 25 year trend (Mean in cm)

	Rural – 1977		Rural-1996		Rural-2002		NCHS Median Values	
	I		II		IV		IV	
Age	M	F	M	F	M	F	M	F
01+	71.9	73.1	72.8	75.0	73.8	75.3	74.3	76.1
05+	99.6	100.5	100.4	102.1	102.5	103.2	108.4	109.9
10+	125.7	125.1	126.8	127.9	128.5	128.7	138.3	137.5
20-24	151.2	163.4	151.5	164.0	151.1	163.3	163.7	176.8
>=60	147.9	162.3	147.9	161.0	146.8	160.0	-	-

Source: NNMB Reports, 1977, 1996, 2002

The most robust indicator of nutritional status, according to nutritionists today is the Body Mass Index (BMI). BMI is a measure of whether a person has adequate weight for his/her height. Any individual with a BMI of less than 18.5 is considered to have Chronic Energy Deficiency and therefore malnourished.

If we use the Body Mass Index (BMI) to calculate the nutritional adequacy of the Indian population, and take a 20 year trend analysis, we would find that nearly 40% of the adult population in the country have a BMI of less than 18.5. The World Health Organisation classifies such a situation as ‘alarming’ and a nutritional emergency.

% Distribution of Adults According to BMI Classification 20 Year Trend

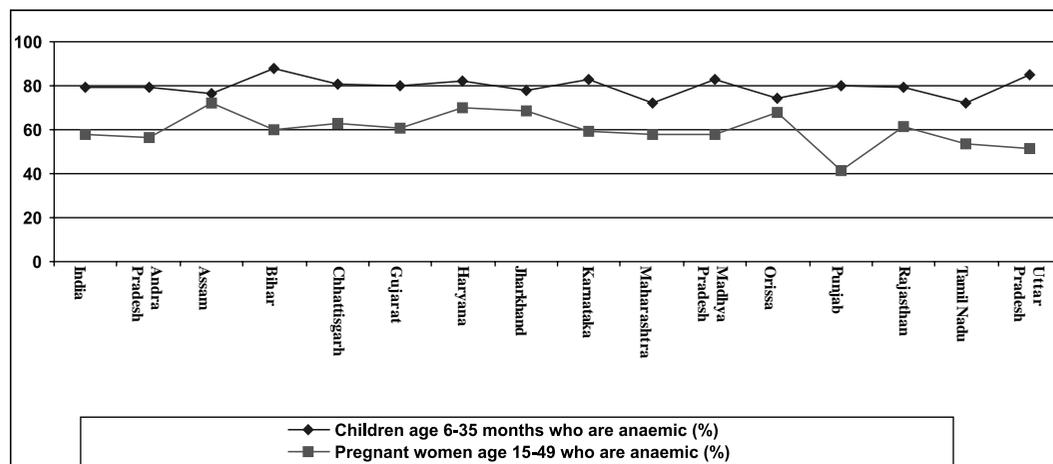
BMI CLASSES		1974-79* (RURAL)	1988-90* (RURAL)	1996-97** (RURAL)	1993-94*** (URBAN)	2002* (RURAL)
<18.5 (CED)	F	51.8	49.3	47.7	36.7	38.9
	M	55.6	49.0	45.5	42.8	36.6
(NORMAL) 18.5-25.0	F	44.8	46.6	46.3	51.7	52.4
	M	42.1	48.3	50.4	51.8	57.2
(OBESE) >=25	F	3.4	4.1	6.3	11.6	8.7
	M	2.3	2.7	4.1	5.5	6

*NNMB, 1991, quoted by N,Nadamuni Naidu et al, 1994. *Rural, 2002

NNMB, Rural surveys, 1996; *NNMB Urban Surveys, 1994

We are also enclosing the figures for states where the prevalence of anemia among pregnant women and children is more than 70%. This is the data from NFHS 3.

Prevalence of anemia among pregnant women and children
(States with anemia levels more than 70% among children)

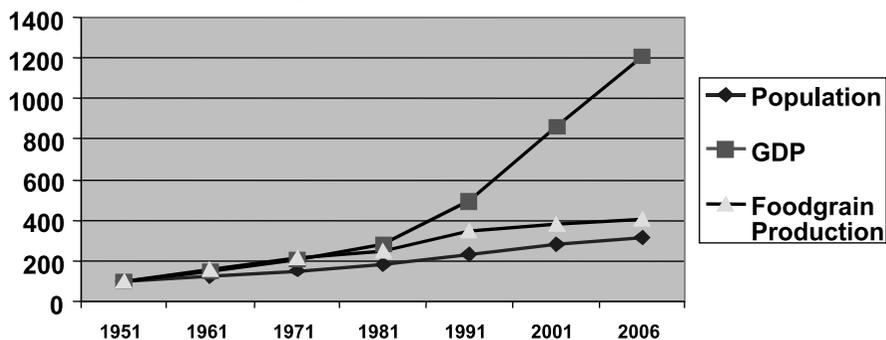


Source: **Source:** NFHS-3 (2005–2006), IIPS, Ministry of Health and Family Welfare, Govt.

It is important to reflect on the reasons for this situation and correlate it with the declining consumption and availability of food grains in the country. The paper by Prof. Utsa Patnaik shows the clearly declining trends on consumption and availability of foodgrains that has led to this situation.

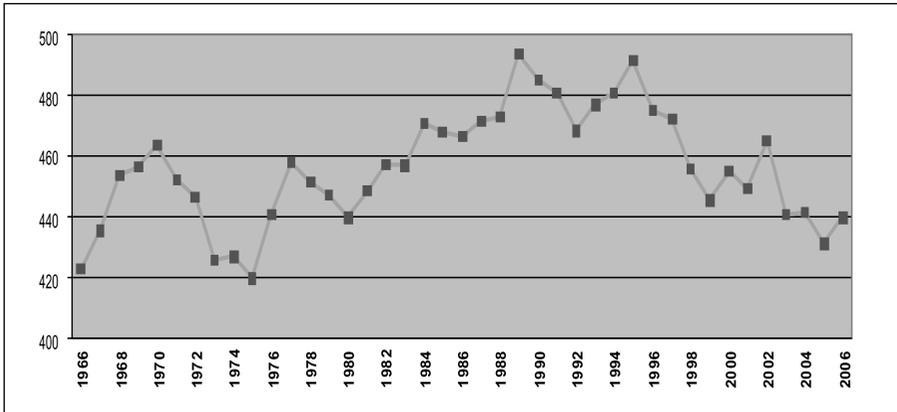
The first graph below shows that overall food grain production in India has kept pace, and actually modestly outpaced the growth in population after the 1960s until the early 1990s, but since then there has been a worrying decline. The growth in GDP has even more outpaced both the foodgrain production and the growth in population after the mid 1960s up to 1990s.

Population, GDP and Foodgrain Production



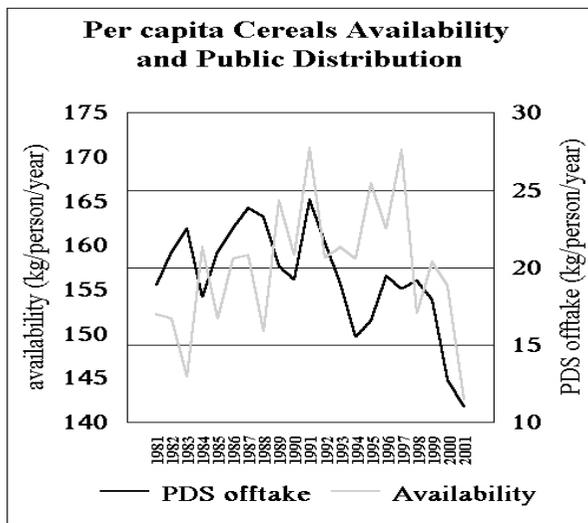
When we examine the per capita availability of foodgrains in the country, we see a clearly declining trend after the early 1990s.

Per capita foodgrain availability per day in gms



The steepest decline in availability of foodgrains, in recent years is from 1997. This is the year when Government of India moved from a universal Public Distribution System when food grains were available at subsidised rates for the entire population to a system of targeting it to a BPL population based on the poverty line drawn up by the Planning Commission. There has been a reversal of this trend marginally now with the focus on food schemes that has been brought about because of the PUCL case and the subsequent monitoring by the Supreme Court. The Government of India acknowledged this gap in availability of food grains with the reduced off-take from the PDS in the Long Term Grain Policy Report (Abhijit Sen Committee Report) way back in 2001. The graph reproduced below, from the Long Term Grain Policy Report, shows the stark reduction in the off-take and availability of grain from the PDS after 1997, when it was targeted.

Per Capita Cereal Availability and Public Distribution



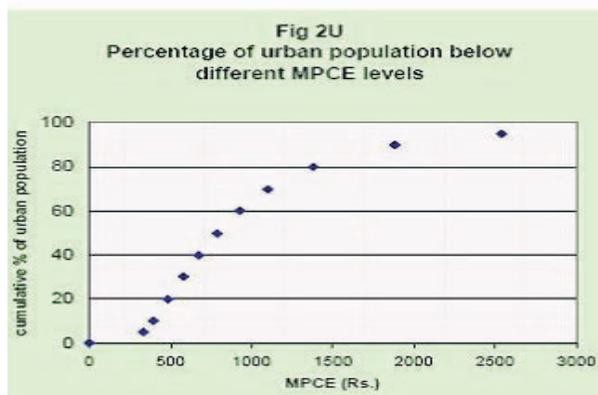
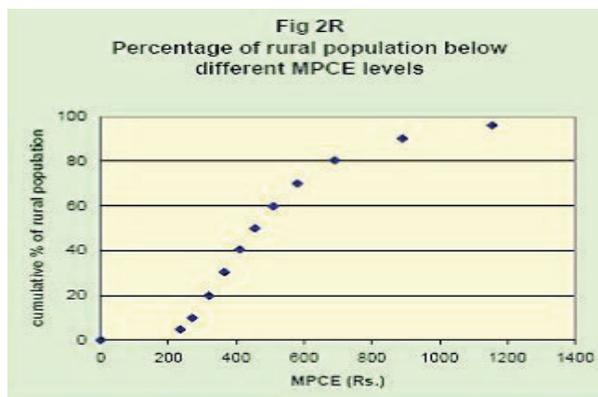
If we look at the trend state-wise on the decline for both rural and urban areas as we have examined in the table below we find that this trend is across States and holds true both for rural and for urban areas.

Changes in average per capita cereal consumption in physical terms over the last decade in the major States

Year	Rural Monthly per capita cereal consumption (kg.) in							
	AP	ASM	BHR*	GUJ	HAR	KTK	KRL	MP**
1993–1994	13.3	13.2	14.3	10.7	12.9	13.2	10.1	14.2
1999–2000	12.65	12.63	13.75	10.19	11.37	11.53	9.89	12.94
2004–2005	12.07	13.04	13.08	10.07	10.66	10.73	9.53	12.16
	MAH	ORS	PUN	RAJ	TN	UP^	WB	IND
1993–1994	11.4	15.9	10.8	14.9	11.7	13.9	15.0	13.4
1999–2000	11.32	15.09	10.58	14.19	10.66	13.62	13.59	12.72
2004–2005	10.50	13.98	9.92	12.68	10.89	12.87	13.18	12.12

Year	Urban Monthly per capita cereal consumption (kg.) in							
	AP	ASM	BHR*	GUJ	HAR	KTK	KRL	MP**
1993–1994	11.3	12.1	12.8	9.0	10.5	10.9	9.5	11.3
1999–2000	10.94	12.26	12.70	8.49	9.36	10.21	9.25	11.09
2004–2005	10.51	11.92	12.21	8.29	9.15	9.71	8.83	10.63
	MAH	ORS	PUN	RAJ	TN	UP^	WB	IND
1993–1994	9.4	13.4	9.0	11.5	10.1	11.1	11.6	10.6
1999–2000	9.35	14.51	9.21	11.56	9.65	10.79	11.17	10.42
2004–05	8.39	13.11	9.01	10.84	9.48	10.94	10.39	9.94

* includes Jharkhand **includes Chhattisgarh ^ includes Uttaranchal



We now move to the final details for the basis of the fixation of the poverty line. As we have shown in the analysis using multiple source of official data, there is a drastic decline in the availability and consumption of foodgrains over the years and this is directly linked to the foodgrain availability through the Public Distribution System.

We believe that the poverty line for access to subsidised food under TPDS should be separated from other debates and calculations of poverty levels (around which the Commissioners also have serious reservations, but these are not germane to the debate around access to subsidised food). In order to look at the level at which this poverty line should be fixed, we will also examine the monthly per capita expenditure data for rural and urban areas and suggest the level at which this poverty line could be fixed.

The MPCE data of the Government of India (for urban areas) given in the table shows that current MPCE data of the Government of India shows that the current level of Rs.500 per person per month (which is the poverty line for urban areas as defined by the Planning Commission) and corresponds to roughly 20% of the population.

We are of the view that this should be increased to the MPCE band of Rs. 915/- to Rs.1120/- for urban areas. This would comprehensively cover all the urban poor. **This would roughly cover 70% of the population.**

Since the same argument holds true for the rural areas, the Honourable Court may consider enhancing the MPCE limit for identification of the rural poor to Rs.525 to Rs. 615 for rural areas.

This would roughly cover around 72% of the rural population.

The details of the MPCE categories are given in the table below:

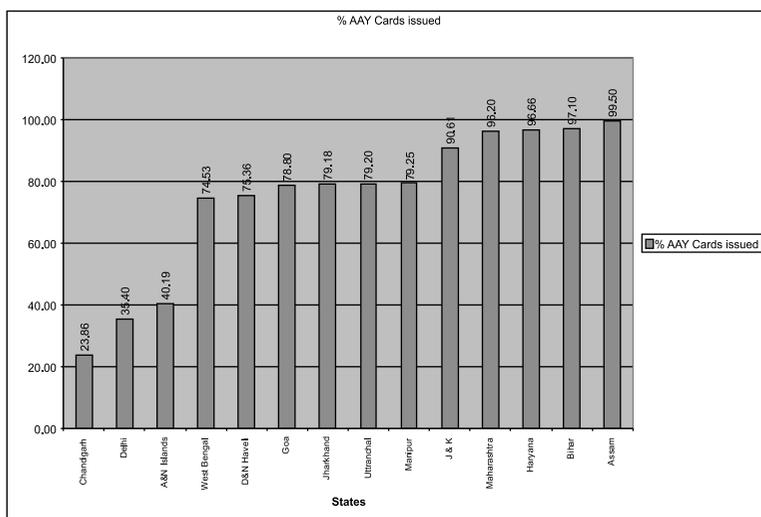
Monthly per capita expenditure (MPCE) Rural			Monthly per capita expenditure (MPCE)Urban		
MPCE class	no. of persons per 1000	av. hh size	MPCE class	no. of persons per 1000	av. hh size
0-225	24	6.19	0-300	20	6.05
225-255	27	6.65	300-350	30	6.48
255-300	64	6.01	350-425	64	6.05
300-340	83	5.98	425-500	69	5.72
340-380	96	5.85	500-575	91	5.58
380-420	96	5.66	575-665	85	5.36
420-470	108	5.5	665-775	117	5.31
470-525	100	5.29	775-915	103	4.96
525-615	122	4.93	915-1120	123	4.28
615-775	126	4.56	1120-1500	123	3.86
775-950	67	4.39	1500-1925	70	3.4
950+	88	3.9	1925+	106	2.87
All classes	1000	5.08	All classes	1000	4.43

The fixation of the poverty line for the purposes of identifying the poor at **70% for urban areas and 72% for rural areas** would not only realistically cover all the poor whom the PDS is meant to serve but would also be in line with the recommendation made by the CVC on the APL category.

4.3 Identification of Antyodaya Anna Yojana Families

There has been considerable improvement in the status of distribution of Antyodaya cards, and most States and UTs, including Delhi (which had amongst highest level of default) have complied with SC

orders and distributed their entire share of AAY cards. The graph below illustrates the status with regard to the distribution of Antyodaya cards.



However as Table 4.3 shows, the states of West Bengal (5 lakhs), Jharkhand (1.9 lakhs), Maharashtra (0.95 lakhs) and Bihar (0.72 lakh) have the highest number of undistributed cards.

Table 4.3 Status of Distribution of AAY Cards

S.No.	State	Number of AAY Cards sanctioned (in lakhs)	Number of AAY cards distributed (in lakhs)	Number of Undistributed cards (in lakhs)
1	West Bengal	19.857	14.799	5.058
2	Jharkhand	9.179	7.268	1.911
3	Maharashtra	25.053	24.1	0.953
4	Bihar	25.01	24.285	0.725

State Governments of West Bengal, Jharkhand, Maharashtra and Bihar should be directed to distribute their entire quota of cards under the AAY. Since this scheme affects the poorest of the poor, there is an urgency for the States/UTs to act and ensure that all the cards are distributed without any further delay.

In the interim order dated May 2nd 2003, the Honorable Supreme Court had declared that all households belonging to six “priority groups” would be entitled to Antyodaya cards.²⁸ The Government of India was directed “to place on AAY category the following groups of persons:

1. Aged, infirm, disabled, destitute men and women, pregnant and lactating women, destitute women;
2. Widows and other single women with no regular support;
3. Old persons (aged 60 or above) with no regular support and no assured means of subsistence;
4. Households with a disabled adult and no assured means of subsistence;
5. Households where due to old age, lack of physical or mental fitness, social customs, need to care for a disabled, or other reasons, no adult member is available to engage in gainful employment outside the house;

We had written to State Governments for information whether all the categories of people mentioned in the interim order of May 2nd, 2003 have been fully covered under the Antyodaya Anna Yojana Scheme. However, since the State/Union Governments have not responded to our request for information on the above-mentioned categories of people, Government of India and the States/ Union Territories may therefore be directed to file affidavits indicating the estimated numbers of each category, the numbers covered so far under each category, and whether clear instructions have been issued and are being complied with that future distribution of AAY cards will exclusively cover these groups until they are fully covered in compliance with the interim order of May 2nd, 2003.

The finding of the CVC on there being a large number of inclusion and exclusion errors in the provision of BPL and AAY cards and the existence of a large number of bogus ration cards is further reinforced by the recently released data from the latest (61st) round of the National Sample Survey Organisation (NSSO) of the Government of India. This shows almost a fourth of the poorest families in the country do not have any access to any ration card. On the other hand 87.5% of the richest quintile of the population have access to ration cards. What is even more alarming that is that 16.8 % of the richest quintile has BPL cards whereas only 49% of the poorest families in the country have either BPL or Antyodaya cards, whereas 100% of the poorest quintile should have had access to Antyodaya cards. Similarly only 43 % of the next poorest quintile have access to BPL and Antyodaya cards.

Table 4.2 % of HH that possess ration card 2004/05 (NSSO 61st round)

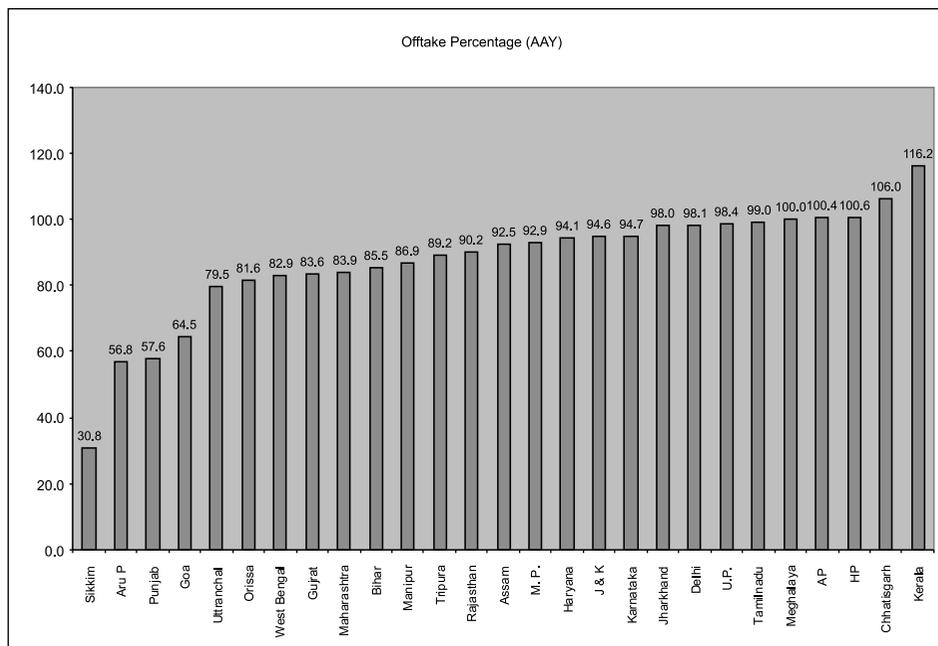
	Any card	BPL card	APL card	AAY card
Poorest	77.3	44.2	28.2	4.9
Q2	81.6	40.5	38.4	2.7
Q3	83.3	40	41.6	1.8
Q4	84.9	30.5	52.7	1.7
Richest	87.5	16.8	70.1	0.6

While for most rural areas, BPL census surveys have been carried out from time to time, we have found no systematic attempt to do so for urban areas. Government of India may therefore be directed to design and develop a comprehensive census survey for the identification of the urban poor in consultation with the Supreme Court Commissioners, as has been done for rural areas. This would be necessary to eliminate the bogus cards, as suggested by the CVC and also ensure that the food grains meant for the poor actually reach them. Only on the basis of such a census in urban areas should existing ration cards be renewed, and new cards sanctioned.

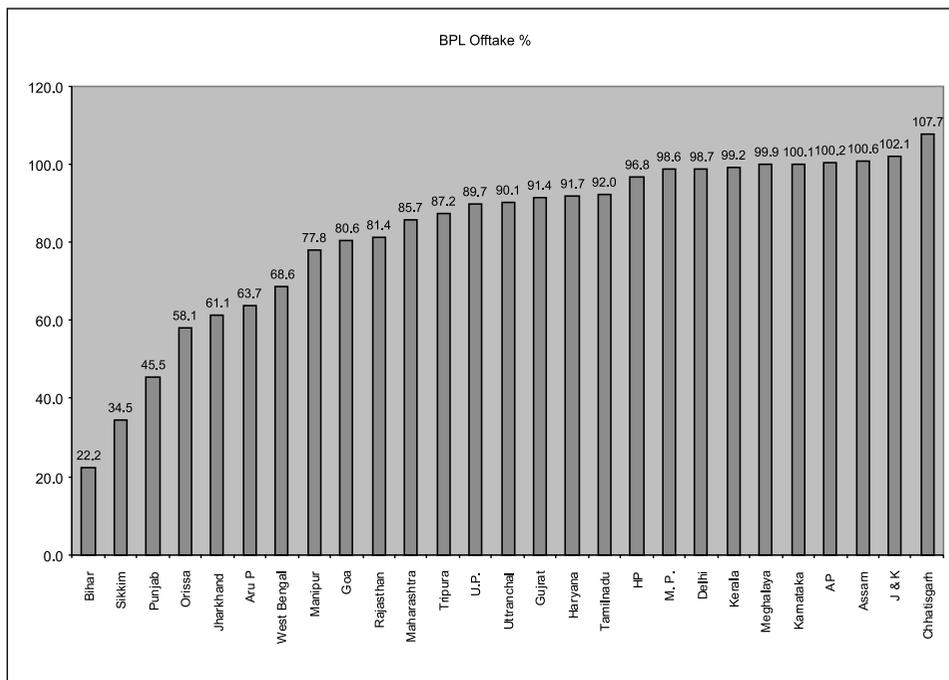
4.4 Offtake of PDS grains for Antyodaya Anna Yojana, Below Poverty Line and Above Poverty Line Families

There has been a significant increase in the offtake of food grains for the BPL and AAY schemes by the State Governments/ Union Territories since the last report was submitted to the Supreme Court. Table 2.0 and Table 2.1 show the offtake figures for the State/Union Territories for the AAY and BPL schemes respectively.

An analysis of the data shows that the States with the offtake of less than 80% for the AAY scheme are Sikkim (30.8%), Arunachal Pradesh (55.8%), Punjab (57.6%) and Goa (64.5%). Notice should be served to these States to explain the low offtake.



Similarly, an analysis of offtake of the BPL households shows that the States of Bihar (22.2%), Sikkim (34.5%), Punjab (45.5%), Orissa (58.1%), Jharkhand (61.1%), Arunachal Pradesh (63.7%) and West Bengal (68.6%) have similarly an offtake of less than 80%. These States may be asked to file affidavits explaining the reason for the lower offtake).



4.5 Other Issues Pertaining to the PDS

1. ***Antyodaya and BPL Cards for Urban Homeless and People living in JJ Clusters:*** We have written repeatedly to the Government of India and State Governments/Union Territories for covering all urban homeless families and families living in JJ clusters under the TPDS. However, most State Governments have not conducted an objective survey of the households living below the poverty line and the distribution of ration cards in urban areas is either arbitrary or dependant on the income criteria which are difficult to assess in the urban context. It has already been established by court rulings that ration cards should not be used as proxy identity cards, as this acts against slum dwellers, rural migrants and urban homeless populations. Government of India may therefore be directed to draw up a methodology for a comprehensive survey of urban homeless and slum dwelling households, similar to the survey for rural households which is objective and based on verifiable criteria. There should be clear and transparent guidelines for these categories to access BPL or AAY cards, and reduced paper work to prevent corruption and harassment. In the first instance, the Commissioners should be authorised to ensure that these instructions are complied with in the country's 6 metropolises: Delhi, Mumbai, Bangalore, Kolkata, Chennai and Hyderabad.

Since the category of "primitive tribes" is relevant largely for rural areas, we would request the Honourable Court to consider urban homeless people instead of "primitive tribes" for the AAY card in the context of urban areas like NCR of Delhi. The direction to Government of India could thus to be amended to include urban homeless people.

We would submit that for urban areas, the Government of India may be directed to place on AAY category the following groups of persons:

- Aged, infirm, disabled, destitute men and women, pregnant and lactating women, destitute women;
- Widows and other single women with no regular support;
- old persons (aged 60 or above) with no regular support and no assured means of subsistence;
- households with a disabled adult and no assured means of subsistence;
- households where due to old age, lack of physical or mental fitness, social customs, need to care for a disabled, or other reasons, no adult member is available to engage in gainful employment outside the house;
- Urban homeless families.

2. ***Issuing of a lower quantity of food grains than that stipulated by the scheme:*** Since the actual number of poor households in the State are in excess of the number families which are provided subsidised grains under the TPDS, many State Governments/Union Territories have provided additional cards, in excess of the number sanctioned by the Government of India. While this is indeed laudable, one of the problems that has arisen because of this is that State/Union Territories have decreased the quantity of rations that each family is entitled to. The States of Tamil Nadu, Andhra Pradesh, Kerala and Chhattisgarh use additional state subsidies to ensure that there is no cut back in the entitlements. Most States/ Union Territories however, use the same quantity of food grains that are provided by the Government of India and distribute it to more number of households.

State Governments and Union Territories should therefore be directed to ensure that the quantity of foodgrains provided is not less than the 35 kg. stipulated within the scheme.

Findings of Performance Evaluation of Targeted Public Distribution System, Planning Commission:

- Taking into account all the inefficiencies of PDS, it is found that GOI spends Rs. 3.65 to transfer Re. 1 to the poor.
- About 57% of subsidised grains does not reach the target group, of which a little over 36% is siphoned off the supply chain.
- Implementation of TPDS is plagued by large errors of exclusion and inclusion.
- A fresh BPL identification survey through independent agencies engaged in social science research is required to eliminate targeting errors.
- PDS is a less efficient mode of income transfer to the poor. The Economic costs of grains are higher than the market prices in most of the States.
- FPS Viability: Only 23% of sample FPSs are viable. The rest survive on leakages and diversions of subsidised grains.
- Delivery Mechanism: Irregular delivery of quota to FPSs. In some States quota is door delivered. Kerala allowed consumer off-take of monthly quota in instalments.
- To make the delivery system effective and efficient, it is necessary to ensure timely door step delivery of FPS quota, rationalise the cost structure of handling food grains through public agencies, make FPSs financially viable, involve PRIs effectively and bring in transparency through e-governance. The welfare gain and saving will far outweigh the additional cost implicit in the reform measures suggested.

Performance Evaluation of Targeted Public Distribution System (TPDS), Programme Evaluation Organisation, Planning Commission, March 2005.

4.6 Directions Sought

The following directions are being sought with reference to the Public Distribution System:

- The Government of India may be directed to double the percentage of BPL card holders from the existing 36% to 72%.
- The Government of India should be served notice on the inordinate delay in the finalisation of the BPL methodology and the conduct of the fresh BPL survey which was to be concluded by April 2007.
- The Government of India and the States/Union Territories should be directed to indicate the estimated numbers of each category of vulnerable groups that the Supreme Court has directed for coverage under AAY, the numbers covered so far under each category, and whether clear instructions have been issued and are being complied with that future distribution of AAY cards will exclusively cover these groups until they are fully covered in compliance with the interim order of May 2nd, 2003.
- The Commissioners should be authorised to supervise the transparent, expeditious and fair distribution of ration cards to the urban homeless and slum households in the country's six metropolises: Delhi, Mumbai, Bangalore, Kolkata, Chennai and Hyderabad.

- Notice should be served to the States of Sikkim, Arunachal Pradesh, Punjab and Goa to explain the low offtake in AAY scheme.
- Notice should be served to the States of Bihar, Sikkim, Punjab, Orissa, Jharkhand, Arunachal Pradesh and West Bengal to explain the low offtake for the BPL scheme.
- Notice should be served to the States of Sikkim, Arunachal Pradesh, Punjab and Goa to explain the low offtake for the Antyodaya scheme.
- All State/Union Territories should be directed to ensure that at least 35 kg. of food grains is provided to every family as stipulated in the BPL and Antyodaya scheme.

5 National Social Assistance Programme and Annapoorna

5.1 Introduction

The National Social Assistance Programme (NSAP), introduced in August 1995, initially comprised of the National Maternity Benefit Scheme (NMBS), the National Old Age Pension Scheme (NOAPS) and the National Family Benefit Scheme (NFBS). NMBS was transferred to the Ministry of Finance w.e.f. 1st April 2001. The present structure of NSAP includes NOAPS and NFBS, which are implemented along with the Annapoorna Scheme. The scheme started as a 100 percent centrally sponsored programme that extended complete central assistance to State Governments in order to enable them to provide benefits as per the norms and guidelines laid down by the Central Government. But as has already been brought to the notice of the Supreme Court in the reports earlier submitted, the NSAP and Annapoorna have been transferred to State/UT Plans from the financial year 2002-03. As per the available centralised guidelines of the Ministry of Rural Development (MoRD), funds for the operation of the Schemes are allocated by the Planning Commission and released as Additional Central Assistance (ACA) to the States/UTs by the Ministry of Finance. *The ACA provided to the States / UTs under NSAP and Annapoorna could be utilised by the States / UTs on Welfare Schemes of Old Age Pension, Family Benefit or free food grains to the aged by taking up one or two or all of the three or in any other combination in accordance with their own priorities and needs.*

As mentioned in the guidelines, the Additional Central Assistance to the States must constitute a genuine additionality over and above the normal allocation of the State for such Welfare Schemes as reflected in the State's budget, both under Plan and Non-Plan. The States/UTs must, therefore, provide a Mandatory Minimum Provision (MMP) for these schemes under their own budget.

These programmes often suffer from low priority and monitoring, both by government and even sometimes civil society activists, but it must be remembered that for several categories of the country's most food vulnerable and at risk categories, these schemes constitute their sole lifeline to bare survival. In this report we look at the coverage under the schemes covered under the NSAP and also on the financial allocations and utilisations for these schemes. The entire analysis, unless mentioned otherwise, is based on the data received by the Commissioners Office from the Ministry of Rural Development on the status of implementation of the schemes under NSAP.

5.2 National Old Age Pension Scheme (NOAPS)

NOAPS is the first and by far the most significant scheme implemented at the national level to address the basic survival needs of the aged destitutes in the country. Looked at from another perspective, it is also the only national scheme, however limited, for the pension of unorganised workers. Likewise

NFBS is the only life insurance scheme for the families of unorganised workers who lose their bread winners.

NOAPS was started in 1995 and at that time the quantum of benefit was fixed at Rs. 75 per month per pensioner. The three eligibility criteria laid out for the scheme include:

- BPL Status
- Destitute status
- Above 65 years of age

The enhanced budget under NSAP & Annapoorna is a consequence largely of the increase in the central contribution to the pension amount announced by the Union Finance Minister in the budget for the financial year 2006–2007. The central contribution to the pension amount under NOAPS has been increased from Rs. 75/- to Rs. 200/- per month per pensioner. But the fact that it took the Government well over a decade to bring about a revision in the subsistence amount given to the aged destitute needs review. The Central Government employees and pensioners get an increment twice a year that is pegged to the Consumer Price Index. Likewise, the pension amount should also be appraised in the light of the inflation in the economy every half a year, using Rs. 200/- in 2006 as the baseline.

With this revision in the pension entitlement under NOAPS, the government has also drastically reduced the proportion of people eligible for NOAPS using the new poverty ratio of 28% mentioned in the Approach Paper to Eleventh Plan instead of the earlier 36%. As per the order of the Court dated 27th April 2004, it is explicitly stated that, “till further orders, the schemes would continue to operate and benefit all those who are covered by the schemes.” Especially in relation to the NSAP and Annapoorna it is directed that till the matter is fully heard the schemes shall not be discontinued and restricted in any way without the prior approval of the Court. The central government is bound by the court’s orders to continue to use the ratio of 36 percent (applied to the current population estimates for 2006–2007) to calculate the percentage of persons eligible for assistance under NOAPS. The Government of India has already accepted this principle and interpretation of the orders of the Supreme Court in not reducing the ratio of TPDS allocations. This scheme applies to the destitute aged. There is even less rationale for the reduction of support to this most food insecure group, which is most vulnerable to starvation.

Secondly, the GoI allocates funds for only 50% of the people below poverty line. The formula used by the GoI to calculate the number of people is as follows:

Population Poverty Ratio Proportion of 65+ age group in total population * 0.5

In the table below we calculate the number of persons eligible for benefit under the NOAPS based on the formula above using population projection figures for 2006 and poverty ratio based on Modified Expert Group Report for 1993–1994. It is seen that at an all India level the coverage is quite high with about 93% of eligible beneficiaries receiving benefit. However, there are wide state-wise variations with Punjab, Kerala and Gujarat showing less than 50% coverage. The coverage in Gujarat is particularly poor with only 12% of eligible beneficiaries being shown as receiving benefit under NOAPS.

Table 5.1 State-wise Coverage in 2006–2007

States/ Union Territories	Coverage under NOAPS in the year 2006 – 07	People eligible as per population projections as on 1st March 2006 using 36% poverty ratio as per the formula used by the government	% Eligible Population being covered under NOAPS	People eligible for universalisation using 36% poverty ratio	% Receiving benefit under NOAPS in relation to ALL old people above 65 below poverty line
Assam	628949	219000	287.2	438000	143.6
North Eastern States (excluding Assam)	227407	110000	206.7	219000	103.8
Delhi	84000	43000	195.3	86000	97.7
Orissa	643400	532000	120.9	1064000	60.5
Rajasthan	418566	383000	109.3	765000	54.7
Karnataka	533334	508000	105.0	1017000	52.4
Jammu and Kashmir	66038	63000	104.8	127000	52.0
Andhra Pradesh	466000	477000	97.7	953000	48.9
Uttar Pradesh	1576481	1653000	95.4	3305000	47.7
Bihar	904916	1014000	89.2	2029000	44.6
Himachal Pradesh	41342	60000	68.9	120000	34.5
Madhya Pradesh	421132	628000	67.1	1255000	33.6
Tamil Nadu	485597	760000	63.9	1520000	31.9
Haryana	95800	152000	63.0	304000	31.5
West Bengal	467846	749000	62.5	1498000	31.2
Maharashtra	723369	1164000	62.1	2329000	31.1
Punjab	45853	101000	45.4	202000	22.7
Kerala	134409	333000	40.4	665000	20.2
Gujarat	40117	329000	12.2	659000	6.1
Chhattisgarh	198906	NA		NA	
Jharkhand	366236	NA		NA	
Uttaranchal	65752	NA		NA	
India	8645371	9278000	93.2	18555000	46.6

There is no mechanism laid out by the Government of India to ensure that the poorest 50% of the BPL are covered under the scheme. Given that nutritional vulnerability and threat of starvation are more imminent in the old age, it is necessary to universalise the old age pension scheme. If the scheme is universalised to all old people above 65 years of age below the poverty line, then the no. of eligible beneficiaries increases to about 1.85 crores. Currently 46.6% of these people are being covered under the NOAPS.

5.3 National Family Benefit Scheme (NFBS)

The NFBS, as has been briefly discussed above, is not among the priority schemes with very scant coverage. The National Family Benefit Scheme provides for central assistance under the scheme of Rs.10,000/- in the case of death of the primary bread-winner. The formula used by the Government of India to calculate the number of people eligible for benefit under this scheme is as follows:

Population x Poverty Ratio x Proportion of 18-64 age group in total population x Age specific mortality in 18-64 age group x 0.5

In the year 2006–2007, the total number of beneficiaries reported from all the States/UTs is 1,71,232 as against a numerical ceiling of 5, 71,500, i.e. only 30% of the eligible beneficiaries. States such as Haryana, Karnataka and Delhi reported **NO** beneficiaries under the NFBS.

Table 5.2 Percentage Coverage of Eligible Beneficiaries under NFBS

	Numerical Ceiling	Number of Actual Beneficiaries	Percentage coverage
Andhra Pradesh*	28800	11759	40.8
Assam	21500	7877	36.6
Bihar	90500	18795	20.8
Goa	300	313	104.3
Gujarat	18300	1055	5.8
Haryana	6100	0	0.0
Himachal Pradesh	2300	2401	104.4
J & K	3100	603	19.5
Karnataka	24500	0	0.0
Kerala	9200	3644	39.6
Madhya Pradesh	60000	16460	27.4
Maharashtra	48000	13500	28.1
Orissa	34900	7928	22.7
Punjab	3800	1290	33.9
Rajasthan	18800	7040	37.4
Tamilnadu	36600	16214	44.3
Uttar Pradesh	113300	40640	35.9
West Bengal	42700	15503	36.3
NCT Delhi	2300	0	0.0
Total	571500	171232	30.0

In the above formula, half the number of deaths in the 18–64 age group population are assumed to relate to the primary breadwinner. As in the case of NOAPS there is no substantial basis for this assumption. In the case of NFBS too, the proportion of people eligible is being calculated using the new poverty ratio of 28% mentioned instead of the earlier 36%. However, as mentioned earlier, the central government is bound by the court’s orders to continue to use the ratio of 36% (applied to the current population estimates for 2006–2007) to calculate the percentage of persons eligible for assistance under NOAPS. Further as this benefit is given to only BPL families and the death of any person of the working age group would have an impact on the family’s earning capacity the benefit should be expanded to cover all deaths in the working age group (18–64 years) in families below the poverty line. Such universalisation would double the number of eligible beneficiaries to about 12 lakh.

5.4 Annapoorna

The Annapoorna scheme, launched in 2002 to cover a proportion of people eligible for the old age pension but left uncovered in the scheme, entitles 10 kgs of free grains every month. With the pension amount enhanced to Rs. 200/- a month, absence of a matching increase in the entitlement under Annapoorna makes it even less lucrative and beneficial.

The Ministry of Rural Development launched the scheme in 2000–2001. Indigent senior citizens or 65 years of age or above who though eligible for old age pension under the National Old Age Pension Scheme (NOAPS) but are not getting the pension, are covered and 10 kgs. of foodgrains per person per month are supplied free of cost under the scheme. From 2002–2003 it has been transferred to State Plan along with the National Social Assistance Programme comprising the National Old Age Pension Scheme and the National Family Benefit Scheme. The funds for the transferred scheme are being released by the Ministry of Finance as Additional Central Assistance (ACA) to the State Plan and the States have the requisite flexibility in the choice of beneficiaries and implementation of the Scheme. The implementation of the Scheme at the ground rests with the States/UTs. The foodgrains is released to the State Governments on the existing norms at BPL rates. Allocation/offtake of foodgrains under the scheme during the last four years is as under:

Table 5.3 Allocation and Offtake of Foodgrain under Annapoorna Scheme*

Year	Allocation			Offtake			% Offtake
	Rice	Wheat	Total	Rice	Wheat	Total	
2003–2004	0.56	0.67	1.23	0.45	0.64	1.09	88.6
2004–2005	0.90	0.77	1.67	0.64	0.68	1.32	79.0
2005–2006	0.90	0.77	1.67	0.69	0.70	1.39	83.2
2006–2007	0.90	0.77	1.67	0.60	0.29	0.89	53.8

Source: Website of Department of Food and Public Distribution, Government of India

As can be seen in the table above, the offtake of the grains allocated under the Annapoorna Scheme at only 53.8% is particularly low for the present year.

* Figures in lakh tones

Looking at the offtake for Annapoorna state-wise (see table below) it is seen that while states such as Andhra Pradesh, Orissa and Rajasthan used almost the entire allocation made under the scheme, states like Delhi, Manipur, Uttar Pradesh and Manipur did not use any of the allocation made to them under the Annapoorna Scheme.

**Table 5.4 Allocation and Offtake under Annapoorna Scheme 2006–2007 (Rice & Wheat)
in '000 tones**

	State/UT	Annual Allocation	Annual Offtake	% Offtake
1	Andhra Pradesh	11.16	10.99	98.5
2	Arunachal Pradesh	0.60	0.06	10.0
3	Assam	8.28	2.05	24.8
4	Bihar	20.04	15.58	77.7
5	Chhattisgarh	3.24	0.04	1.2
6	Delhi	0.02	0.00	0.0
7	Goa	0.10	0.04	40.0
8	Gujrat	1.00	0.82	82.0

Contd...

9	HP	0.77	0.34	44.2
10	J & K	1.22	0.35	28.7
11	Jharkhand	6.59	5.23	79.4
12	Karnataka	8.16	0.51	6.3
13	Kerala	3.72	3.27	87.9
14	Maharashtra	14.40	11.84	82.2
15	Manipur	1.08	0.00	0.0
16	Meghalaya	1.08	0.75	69.4
17	Mizoram	0.36	0.32	88.9
18	Nagaland	0.84	0.28	33.3
19	Orissa	7.80	7.33	94.0
20	Rajasthan	12.60	12.71	100.9
21	Sikkim	0.24	0.08	33.3
22	Tamilnadu	8.64	7.87	91.1
23	Tripura	1.80	1.05	58.3
24	U.P.	42.00	0.04	0.1
25	Uttaranchal	1.32	0.16	12.1
26	West Bengal	9.60	7.32	76.3
27	A&N Islands	0.06	0.00	0.0
28	Chandigarh	0.06	0.00	0.0
29	D & N Haveli	0.05	0.00	0.0
30	Damen & DIU	0.01	0.00	0.0
31	Lakshadweep	0.01	0.00	0.0
32	Pondicherry	0.00	0.67	
	All India	166.85	89.70	53.8

5.5 Allocation And Utilisation Under NSAP & Annapoorna

5.5.1 Allocation vs. Expenditure

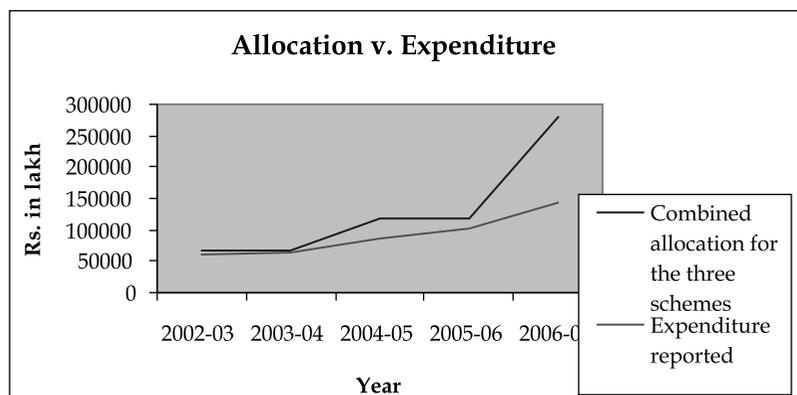
NSAP and Annapoorna draw a significant amount of contribution from the Central Government. The funds are allocated by the Central Government combined for the three schemes and as is mentioned above, the states respectively decide the proportion to be spent on each of the three schemes. The table below shows the total money allocated by the Central Government for all the states and the total expenditure reported by all the states for the previous four years.

Table 5.5 Utilisation on Allocated Funds*

Year	Combined allocation for the three schemes	Expenditure reported	Percentage of money spent
2002–2003	68000.00	59378.30	87.32
2003–2004	67987.00	64906.99	95.47
2004–2005	118987.00	84738.96	71.22
2005–2006	119000.00	102826.76	86.41
2006–2007	280054.25	144436.49	51.57

*Rs. in lakhs

In the year 2003–2004, the money utilised was close to optimum with less than 5% of the funds allocated left unused. But in the two subsequent years, the expenditure reported declined steeply with unused balances as high as 29.05% in 2004–2005 and 21.59% in 2005–2006. Last year, i.e. 2006–2007 showed lowest levels of utilisation with almost half the funds allocated left unused.



Except for the year 2003–2004, the gap between allocation and expenditure has significantly widened leading to sub optimal benefits and coverage under the schemes. Table 2²⁸ gives the allocation and expenditure reported statewise. The table shows that **only** six states of Mizoram, Goa, Himachal Pradesh, Jammu & Kashmir, Orissa and Manipur and one union territory Chandigarh, have reported expenditure above 80%.

Table 5.6 State-wise Utilisation of Allocated Funds 2006–2007**

Sl. No.	States/UTs	Combined Allocation for 3 schemes	Expenditure Reported	Percentage expenditure
1	Andhra Pradesh*	14882.08	9324.95	62.66
2	Bihar*	36002.21	14921.10	41.44
3	Chhattisgarh*	7321.38	3355.87	45.84
4	Goa*	66.95	98.04	146.44
5	Gujarat*	5601.09	2464.11	43.99
6	Haryana*	3296.24	2360.00	71.60
7	Himachal Pradesh*	1389.07	1260.00	90.71
8	J & K*	1716.73	1540.14	89.71
9	Jharkhand*	12746.83	6247.62	49.01
10	Karnataka*	11238.58	6418.67	57.11
11	Kerala*	5040.98	1959.28	38.87
12	Madhya Pradesh*	17387.81	10260.63	59.01
13	Maharashtra*	22213.90	9218.24	41.50
14	Orissa*	17021.70	14106.84	82.88
15	Punjab*	1601.91	419.60	26.19
16	Rajasthan*	8533.25	5591.14	65.52
17	Tamilnadu*	13159.75	9700.88	73.72
18	Uttar Pradesh	50432.59	19291.93	38.25

Contd...

²⁸ Based on the information furnished to the Office of the Commissioners by the Ministry of Rural Development.

19	Uttarakhand*	3217.40	1525.03	47.40
20	West Bengal*	18914.86	11725.87	61.99
21	Arunachal Pradesh*	759.10	404.00	53.22
22	Assam*	19717.54	8692.52	44.09
23	Manipur*	1320.90	1147.92	86.90
24	Meghalaya*	1479.85	577.47	39.02
25	Mizoram*	345.30	333.01	96.44
26	Nagaland*	1016.70	430.00	42.29
27	Sikkim*	378.18	141.08	37.30
28	Tripura*	2386.93	876.69	36.73
29	A&N Islands*	78.42	7.14	9.10
30	Chandigarh*	16.00	20.00	125.00
31	D&N Haveli*	78.42	16.72	21.32
32	Daman & Diu*	4.00	0.00	0.00
33	NCT Delhi*	567.00	0.00	0.00
34	Lakshadweep*	5.60	0.00	0.00
35	Pondicherry*	115.00	0.00	0.00
	Grand Total	280054.25	144436.49	51.57

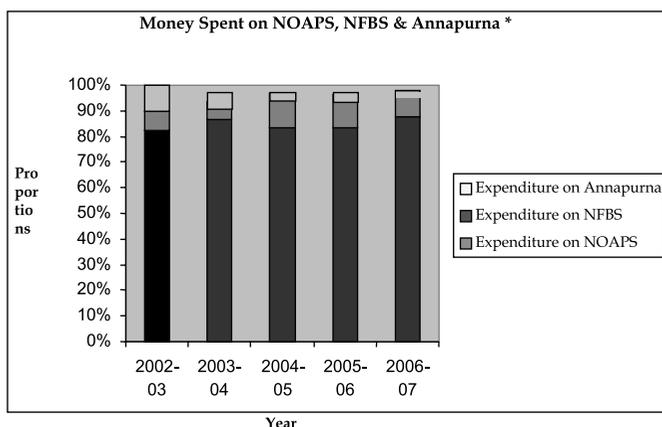
* Released upto March, 2007. ** Rs. in Lakh

This low utilisation of a scheme that is significantly supported by central grants, and is the lifeline of food survival for the most indigent families and individuals, is deeply regrettable. The Government of India and state governments need to monitor these schemes much more closely, and ensure that they are backed by much greater political and administrative will.

5.5.2 Proportion Spent on Different Schemes

At this point it is also worthwhile to look at the proportions of the total money allocated spent on NOAPS, NFBS and Annapurna. The data available for the past five years show that the money is predominantly spent on NOAPS while the other two schemes receive very modest proportions of the money allocated by the Central Government. Graph 1 below shows the break up of the Central Government money expended on the various schemes. States have reported additional expenditure from their coffers on NOAPS, but it is evident that NFBS as a scheme is most laggardly and receives minimum attention from the governments themselves.

*Since some states have given only the combined allocation, the NOAPS figures may be somewhat inflated.



5.5.3 Required Allocation

The allocation made under NSAP and Annapoorna has undergone steep revision in the financial budget for the year 2006–2007. The budget allocated for NSAP and Annapoorna has been enhanced to Rs. 2800.54 crore during the current year (2006–2007) from budget allocation of Rs. 1190 crore during 2005–2006. Even though this may not suffice to run the three schemes fully adequately, it nonetheless is a move that was long overdue.

In the table below we make a rough calculation of the amount of funds required to be allocated for these three schemes to reach all the eligible beneficiaries.

Table 5.7 Required Allocation to Cover Beneficiaries

Scheme	No. of Eligible Beneficiaries	Required Allocation (in Rs. crores)
NOAPS*	9278000	2226.7 [^]
NFBS**	571500	571.5 ^{^^}
Annapurna***	6881000	545.55 ^{^^^}
TOTAL		3343.8

*based on calculations made above (see table 1) ** the numerical ceilings set up Government of India in the NSAP guidelines. ***number would be equal to number of NOAPS beneficiaries as NOAPS covers 50% of old people below poverty line and Annapoorna is supposed to cover the rest. [^] = no. of beneficiaries * Rs.200 * 12 months^{^^} = no. of beneficiaries * Rs. 10000^{^^^} = no. of beneficiaries * 10kgs * 12 months * Rs.4.9 (The price of Rs. 4.9 is the average of the central issue price for BPL families for rice (565) and wheat (415).

Although this is strictly not accurate, as mentioned before this is just a rough calculation to indicate the scale of allocation required if the NSAP is to be implemented properly. While the required allocation was at least Rs. 3343 crores, the combined allocation in 2006–2007 for these three schemes was only Rs. 2800 crores. More importantly of this only about Rs. 1444 crores was utilised.

5.6 Delay in Transfer of Funds

The Finance Minister in his budget speech of March 2006 announced an enhancement in the pension amount of Rs. 75/- to Rs. 200/-. This was something that was also recommended by the Commissioners in their previous reports. However, the enhanced allocations were not transferred to the state governments by the Government of India until as late as September 2006, despite repeated reminders from the Commissioners to the Ministry of Rural Development. This inordinate delay led to state governments not paying pensions for a period of almost six months.

5.7 Key Issues and Recommendations

For NOAPS to start with the ratio of 36% (applied to the current population estimates for 2006–2007) should be used to calculate the percentage of persons eligible for assistance under NOAPS. Over time, it should cover all old people below poverty line as well as those from SC ST, and reduce the age criteria to above 60 years instead of 65, as has been done in many states.

Annapoorna should be an additional assistance to single women among old people, who are most vulnerable.

Old age pension must be pegged to inflation rates, using a floor of Rs. 200/- for the year 2005–2006.

NFBS amount must be increased and must cover deaths of any 18–64 year old member of the family in a BPL household, using the ratio of 36% (applied to the current population estimates for 2006–2007) to calculate the percentage of persons eligible for assistance under NFBS.

Families of persons who died allegedly of starvation, farmer suicides, natural and human made disasters should get first priority in NFBS releases.

6 National Rural Employment Guarantee Act

The Indian Parliament passed NREGA on September 25, 2005. And it was officially launched in 200 districts of the country on February 2, 2006. It aims at strengthening livelihood base, generating productive assets, make a dent on distress migration, and foster social equity. The Act entails a guarantee of 100 days of work (in a financial year) to a rural household who is willing to do unskilled manual work, at the state minimum wage.

200 districts were identified for implementation of the NREG Act in the first phase. The Ministry of Rural Development has earmarked Rs. 11,300 crore as Central Government Budget outlay for the year 2006–2007. This will mainly cater to 100% of the wage component and 75% of the non-wage component under this scheme, the rest 25% of the non-wage component is to be borne by the respective State Governments. This is an open-ended employment guarantee scheme so that these funds are only suggestive. The NREGA has subsequently been extended to cover all the districts in the country.

6.1 Salient Features of the Scheme

The focus of the Scheme shall be on the following works in their order of priority:

- water conservation and water harvesting
- drought proofing (including afforestation and tree plantation)
- irrigation canals including micro and minor irrigation works;
- provision of irrigation facility to land owned by households belonging to the Scheduled Castes and Scheduled Tribes or to land of beneficiaries of land reforms or that of the beneficiaries under the Indira Awas Yojana of the Government of India;
- renovation of traditional water bodies including desilting of tanks;
- land development;
- flood control and protection works including drainage in water logged areas;
- rural connectivity to provide all-weather access; and
- any other work which may be notified by the Central Government in consultation with the State Government.

Creation of durable assets and strengthening the livelihood resource base of the rural poor is an important objective of the Act. The works taken up under this Act are to be in rural areas. The State Council can prepare a list of preferred works for different areas based on their ability to create durable assets. Under no circumstances are the labourers to be paid less than the minimum wage rate. When wages are directly linked with the quantity of work, the wages shall be paid according to the schedule of rates fixed by the State Government for different types of work every year, in consultation with the State Council. The schedule of rates of wages for unskilled labourers shall be so fixed that a person working for seven hours would normally earn a wage equal to the minimum wage rate relevant to the State. The cost of material component of projects including the wages of the skilled and semi-skilled workers taken up should not exceed 40 percent of the total project costs.

Contractors: The Act does not permit engaging any contractor for implementing of the projects under it. As far as practicable, a task funded under the Act shall be performed by using manual labour and no machines.

Accountability and Transparency: Provisions for regular inspection and supervision of works taken up under the Scheme are made to ensure proper quality of works as well as to ensure that the total wages paid for completion of the work is commensurate with the quality and quantity of work done. The District Programme Coordinator, the Programme Officer and the Gram Panchayat implementing the Scheme prepare annually a report containing the facts and figures and achievements relating to the implementation of the Act within his or its jurisdiction and a copy of the same is to be made available to the public on demand and on payment of such fees as may be specified in the Scheme. All accounts and records relating to the Scheme are to be made available for public scrutiny and any person desirous of obtaining a copy or relevant extracts there from may be provided such copies or extracts on demand and after paying such fee as may be specified in the Scheme. A copy of the muster rolls of each project are to be made available in the offices of the Gram Panchayat and the Programme Officer for inspection by any person interested after paying such fee as may be specified.

Monitoring, Social Audits and Evaluation: The guidelines of the scheme provide that all works should be inspected by Gram Level Officials. 10% of the works should be inspected by District level officials and 2% by State level Officials. The Gram Sabha is to monitor all the works at the village level as well as the registration & issues of Job Cards and the timely payment of wages. The NREG Act (section 17) provides for a central role to social audits as a means of continuous public vigilance. In this direction, the Mazdoor Kisan Sangthan Sangh in Rajasthan has done social audits of all NREGA works in Dungarpur district, AASHA; a civil society organisation, has begun social audit in Hardoi (Uttar Pradesh); in Andhra Pradesh, the State Government has done social audit on NREGA works over most of the Ananthapur district and NIRD has done social audit in Kalahandi.

6.2 Registration

Rural households in the notified districts will have the right to register themselves with the local Gram Panchayat as persons interested in getting employment under the Act. The Gram Panchayat after proper verification will register the household and issue a Job Card to the registered household. The Job Card is the legal document that entitles a person to ask for work under the Act and to get work within 15 days of the demand for work.

The table below provides state-wise data on number of households that have been issued job cards under the NREGA. The table shows that in eight states, the percentage of job cards issued is less than 50%. These are Tamil Nadu, Gujarat, Sikkim, Haryana, Bihar, Punjab, Kerala and Meghalaya. In seven states, the percentage of job cards issued falls in the range of 50% to 70%. Further, in five states, the percentage is higher than 70.

6.3 Work demanded and allocation of employment opportunities

One feature that makes NREGA unique is that it provides 'work on demand'. Individuals are mandated to demand or apply for work, while the state guarantees that it will provide work for all those who ask for it, subject to the provisions under the Act. Applications are to be submitted to the Gram Panchayat. Awareness regarding this feature therefore forms the backbone of NREGA implementation.

The Table 6.1 depicts the number of job card holders who demanded work and who were provided work.

Table 6.1 Percentage of households who have been issued job cards until October, 2006

State	Total number of households (in NREGA districts) (in lakhs)	Number of households issued job cards (in lakhs)	Percentage of households issued job cards
Arunachal Pradesh	7878	16926	214.8
Madhya Pradesh	3550273	4424414	124.6
Rajasthan	1294087	1498134	115.7
Tripura	57788	64587	111.7
Manipur	16149	17880	110.7
Mizoram	21661	22918	105.8
Uttaranchal	206059	194559	94.4
Chhattisgarh	2023402	1788745	88.4
Nagaland	31939	27884	87.3
Assam	817286	699478	85.5
Andhra Pradesh	6715598	4768530	71.0
Jammu & Kashmir	240978	162196	67.3
Maharashtra	3713013	2467037	66.4
West Bengal	7064480	4415770	62.5
Orissa	3836278	2389160	62.2
Himachal Pradesh	150715	91507	60.7
Jharkhand	3395640	1914800	56.3
Karnataka	1282966	658137	51.2
Uttar Pradesh	7162466	3591596	50.1
Tamil Nadu	2067689	972037	47.0
Gujarat	1388048	618847	44.5
Sikkim	10649	4323	40.5
Haryana	257304	91468	35.5
Bihar	7755942	2546677	32.8
Kerala	616309	141742	22.9
Punjab	221815	37326	16.8
Meghalaya	101657	0	0
Total		33626678	

Table 6.2 Percentage of job card holders (households) who demanded work and who were provided employment under the NREGA

	State	Total Households that were issued job cards	Total Households demanded employment	Total households provided Employment	% households with job cards who demanded employment	Employment provided to households out of total demanded (%)	Employment provided to households out of total job cards issued to households (%)
1	Manipur	17880	17800	17880	99.6	100.4	100.0
2	Andhra Pradesh	4768530	1448647	1448647	30.4	100	30.4
3	Arunachal Pradesh	16926	16926	16926	100.0	100	100.0
4	Gujarat	618847	126028	126027	20.4	100.0	20.4
5	Haryana	91468	33119	33119	36.2	100.0	36.2
6	Maharashtra	2467037	191272	191272	7.8	100.0	7.8
7	Mizoram	22918	20801	20801	90.8	100.0	90.8
8	Punjab	37326	30828	30828	82.6	100.0	82.6
9	Rajasthan	1498134	1027231	1027231	68.6	100.0	68.6
10	Sikkim	4323	3611	3611	83.5	100.0	83.5
11	Tamil Nadu	972037	394082	394082	40.5	100.0	40.5
12	Bihar	2546677	638523	638185	25.1	99.9	25.1
13	Jharkhand	1914800	581689	578343	30.4	99.4	30.2
14	Orissa	2330601	1131798	1119218	48.6	98.9	48.0
15	Karnataka	658137	337382	332847	51.3	98.7	50.6
16	Chhattisgarh	1788745	765207	754419	42.8	98.6	42.2
17	Tripura	64587	73971	72348	114.5	97.8	112.0
18	Madhya Pradesh	4424414	2432374	2338668	55.0	96.1	52.9
19	Uttar Pradesh	3591596	2002689	1919725	55.8	95.9	53.5
20	Assam	512170	276001	262645	53.9	95.2	51.3
21	Himachal Pradesh	91507	52446	49272	57.3	93.9	53.8
22	West Bengal	4415770	1841553	1664640	41.7	90.4	37.7
23	Uttaranchal	194559	84318	61711	43.3	73.2	31.7
24	Kerala	141742	26148	16040	18.4	61.3	11.3
25	Jammu & Kashmir	162196	39579	16079	24.4	40.6	9.9
26	Meghalaya	0	0	0		0.0	0.0
27	Nagaland	27884	0	0	0.0	0.0	0.0
	Total	33380811	13594023	13134564	40.7	96.6	39.3

* 0 denotes non-reporting by concerned States

It is seen in the table above that the proportion of households demanding employment is much less than those issued job cards. Only 40.7% households that were issued job cards demanded for work. This figure is less than 30% in Bihar (25.1), Jammu and Kashmir (24.4), Gujarat (20.4), Kerala (18.4) and Maharashtra (7.8).

However, the above table also shows almost all the households *demanding* work were given work. Among those who demanded for work it is seen that 96.6% households were given work. The states that didn't perform as well on this account are Uttaranchal (73.2%), Kerala (61.3%) and Jammu and Kashmir (40.6%).

6.4 Number of days of work provided

As mentioned earlier under the NREGA, each household can demand and be given work for 100 days in a year. In this section we look at the number of days for which work for provided to each household on an average.

Table 6.3 Number of days of work provided

	House Holds	Employment Generated in Person days	Days employed by the households
Tripura	64551	4543000	70.4
Rajasthan	1038089	70878000	68.3
Assam	452475	29587000	65.4
Madhya Pradesh	2435462	148572000	61.0
Chhattisgarh	887253	38232000	43.1
Gujarat	137092	5896000	43.0
Nagaland	27800	1133000	40.8
Sikkim	4111	155000	37.7
Orissa	1206942	45331000	37.6
Haryana	36283	1215000	33.5
Karnataka	504599	14032000	27.8
Uttar Pradesh	2059332	54188000	26.3
Andhra Pradesh	1598382	40115000	25.1
Himachal Pradesh	72421	1734000	23.9
Uttaranchal	95837	2049000	21.4
Tamil Nadu	420831	8487000	20.2
Meghalaya	14459	201000	13.9
Mizoram	19020	243000	12.8
Bihar	2074139	21411000	10.3
West Bengal	2340000	23552000	10.1
Kerala	43500	326000	7.5
Jammu & Kashmir	839630	965000	1.1
Arunachal Pradesh	16926	0	0.0
Maharashtra	0	0	
Manipur	0	826000	
Punjab	0	1108000	
Jharkhand	0	21759000	
Total	16389134	536537000	32.7

* 0 denote non-reporting by concerned States

On an average only 32.7 days of work was provided to each household for the year 2006–2007 (up to December 2006). The worst performing states are Meghalaya (13.9 days), Mizoram (12.8 days), Bihar (10.3 days), West Bengal (10.1 days), Kerala (7.5 days) and Jammu & Kashmir (1.1 days).

6.5 Equity Reaching out to SCs/STs/Women/disabled

Table 6.4 Share of SC and ST households among total households that were issued job cards

State	SCs households to total households issued job cards (%)	STs households to total households issued job cards (%)
Andhra Pradesh	26.83	13.69
Arunachal Pradesh	0.00	100.00
Assam	9.00	41.00
Bihar	41.04	1.64
Gujarat	13.22	49.23
Haryana	55.63	0.00
Himachal Pradesh	33.21	20.25
Jammu & Kashmir	4.21	27.40
Karnataka	32.82	18.82
Kerala	16.59	10.22
Madhya Pradesh	13.94	40.47
Maharashtra	0.00	0.00
Manipur	0.00	0.00
Meghalaya	0.00	0.00
Mizoram	0.00	0.00
Nagaland	0.00	0.00
Orissa	24.19	46.36
Punjab	65.00	0.00
Rajasthan	18.11	56.45
Sikkim	0.00	0.00
Tamil Nadu	48.93	2.77
Tripura	0.00	0.00
Uttar Pradesh	55.38	1.72
West Bengal	20.70	8.24
Chhattisgarh	11.92	48.09
Jharkhand	0.00	0.00
Uttaranchal	22.84	1.07
Total	23.64	19.35

SCs and STs account for a majority of those to whom job cards were issued, i.e. those who came out and applied for job cards). In fact, in such states as UP and Bihar where the proportion of SCs is quite significant, and well above the national average, the share of SCs getting job cards issued is well above their share in the total population. In the country as a whole, SCs accounted for 24% of all job cards issued, and STs for 19%, both well above their respective share in the national population. In other words, the demand for employment is being generated from the appropriate sections of the population.

Table 6.5 Share of SC, ST and Women in Work Generated under NREGA (Up to Nov 2006)

State	SC households (%)	ST households (%)	No of days worked by women to total person days
Andhra Pradesh	31.4	12.9	46.7
Arunachal Pradesh	0.0	100.0	0.0
Assam	7.4	40.3	24.2
Bihar	45.0	0.7	16.2
Gujarat	5.5	67.3	61.5
Haryana	59.4	0.0	28.0
Himachal Pradesh	31.7	22.7	10.6
Jammu & Kashmir	7.4	12.6	0.1
Karnataka	31.7	20.6	56.2
Kerala	14.3	14.7	65.2
Madhya Pradesh	14.9	47.2	41.0
Maharashtra	0.0	0.0	0.0
Manipur	0.0	0.0	40.1
Meghalaya	0.0	0.0	0.0
Mizoram	0.0	0.0	33.3
Nagaland	0.0	0.0	30.0
Orissa	23.1	46.5	34.3
Punjab	0.0	0.0	38.0
Rajasthan	17.8	60.3	60.3
Sikkim	0.0	0.0	30.0
Tamil Nadu	47.5	4.2	55.6
Tripura	0.0	0.0	29.9
Uttar Pradesh	56.1	1.8	13.1
West Bengal	38.0	17.8	14.4
Chhattisgarh	11.8	50.1	35.2
Jharkhand	0.0	0.0	30.8
Uttaranchal	23.9	1.1	33.0
Total	29.9	25.5	38.3

* 0 denote non-reporting by concerned States

Even among those who were given work the share of SCs and STs at 29.9% and 25.5% is higher than share in population. Given that this scheme is for the poorest who are unable to find work, it must reach out even more to the most vulnerable groups in society.

The table above shows that the goal in the NREG Act to ensure women get work is also being fulfilled to some extent. In populous states the share of days worked by women to total person days is 47% in AP, 60% in Rajasthan, 55% in Tamil Nadu, 62% in Gujarat, 56% in Karnataka, 35% in Chhattisgarh and 31% in Jharkhand. However, it is notable that in the states where the status of women by all other

social indicators is the weakest, the share of women getting work remains low: UP 13%, Bihar 16%, Haryana 28%. West Bengal is also low at 15%.

6.6 Financial Performance

As of end-November 2006, of the Rs. 9220 crores amount allocated in India, Rs. 4184 crore was spent, or only 45%. Even allowing for the **expenditure** going up in the next 6 months to March 2007 to Rs 1000 cr per month, the total expenditure is unlikely to exceed Rs 7000–8000 crores in fiscal 2006–2007. The total expenditure reached 100% of total available funds only in Punjab. The expenditure share of funds allocated was a third or less in the following states: Andhra Pradesh, Assam; Jammu and Kashmir; Kerala; Maharashtra; Orissa; Sikkim; and Tripura.

Table 6.6 Actual Expenditure as a Share of funds allocated under NREGA—By States

S.No.	State	Total Available Funds (in Lakhs)	Total Expenditure (In Lakhs)	% of Expenditure to Total available Funds
1	Andhra Pradesh	93318.84	33504.25	35.9
2	Arunachal Pradesh	273.25	179.68	65.76
3	Assam	55078.74	16422.13	29.82
4	Bihar	94856.24	29188.31	30.77
5	Gujarat	8993.87	4180.15	46.48
6	Haryana	2795.24	1626.14	58.18
7	Himachal Pradesh	2882.70	1920.95	66.64
8	Jammu and Kashmir	3836.68	1062.65	27.7
9	Karnataka	22163.02	11766.98	53.09
10	Kerala	3343.56	252.15	7.54
11	Madhya Pradesh	166489.79	110235.63	66.21
12	Maharashtra	41627.20	11130.38	26.74
13	Manipur	1250.92	950.00	75.94
14	Meghalaya	2064.68	0.00	0
15	Mizoram	1074.04	575.55	53.59
16	Nagaland	1485.05	975.45	65.68
17	Orissa	79326.16	28455.18	35.87
18	Punjab	1501.18	1501.12	100.00
19	Rajasthan	77417.30	42515.72	54.92
20	Sikkim	510.07	34.83	6.83
21	Tamil Nadu	16055.66	5502.36	34.27
22	Tripura	4282.00	1412.50	32.99
23	Uttar Pradesh	79055.64	44157.46	55.86
24	West Bengal	43341.54	16989.54	39.2
25	Chattisgarh	49074.87	24826.52	50.59
26	Jharkhand	64901.40	27198.28	41.91
27	Uttranchal	5080.63	1928.48	37.96
	Total	922080.27	418492.40	45.39

6.7 NREG expenditure by type of public works

Table 6.7 shows the distribution of NREG expenditure by type of public works. Eight types of work have been approved, though the list can be expanded in consultation between the Central and State governments (according to the Act). Remarkably, only two types of work listed in the Act actually account for two-thirds of the entire expenditure at the national level so far: road connectivity (38%) and water conservation and water harvesting (30%). The remaining six of the eight listed activities

Table 6.7 Distribution of REGA Expenditure by type of Public Works (% of Total NREGA Exp)

State	Road connectivity	Flood Control & Protection	Water Conservation and water Harvesting	Drought Proofing	Micro Irrigation Works	Provision of irrigation Facility to land owned by Sc and ST	Renovation of Traditional Water Bodies	Land Development	Any other Activity approved by MRD
Andhra Pradesh	0.23	0.00	57.70	7.31	7.20	0.13	9.81	17.63	0.00
Arunachal Pradesh	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Assam	51.05	9.61	6.78	4.67	5.31	0.01	2.84	8.32	11.40
Bihar	91.45	0.47	2.44	0.31	0.22	0.16	0.42	0.08	4.45
Gujarat	21.50	1.14	67.96	3.38	1.19	0.00	3.05	1.78	0.00
Haryana	45.79	0.32	33.56	0.64	4.73	0.00	2.99	11.37	0.61
Himachal Pradesh	42.52	11.86	9.76	7.05	4.97	0.26	2.20	3.82	17.55
Jammu & Kashmir	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Karnataka	27.85	5.78	36.92	4.46	2.62	2.52	5.82	2.96	11.07
Kerala	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Madhya Pradesh	0.00	3.39	61.86	9.13	1.05	10.89	4.66	4.73	4.29
Maharashtra	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Manipur	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Meghalaya	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Mizoram	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Nagaland	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Orissa	54.31	2.53	15.08	4.37	0.09	0.41	12.30	0.32	10.61
Punjab	75.57	0.58	0.00	0.24	0.00	0.00	18.41	5.19	0.00
Rajasthan	29.59	0.55	36.39	9.84	1.59	0.33	20.94	0.76	0.01
Sikkim	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Tamil Nadu	7.01	0.98	21.13	0.02	24.23	0.00	46.63	0.00	0.00
Tripura	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Uttar Pradesh	50.26	3.64	18.12	5.56	1.77	0.63	12.13	3.23	4.67
West Bengal	32.40	10.48	16.53	14.84	6.34	1.19	7.94	6.48	3.81
Chhattisgarh	36.55	0.28	24.27	25.44	6.19	0.00	6.56	0.24	0.48
Jharkhand	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Uttaranchal	8.64	20.77	42.62	15.27	3.44	0.02	1.36	0.34	7.54
Total	37.63	2.58	30.30	7.21	2.64	2.31	8.95	3.75	4.62

account for a total of 27% of expenditure, while ‘any other activity’ (the ninth item in the list of permissible works in the Act) is barely 5%. Clearly the list of permissible works needs to expand.

6.8 Minimum Wages

As per the information received from the state governments, the minimum wages box 6.8 provides information on (i) whether the State Employment Guarantee Council has been constituted and (ii) the amount of Minimum wage fixed by the state government under NREGA.

Among the states for which information is available, in West Bengal, Mizoram and Uttaranchal the State Employment Guarantee Councils have not been formed. As can be seen in the table above there is a great variation in the minimum wages among different states with the minimum wage being even less than Rs. 60/- per day in Uttar Pradesh and Arunachal Pradesh.

Box 6.8: Minimum Wages

	State	Time period	Yes/No	Minimum wages (Rs.)
1	Tamil Nadu	April–October, 2006	Yes,	80 (revised from 54 per day)
2	Karnataka	April–October, 2006	Yes,	69 (enhanced from 62.5 per day)
3	Arunachal Pradesh	April–July, 2006	Yes	57 per day
4	Tripura	April–October, 2006	Yes	60
5	Meghalaya	April–July, 2006	Yes	70 for unskilled 75 for semi skilled 85 for skilled
6	Madhya Pradesh	April–September, 2006	Yes	61.37
7	Himachal Pradesh	April–July, 2006	Yes	70
8	West Bengal	April–July, 2006	No	68
9	Orissa	April–July, 2006	Rules have been framed an vetted by the law dept. Preliminary work done, approval from the State government awaited	66
10	Assam	April–July, 2006		
11	Mizoram	April–July, 2006	No	91
12	Andhra Pradesh	April–July, 2006	Yes	80
13	Uttaranchal	April–July, 2006	No	73
14	Rajasthan	April–August, 2006	Yes	73
15	Uttar Pradesh	April–July, 2006	Yes	58

6.9 Impact

National Monitors appointed by Ministry of Rural Development (MORD) have visited 137 work-sites to check the actual implementation. The MORD has also appointed independent professional agencies to review the scheme viz; the Centre for Budget and Governance Accountability in two districts each in Andhra Pradesh, Chhattisgarh, Madhya Pradesh and Jharkhand, the Centre for Development Alternatives in all six districts of Gujarat, the Institute of Human Development in six districts of Bihar, the Indian Institute of Management, Bangalore in one district each in Andhra Pradesh and Karnataka and the Institute for Women Studies Organisation in two districts each of Maharashtra, Orissa, Tamil

Nadu and West Bengal. However, as the scheme was launched only ten months back when these studies were conducted, more fruitful evaluation can be done only at the end of a one-year period.

This section briefly discusses the difficulties in NREGA implementation, drawn from the reports received from the field.

Definition of household: Confusions still prevail about the definition and application to the term 'household'. For instance, reports from Madhya Pradesh (Dhar district) show that the gram panchayat are treating joint families as one household. And thus, issuing them a single job card.

Denial of registration: Reports from the field point towards some incidents of denial of registration to single-women headed households and physically challenged individuals. Discrimination based on caste has also been noted in some states like Gujarat.

Delay in distribution of job cards: It has been noted that though job cards have been prepared across most states, but in many states they have not reached the people, thereby restricting their right to demand work.

Unsolicited fees being charged for work application forms: Fees for application forms is being charged in many states like Gujarat, Madhya Pradesh, Jharkhand. The fee ranges from Rs. 5 and goes on upto Rs. 50 in some states. They are also found to be sold openly in local markets or haats, flouting the NREGA guidelines.

Absence of worksite facilities: Absence of worksite facilities (such as safe drinking water, shade for children and periods of rest, first-aid box) is another noted problem that cuts across most states. Some reports from the field including Orissa (Kalahandi district)²⁹, Chhattisgarh (Jashpur district), Jharkhand (Palamau district), Madhya Pradesh (Jhabua, Khandwa and Umaria district), Gujarat (Sabarkantha district) have reported a complete lack of facilities at the worksites. But in Dungarpur district of Rajasthan it was heartening to note that medical kits were found at most worksites.

Presence of contractors: Contractors are increasingly becoming a threat to the NREGA also. Though it does not seem very clear from the surface, yet the private contractors are slowly finding their way into the system. The act clearly states (Schedule I, section 11), that no contractor is permitted in the implementation of the projects. Reports from the states of Chhattisgarh and Orissa point towards this emerging problem.

Non-availability of Muster Rolls at the work sites: It is a rare opportunity when one finds the muster rolls at the worksites. Reports across the NREGA districts show that kuccha muster rolls/attendance sheets are being maintained by the mates at the worksites. Roughly kept notebooks, diaries are being used for marking attendance and making wage payments at worksites.

Shortage of staff and delay in appointments: Launching of the Act has not been accompanied with appointment of additional staff for its implementation, thus burdening the existing staff. At the panchayat level, the Guidelines had specifically advised appointment of a 'rozgar sevak'. Disappointingly, this has not taken place so far. Such dearth of staff is having an adversarial impact on the working of the NREGA. A survey at Jashpur block of Chhattisgarh district found that sub-engineers were being burdened with the task of maintaining job cards which implies that their primary tasks suffer.

Stopping of works in monsoons: Some states like Chhattisgarh have disrupted works under the NREGA on account of monsoons. A circular, issued by the Chhattisgarh government, clearly states

²⁹ Advisor to the Commissioners; Implementation of NREGA in Bhawanipatna Block of Kalahandi district of Orissa, June 2006

that from 15th June to 15th October, the state will not be liable to open works within 15 days or provide unemployment allowance. Rumours of similar disruption are also floating in the state of Orissa. Such declarations not only violate the Act but also affect the landless farmers. Field organisations from Chhattisgarh report that with such stoppage, the wage rate has decreased to as low as Rs. 15. The landless farmers are left with no negotiating power, and are forced to accept whatever is being determined by the rich landlords, giving rise to a distress situation.

Disruption due to imposition of election code of conduct: Elections (including by-polls, state-elections) are also disrupting implementation of the Act. Early this year (in March, 2006) states like West Bengal, Kerala, Tamil Nadu and Assam witnessed disruption in NREGA due to imposition of election code of conduct. And lately, yet again, the process of NREGA is getting disturbed in Malda and Puruliya districts of West Bengal on account of by-polls.

Delay in wage payments: Delay in wages has always been a matter of concern in previous employment programmes and continues to plague NREGA. Wage payments are delayed for weeks and sometimes for months. The time period of lag, however, varies from state to state. For instance, in Jashpur district of Chhattisgarh, delays of months were noted. In some places like Barwani district of Madhya Pradesh delay was for a period of 15 to 30 days. Delays were also noted in Manika and Manatu blocks of Jharkhand.

Payment of less than minimum wage: In many states, workers are not earning minimum wages. For instance, in Sabarkantha district of Gujarat the paid wages are as low as Rs. 4 to Rs. 7,³⁰ in Kalahandi district (Bhawanipatna block) of Orissa, workers are earning wage between Rs. 40–50, whereas the minimum wage is Rs. 55. Women are getting paid even less, about Rs. 30 per day. In some states like Jharkhand workers are getting paid as low as Rs. 10.

The reasons behind payment of less than minimum wages are varied. In some states the soil type is not being considered as a result of which the payment are getting affected. Following the system of *chauka*³¹ in some states like Jharkhand is also leading to lowering of the wage.

The National Rural Employment Guarantee Act has the potential of productive employment of differently abled persons. In this regard, there is a concrete example to cite. In Badwani district of Madhya Pradesh, 79 differently abled persons have been employed across 27 villages in NREGA. They are engaged in tasks such as ground digging, ground leveling, providing water to the workers at the sites etc. Some differently abled are also performing the tasks of mates and supervisors. This data was provided by the civil society groups and not by the state government.

It is disappointing to note that the state governments are not taking an interest in the issue. Reports state that many states like Rajasthan, Madhya Pradesh, Karnataka, Arunachal Pradesh are not monitoring data regarding employment of differently abled persons in NREGA. Other states have mentioned that the figures for employment for People with Disabilities (PwDs) is nil, these include Uttaranchal, Uttar Pradesh. The government of Andhra Pradesh reported that 0.08 % differently abled persons form a part of NREGA work force. Furthermore, in the state of Uttar Pradesh, only 927 disabled people are employed out of the total workforce of about nine lakh persons.

³⁰ Status report on Implementation of NREGA in Gujarat prepared by Sabar Ekta Manch and Janpath, April 2006.

³¹ "Under this system, the workers are supposed to dig a *chauka* (pit) of pre-specified size (e.g. 100 cubic feet in the case of soft soil) in order to earn the minimum wage. In practice, this system raises several problems. To start with, it typically takes more than a day for an average labourer to complete the specified task, making it hard to earn the statutory minimum wage. This is a violation of the Act, which states that the "schedule of rates" should be such that a labourer working for seven hours would normally earn the minimum wage (Schedule I, Section 8)." As elaborated by Jean Dreze and Bela Bhatia in their article titled: Employment Guarantee in Jharkhand: Ground Realities, EPW, July 22, 2006

A field study conducted by Hirway and Singh, 2006³² in six districts in Gujarat where the NREGA is being implemented suggests that the slow spread of implementation is fundamentally due to ignorance amongst workers of their rights. Without such awareness, the three concerns arise:

- Individuals do not realise that ‘employment’ is their right. In fact they are loathe to apply for employment—as previous experience suggests that this does not have any definite outcome. Lack of awareness then gets easily disguised in quantitative statistics into ‘low demand’
- There is neither public pressure nor evidence (as job applications are hardly ever made in writing) to demand employment benefit if a job is not provided within 15 days.
- In fact there is some evidence that the ‘guarantee’ aspect is making the administrative machinery wary of publicising the scheme for fear of being held legally responsible in case of inability to provide employment. In the field study by Hirway and Singh, there has not been a single case of receipt of the unemployment benefit, (which are to be paid from State government funds) while there are plenty of complaints of having applied unsuccessfully for employment under the scheme.
- The demand for a social audit which could greatly reduce corruption, does not exist.

6.10 Recommendations

Although workers know about the programme, there is need to raise awareness about procedures under the Act (especially in about 80 of the 200 districts), such as the need to apply for employment.

- Publicity and guidance material for the State Employment Guarantee Schemes should be made available in local languages.
- Muster roll maintenance needs to be improved.
- Documentation needs improvement.
- Entries in job cards should be made regularly.
- Work measurement and payment should be done on time.
- There should be an adequate number of estimated and approved projects available.

The implementation of NREGS requires strengthening of administrative machinery at Gram Panchayat and at Block / District level in terms of placements of staff and training of the representatives of Panchayati Raj Institutions (PRIs) and officials involved. At present, 2% of the budget allocation is allowed towards **administrative expenses**. The State Governments have been continuously asking for an increase in the administrative expenses.

There are several good initiatives undertaken by States to introduce transparency in implementation like social audit (in Dungarpur in Rajasthan and Anantpur in Andhra Pradesh), use of banks and post network for paying wages to workers (Karnataka and Andhra Pradesh), MIS (Orissa and AP), signboards (Rajasthan and MP) and work time and motion studies (AP, Tamil Nadu and Gujarat).

Independent monitors should be deployed in areas where participation of vulnerable sections is not adequate, to ensure that the weaker sections are participating and getting their entitlements.

The requirements of **training** are considerable at all levels: a. the relevant NREG officers need training; b. PRI officials need training since NREG is implemented by them; and c. the local vigilance committee needs training. The NIRD and the state IRDs are being incorporated into the training programme.

In addition to such capacity development, there is need for a shelf of projects in each district ready and waiting to be taken up for rural work and employment generation. This is a requirement since

³² Concurrent monitoring of NREGA, Feedback from the Field, Feb-July 2006. Submitted to MORD, GOI, and UNDP, New Delhi, Centre for Development Alternatives, October 2006

NREG is a demand-based programme, and projects cannot be formulated when the work demand suddenly mounts. It is therefore, necessary, that each of the National, State and District Employment Guarantee Councils (created to oversee the implementation of NREG in each) should have at least three professionals to help prepare projects in advance (as in PMGSY).

For better implementation and monitoring, e-connectivity at the local level needs to be strengthened. Orissa, Andhra Pradesh, along with some other States have taken a lead in this direction.

Job cards should be issued separately to each adult physically challenged person.

Household should be defined to mean a nuclear family i.e. husband, wife and minor children, and may include any person wholly or substantially dependent on the head of the family

7 Sampoorna Grameen Rozgar Yojana

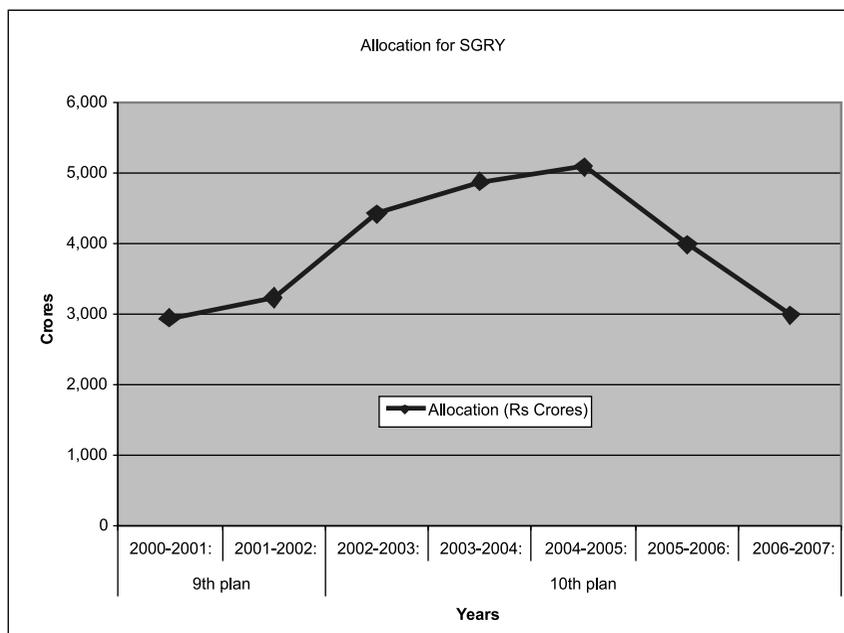
The Sampoorna Grameen Rozgar Yojana (SGRY) is a wage employment scheme launched in September 2001, and the Jawahar Gram Samridhi Yojana (JGSY) and Employment Assurance Scheme (EAS) were merged under this programme from First April 2002. The primary objective of the scheme is to provide additional wage employment in all rural areas and thereby provide food security and improve nutritional levels. The secondary objective is the creation of durable community, social and economic assets and infrastructure development in rural areas. A special component under SGRY provides foodgrains to calamity stricken states for undertaking relief activities. Thirty percent of employment opportunities under the programme are reserved for women. The programme is implemented through the Panchayati Raj Institutions (PRIs).

Each local body prepares an annual action plan to include the works to be undertaken under the scheme. Completion of incomplete works is given priority and emphasis is laid on labour-intensive works. Priority is to be given to soil and moisture conservation, minor irrigation, rejuvenation of drinking water sources, augmentation of ground water, traditional water harvesting structures, desiltation of village tanks/ponds, construction of rural link roads, drainage works, afforestation, schools, kitchen sheds for schools, dispensaries, community centres, panchayat ghars, development of haats (markets), etc. However, the nature of works should be such that they could be completed in one or two years. Up to a maximum of 15% of the funds can be spent on maintenance of assets created under the programme.

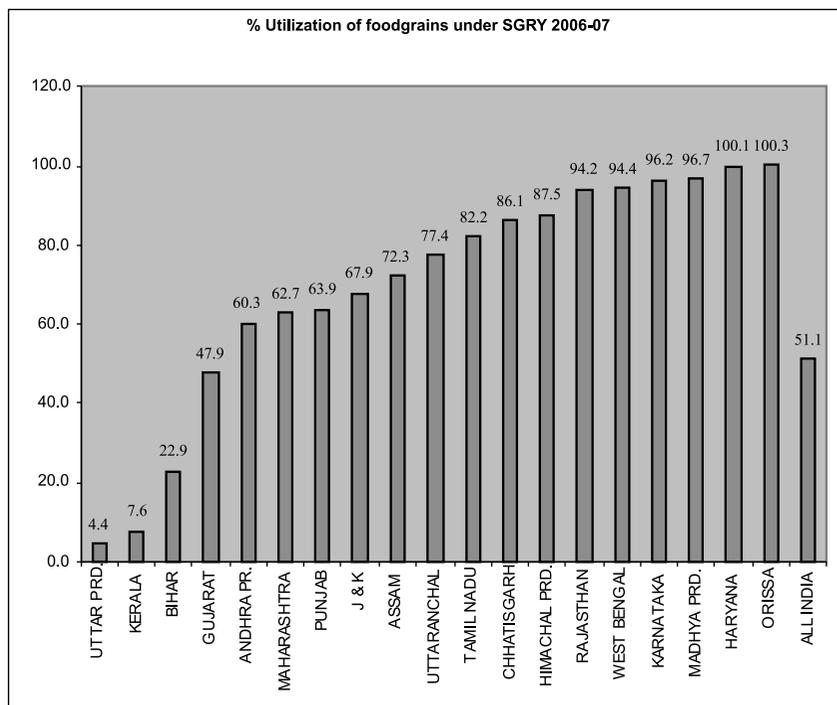
While the SGRY was being implemented throughout the country until 2006, with the passing of the National Rural Employment Guarantee Act in 2005, SGRY was phased out and replaced by the NREG scheme in 200 districts in the country. This year the NREG scheme was expanded to cover 330 districts across the country. In these additional 130 districts, the works being carried out under SGRY have also been merged under NREGA. Over time, once NREGA is expanded to cover all the districts in the country, the SGRY programme will be closed entirely. This section therefore looks briefly at how the SGRY is being implemented in relation to its present guidelines. It is therefore complementary to the section on NREGA.

The allocation for SGRY, as given in the graph, shows a clearly declining trend lately, since the SGRY is being phased out and is being replaced by the NREGA.

While the overall utilisation of foodgrains at the national level is 51.1 percentage, there is wide state-wise variation as is clear from the figure on next page. Even though the scales of operation are different as NREGS is in place, once the smaller states are excluded, states like Uttar Pradesh, Bihar, Kerala, Gujarat, Andhra Pradesh, Maharashtra, Punjab, Jammu and Kashmir, Assam and Uttaranchal show foodgrain utilisation that is lower than 80%.

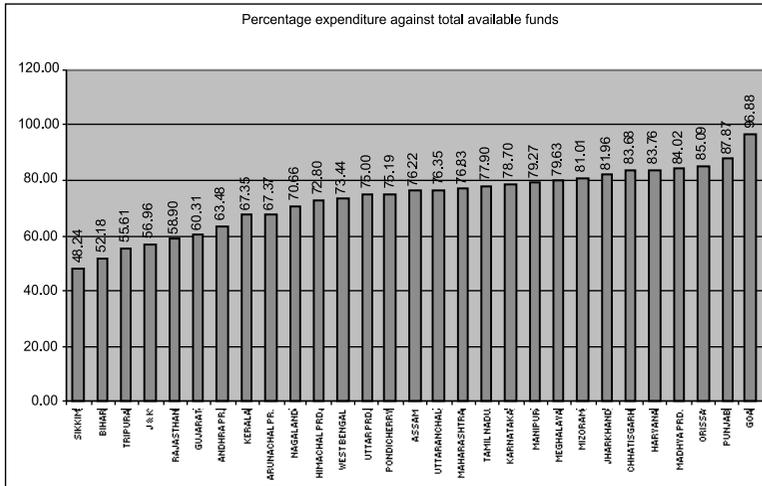


Source: http://www.cseindia.org/programme/nrml/pdf/NREGA_Briefing_Online.pdf



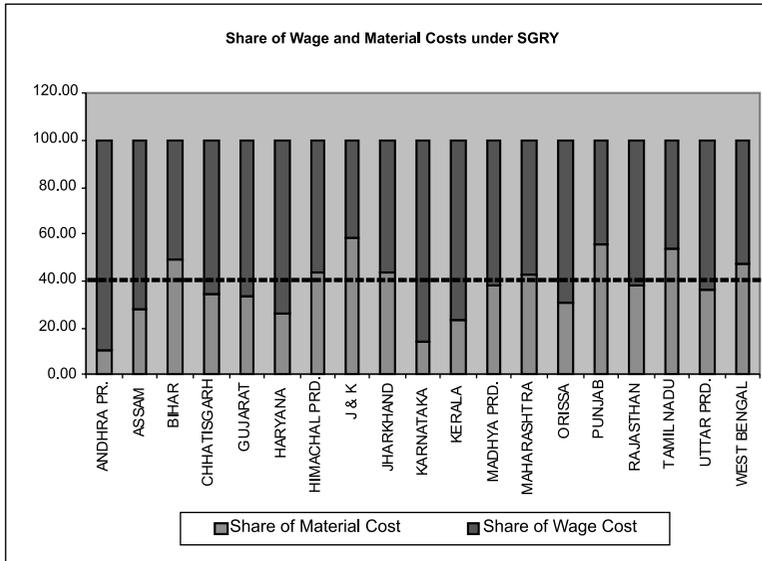
Source: Ministry of Rural Development, GoI

RIGHT TO FOOD



Source: Ministry of Rural Development, GoI

So far as the utilisation of financial resources, the overall percentage is markedly higher, at 73%, and the contrast in the distribution is not as stark as with foodgrain utilisation. A majority of states utilised less than 80 percent of the total available funds, the worst performers being Sikkim, Bihar, Tripura, Jammu and Kashmir, Rajasthan, Gujarat, Andhra Pradesh, Kerala, West Bengal, Uttar Pradesh and Assam, among others.



Source: Ministry of Rural Development, GoI

SGRY guidelines clearly state that while creating rural infrastructure, emphasis should be given on labour intensive works. Clearly in violation to the stipulated 40–60 proportion of wages to material costs, states like Bihar, Himachal Pradesh, Jammu and Kashmir, Jharkhand, Maharashtra, Punjab, Tamil Nadu and West Bengal have material costs higher than 40%.

Problems and Issues: The main issues that undermine the effective implementation of SGRY guidelines and subsequent court orders could be summarised as follows:

- Same works are taken every third year
- No funds for operations and maintenance
- Poor monitoring
- Acute shortage of technical staff
- Extensive use of outside contract labour & heavy machinery
- Planning commission estimated that only Rs. 15/- of every Rs. 60/- expenditure reached the beneficiaries.

Recommendations:

- Earmark SGRY funds for drought proofing & afforestation and planting of fruit trees on the lands of STs/ SCs etc.
- Monitor quality of completed works, and not just employment
- Put the list of registered labourers, the muster of all works, payments made, absentees, etc. on website
- Provision of an effective citizen interface mechanism that would enhance accountability.
- Payment of wages is made by account payee cheque.
- Use laminated cards to reduce leakages.
- Appoint civil society for monitoring & audit.

As an annexure to this chapter, extracts from a recent article in Frontline, which makes use of more recent data is included.

Annexure

Extracts from an article from Frontline

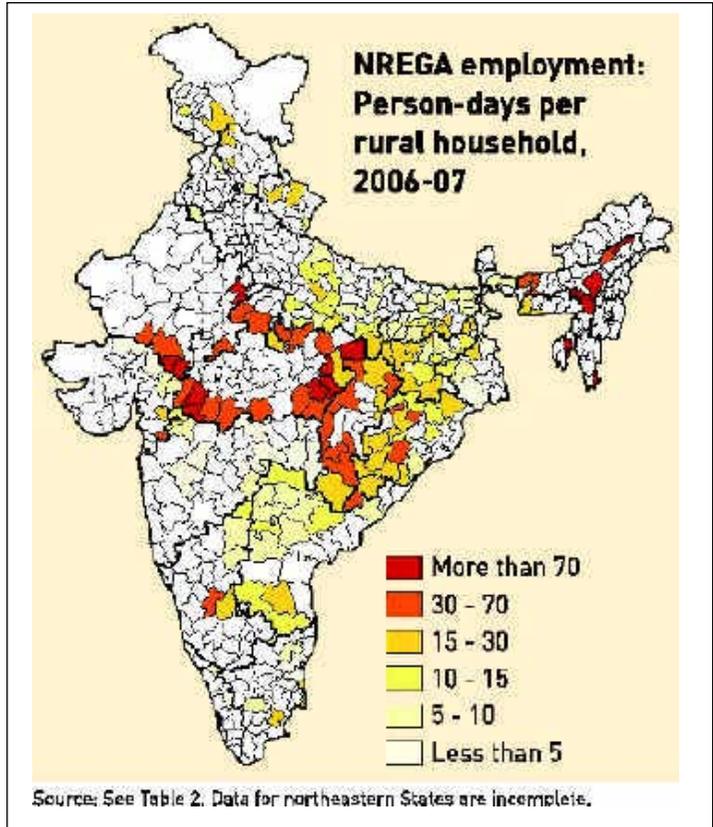
(*Commendable Act*, Jean Dreze and Christian Oldiges, Frontline, Volume 24– Issue 14, Jul. 14–27, 2007).

The National Rural Employment Guarantee Act (NREGA) has been a subject of lively debate in the past two years or so. Unfortunately, the factual basis of this debate has been, so far, rather thin. This has made it possible for extremist positions to flourish without being put to the test of careful evidence. While the Act is regularly pilloried in the corporate-sponsored media as an “expensive gravy train” (as a former Chief Economic Adviser described it), the government gets away with extravagant claims of success.

Fortunately, the scope for informed analysis is rapidly growing as reports are beginning to pour in from various parts of the country. Some statistical evidence is also available, notably on the NREGA website launched by

the Ministry of Rural Development (www.nrega.nic.in). This website is not exactly a model of clarity and elegance. Many of the links do not work, quite a few tables are blank, and essential facts that ought to be available at a glance tend to be oddly scattered through the site. More importantly, much of the site is a rather puzzling mix of valuable data and dubious statistics. It is hard to understand why a Ministry that spends more than Rs. 10,000 crore a year on implementing the NREGA is unable to ensure that this crucial resource is up to the mark. Be that as it may, there is much to learn here for those who have the patience to find their way through the maze.

Table 1 presents a simple “fact sheet” on the NREGA based on official data from the Ministry’s website. The data pertain to the financial year 2006–2007, and should be interpreted bearing in mind that this was essentially a “learning phase” for the NREGA. The Act came into force on February 2nd, 2006 in 200 districts. Many districts were unable to put the required systems in place before the summer months (April to June), which tend to be the period of peak demand for employment in public works. Some of these districts had much higher levels of NREGA employment this summer, but this is not captured in Table 1 since the reference period ends on March 31st, 2007. Quite likely, the levels of



NREGA expenditure and employment in these 200 districts will be much higher in 2007–2008 than in 2006–2007 (that is, if the Finance Ministry cooperates). Nevertheless, it is useful to look at the record of the NREGA in “year zero”, so to speak.

As Table-1 indicates, works under the NREGA generated 90 crore (nearly one billion) person-days of employment in 2006–2007, at a cost of about Rs. 9,000 crore. By any reasonable analysis, this is much below the employment and expenditure levels that would materialise if the Act were implemented in letter and spirit. For instance, based on rather conservative assumptions, the National Advisory Council estimated two years ago that fair implementation of the Act in the country’s poorest 200 districts would create about 200 crore person-days of employment - more than twice the actual level of employment generation in 2006–2007. Nevertheless, 90 crore person-days is a start of sorts, and certainly more – much more – than the amount of employment generated in these districts in earlier years under the National Food For Work Programme (NFFWP) and the Sampoorna Grameen Rozgar Yojana (SGRY).

Having said this, there are startling differences in the levels of the NREGA employment in different States. The point is illustrated in Table 2, where States are ranked in descending order of employment generated *per rural household* (in the relevant districts). Some State governments have clearly decided to “own” the NREGA and have seized this opportunity to provide large-scale employment to the rural poor at the cost of the Central government (which foots about 90% of the bill). In other States, the whole programme is yet to take off.

Looking first at the top of the scale, it is perhaps not surprising to find that Rajasthan was the best performer among all major states in 2006–2007 (in terms of employment generation per rural household). Indeed, employment guarantee has been a lively political issue in Rajasthan for quite a few years now, and the State also had a high level of preparedness for the Act, having organised massive public works programmes almost every year in living memory. Note, however, that the small State of Tripura in northeastern India (not shown in the table) is doing even better than Rajasthan, with 87 days of NREGA employment per rural household in 2006–2007. In both States, employment generation under NREGA is already quite close to the upper limit of “100 days per rural household”. This is an unprecedented achievement in the history of social security in India.

At the other end of the scale, there are some surprises. Kerala is at the rock bottom, but perhaps this is partly a reflection of the low demand for the NREGA employment in the State, rather than of a failure to provide it. The same interpretation, however, is unlikely to apply to Maharashtra and West Bengal. The fact that the NREGA is – as of now – a flop in both States may seem surprising, but it is actually in line with recent policy priorities. Maharashtra has assiduously sabotaged its own Employment Guarantee Scheme from the early 1990s onwards. The government of West Bengal, for its part, had an ambivalent attitude towards the NREGA from the beginning.

There is another way of looking at the State ranking in Table 2. As is well known, the southern and western States (Andhra Pradesh, Gujarat, Karnataka, Kerala, Maharashtra and Tamil Nadu) routinely do better than most of the northern and eastern States when it comes to social policy and rural development programmes. The large north Indian States, for their part, tend to lag far behind. But when it comes to NREGA, the pattern is reversed: only one of the southern or western States (Karnataka) has generated more than 10 person-days of employment per rural household in 2006–2007, while the eastern and northern States have done comparatively well in this respect. Of course, this pattern has to be read in the light of the fact that the need for fallback employment may be greater in the eastern and northern regions. Nevertheless, it is encouraging to find that the NREGA made an early start in these deprived regions (with the significant exceptions of Bihar and West Bengal).

NREGA fact-sheet, 2006-07 (financial year)

Person-days of employment generated	
Total	90 Crore
Per rural household	17
Per job card	24
Per household employed in NREGA	43
Share of marginalized groups in total NREGA employment	
Women	40 per cent
Schedule Tribes [ST]	36 per cent
Scheduled Castes [SC]	26 per cent
Number of NREGA works	
Taken up	8.3 lakh
Completed	3.8 lakh
In progress	4.5 lakh
Expenditure on NREGA	
Total expenditure	Rs. 8.813 crore
Average expenditure per district	Rs. 44 crore
Average expenditure per person-day	Rs. 98
Average wage cost per person-day ^b	Rs. 65
Share of wages in total expenditure ^b	66 per cent

^a In the relevant districts, the number of the rural households was taken from the 2001 Census.

^b Unskilled labour only.

Source: Calculated from official data posted on the NREGA website < www.nrega.nic.in >

All figures pertain to the 200 districts where NREGA came into force on February 2, 2006

Empowering Women

The last three columns of Table 2 look at other features of the implementation of the NREGA in different States and enable us, in particular, to spot some important irregularities. Consider, for instance, the participation of women in the NREGA. It is encouraging to note that women's share of NREGA employment is not far from half (40% to be precise) at the all-India level, rising to a startling 81% in Tamil Nadu. The economic dependence of women on men in rural India plays a major role in the subjugation of women, and in this respect the NREGA is an important tool of social change. However, many States are violating the Act by failing to ensure that the share of women in NREGA employment is at least one third: Jammu and Kashmir (4% only), Himachal Pradesh (12%) and Uttar Pradesh (17%) among others. In this connection, it is also worth mentioning that the mandate to provide creche facilities at NREGA worksites has been brazenly ignored so far almost everywhere. Better arrangements for child care are urgently required to facilitate the participation of women in the NREGA. Of course, it is not just a matter of child care. But the provision of creche facilities at NREGA worksites would certainly help and would also have much value as a means of creating wider social acceptance of child care arrangements as a basic right of working women.

The labour component of the NREGA is supposed to account for at least 60% of total expenditure. As Table 2 indicates, this requirement is comfortably met in most States, though some of them (Bihar, Jharkhand, Orissa and Uttar Pradesh, for instance) have marginally lower ratios, and Himachal Pradesh spends only 52% of NREGA funds on the labour component. It would be interesting to know how States like Maharashtra and Tamil Nadu manage to implement NREGA works with virtually no expenditure other than wages. Of course, there is a strong incentive for States to adopt labour-intensive techniques under the NREGA since the labour component is entirely funded by the Central government (unlike the material component, which is shared). The share of wages at the all-India level is 66%, which seems like a satisfactory figure.

The last column in Table 2 presents average wage costs per person-day. This is, for practical purposes, the same as the average wage rate (in rupees per day). Here again, there are major inter-State variations, with (say) Kerala paying more than twice as much as Rajasthan. These large differences raise the question whether it is better to have State-specific wages or a national norm. This complex matter is yet to be adequately debated. Indeed, wage payments raise a host of interesting and complex questions that have been lost in the din of arguments for and against the Act: how NREGA wages should be determined; whether there should be a national norm; whether piece-rate payments are better than daily-wage payments; how work should be measured; whether the “schedule of rates” should be gender-specific; how to avoid long delays in the payment of wages; and so on. It is not too late to initiate an informed debate on these issues.

Minimum wage

Finally, it is alarming to find that some States are evidently paying less than the statutory minimum wage, in flagrant violation of the Act. The most glaring offender in this respect is none other than Rajasthan, where NREGA workers earned a meager Rs. 51/- per day on an average in 2006–2007 even though the statutory minimum wage was Rs. 73/- per day. This is a trifle paradoxical, since workers’ organisations in Rajasthan have been at the forefront of recent struggles for minimum wages. Also, it is in the context of relief works in Rajasthan that the Supreme Court delivered a landmark judgment stating that employing labourers without paying the minimum wage is “forced labour” insofar as it amounts to “[taking] advantage of the helpless condition of the affected persons” (*Sanjit Roy vs. State of Rajasthan* 1983, SCC (1) 525). More than 20 years after this indictment, the problem persists.

NREGA: State-specific indicators, 2006-07

State	Person-days of NREGA employment per rural household	Share of women in NREGA employment (in per cent)	Share of wages in total expenditure ^a (in per cent)	Average wage cost per person-day ^a (in rupees)
Rajasthan	77	67	73	51
Assam	70	32	65	67
Madhya Pradesh	56	43	63	59
Northeastern States ^b	45	49	63	63
Chhattisgarh	34	40	65	63
Orissa	21	36	58	53
Himachal Pradesh	20	12	52	69
Uttarakhand	20	30	61	72
Karnataka	17	51	60	67
Jharkhand	14	28	58	80
Jammu & Kashmir	13	4	65	69
Uttar Pradesh	11	17	59	56
Andhra Pradesh	10	55	86	86
Haryana	9	31	65	97
Tamil Nadu	9	81	96	80
Bihar	8	17	59	70
Gujarat	7	50	65	56
Punjab	7	38	59	94
West Bengal	6	18	78	70
Maharashtra ^c	4	37	95	104
Kerala	3	66	89	121
India	17	40	66	65

a Unskilled labour only. b Excluding Assam [approximate figures, based on incompleting data].

c Up to [and including] February 2007.

As one might expect, the contrasts discussed so far are even sharper at the district level. For instance, employment generation per rural household is just about one person-day in Madhubani (Bihar) but as high as 111 days in Dungarpur district (Rajasthan). Similarly, while women's share of NREGA employment is above 80% in most districts of Tamil Nadu, it is less than one percent in five districts of Uttar Pradesh. The inter-district contrasts are illustrated in the graphic, with reference to the level of NREGA employment (measured, as before, in terms of person-days per rural household).

Behind these facts and figures is a simple yet powerful message about the NREGA. Within a year of the Act coming into force, the programme has been actively taken up in a small but significant number of districts (20 of them spent more than Rs. 100 crore on NREGA in 2006–2007). Further, field reports suggest that many of the anticipated benefits of employment guarantee are beginning to show in these pioneer districts: there is greater economic security, agricultural wages are rising, migration is slowing down, productive assets are being created, women have more economic independence, power equations are changing, and so on. The need of the hour is to extend these positive experiences to other districts. If Sarguja or Mandla or Banswara are able to spend more than Rs. 100 crore on this programme in a single year, there is no reason why (say) Palamau or Kalahandi should not be able to do it.

Of course, it is also important to ensure that the reported expenditure levels actually correspond to “real” work and wages. Earlier employment programmes have left a long trail of fake muster rolls and embezzled money. However, there is growing evidence that firm enforcement of NREGA's extensive transparency safeguards can go a long way in preventing corruption.

Success stories in this respect are no longer confined to Rajasthan; the stronghold of India's “right to information movement”. For instance, a recent verification of muster rolls in Sarguja and Koriya districts (of Chhattisgarh) conducted by students from Delhi University and Jawaharlal Nehru University, New Delhi, found that 95% of the wages paid according to the muster rolls had actually been received by the concerned labourers. This is a significant achievement, especially in contrast with the massive levels of fraud observed in the same area two years ago under the NFFWP.

It would be naive to think that the long history of fraud in public works programmes has already come to an end. But recent experience shows that it is possible to remove mass corruption from NREGA. This calls for strict implementation of the transparency safeguards, as well as firm action whenever corruption is exposed. In these simple steps lies the future of the Act, and of all those for whom it is a new ray of hope.

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**Eighth Report of
the Commissioners
to the
Supreme Court**



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Introduction and Summary of Recommendations

In the dark shadows of this land, the silent tragedy plays out, of millions of women and men, boys and girls, who sleep hungry. The experience of chronic hunger in distant villages as much as on city streets is one of intense avoidable suffering; of self-denial; of learning to live with far less than the body needs; of minds and bodies stymied in their growth; of the agony of helplessly watching one's loved one's - most heartbreakingly children - in hopeless torment; of unpaid, arduous devalued work; of shame, humiliation and bondage; of the defeat and the triumph of the human spirit.

Such high levels of hunger and malnutrition are a paradox, because they stubbornly survive surging economic growth and agricultural production which outpaces the growth of population (although it has worryingly stagnated in recent years). The riddle deepens because the State in India runs some of the largest and most ambitious food schemes in the world. The persistence of widespread hunger is the cumulative outcome of public policies that produce and reproduce impoverishment; of failures to invest in agriculture especially in Central and Eastern India and for rain-fed and small farmers; of unacknowledged and unaddressed destitution; of embedded gender, caste, tribe, disability and stigma which construct tall social barriers to accessing food; but in the last analysis it is the result of a profound collapse of governance.

The State in India implements massive food, livelihood and social security programmes – some of the largest in the world - which theoretically support vulnerable people from even before their birth to their survivors after death. Expectant mothers are fed in ICDS centres, along with infants, children up to the age of six and adolescent girls. The child in school gets school meals. As adults, women receive maternity support, bread earners are guaranteed 100 days of wage employment in public works; and if identified to be poor, they can buy subsidised cereals from a massive network of half a million ration shops. The aged - and in many states widows and disabled people - are given pensions. And if an earning adult dies prematurely, the survivor is entitled to insurance.

These programmes are plagued by corruption, leakages, errors in selection, delays, poor allocations and little accountability. They also tend to discriminate against and exclude those who most need them, by social barriers of gender, age, caste, ethnicity, faith and disability; and State hostility to urban poor migrants, street and slum residents, and unorganised workers.

The most evolved definition of food security so far at the time of writing that we could locate in the literature appears in the State of Food Insecurity 2001: 'Food security [is] a situation that exists when all people, at all times, have physical, *social* and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life'. (emphasis added). The inclusion in the definition of 'social' access is highly significant, because it acknowledges that people may be barred from access to food even if it is locally available and they have the economic means. These social barriers to food security may include gender, caste, race, disability or stigmatised ailments.

The brutal expulsion of those who most need it, from support and succour, from care and rights - often by their own families, by local communities, but most importantly by the State - is one of the most profound public crimes of our times. It is important therefore to identify those classes, social

categories and local communities, who are destitute and socially expelled, which is the task this report sets itself. These are people who lack the resources, financial and material, the employment, assets, access to credit, and social and family support and networks, to secure the means for dignified survival. In the first instance, this would entail sufficient and assured food for themselves and in many cases for their dependents. These are men and women, girls and boys who are powerless and disenfranchised, socially isolated and devalued, sometimes stigmatised and even illegalised, and often with special needs born out of disability, illness, social standing and age.

Even in the more intimate context of a village, many of these socially excluded groups are invisible, barely known and acknowledged. In most contemporary cultural contexts, social categories that consistently tend to be very dispossessed and vulnerable in their access to food include disabled people, both as bread winners and dependents, single women and the households that they head, aged people especially those who are left behind when their families migrate or who are not cared for by their grown children, people with stigmatised and debilitating ailments such as TB, HIV AIDS and leprosy, working and out of school children and bonded workers. In addition, in diverse cultural and socio-economic contexts, others may be added, such as some specially disadvantaged dalit groups like Musahars or Madigas in another, weavers, artisans and particularly disadvantaged minority groups in yet another, all designated 'primitive tribal groups', survivors of conflict and internal displacement, and many other diverse forgotten people. Many of them are of contested citizenship.

In the bridge between rural and urban destitute are the distress migrants, at the bottom of the heap both where they move for work, and from where they come. In urban contexts are street children, with or without responsible adult caregivers, urban homeless people, slum dwellers and a wide range of unorganised workers, both seasonal migrants and settlers, such as rickshaw pullers, porters, loaders, construction workers and small vendors, and people dependent on begging.

Overcoming corruption, theft, leakages, inefficiencies, and constraints of costs, are imperative, but still not sufficient, in a highly unequal society like ours, to overcome the barriers that powerless and expelled dispossessed people face to access food and livelihoods with dignity. They may not be able to find work and food only because they are women, and worse single women, because they are aged or disabled, because they suffer from caste discrimination of millennia, because of the discrimination fostered against ethnic and religious minorities and indigenous people, because of the stigma of dreaded diseases like leprosy or HIV AIDS, and for a host of other social barriers.

Government programmes are also woefully inadequate to address destitution; in fact they tend to be blind to or in denial of the fact that large numbers of people lack even the elementary means and power to survive with dignity. Our evidence is that apart from major leakages and corruption, the coverage of government food schemes is so meagre that they leave huge gaping holes in the social security net, through which large numbers of most destitute women and men, girls and boys slip into starvation and hunger. It is stressed again that this is a duty of the State not to the dead, but to the precariously living. It requires public vigilance about individuals, communities and several categories living with starvation and absolute hunger. It requires the State to act, not after there is an emergency like a drought or flood, not even *after* people die of starvation, but pro-actively before people slip into destitution, and fail to access in an assured and reliable manner, with dignity, the nutritious and culturally appropriate food they require to lead healthy lives.

In a sense, this set of duties are of proactive measures by the State to prevent hunger and starvation and to promote well being and the right to food of all people: to anticipate and forestall starvation, by

recognising and arresting destitution well in time, before it pushes hapless people into starvation. After a starvation death, the State's response is reactive, whereas what is imperative is that it is actively protective and deterrent, to end an enormous amount of avoidable and extreme human suffering.

As Commissioners of the Supreme Court in the writ petition (Civil) No. 196 of 2001 (People's Union for Civil Liberties Vs the Union of India & Others) dated 23/07/2001, we have submitted seven reports to the Court so far, which attempted to assess in depth the performance of various governments, central and state, in securing the right to food of its citizens. We attempted to do this mainly by tracking the compliance by governments of various instructions and directives of the Supreme Court regarding food schemes, and the actual performance of these schemes in terms of allocations, utilisations, coverage and field level performance issues like leakages and quality.

However, our field studies confirm distressingly that large numbers of the most vulnerable women and men, boys and girls in the country, are uncovered or inadequately covered by any government food schemes. An estimated eighty to two hundred million still sleep hungry every night. It is about these excluded and hungry people that the Supreme Court in its order in the writ petition (Civil) No. 196 of 2001 dated 23/07/2001, expressed deep worry:

'...it is a matter of concern for all. In our opinion, what is of utmost importance is to see that food is provided to the aged, infirm, disabled, destitute women, destitute men who are in danger of starvation, pregnant and lactating women and destitute children, especially in cases where they or members of their family do not have sufficient funds to provide food for them. In case of famine, there may be shortage of food, but here the situation is that amongst plenty there is scarcity. Plenty of food is available, but distribution of the same amongst the very poor and the destitute is scarce and non-existent leading to mal-nourishment, starvation and other related problems'.

The Commissioners decided therefore to dedicate an entire report to these people who are condemned to live at the edge of hunger, to highlight the most urgent unfinished agenda of the right to food in India. We have titled our Eighth Report to the Supreme Court 'A Special Report on Most Vulnerable Social Groups and Access to Food'. In it, we have focussed on single women, the aged, the disabled and their dependents; 'primitive' tribal groups and most discriminated against dalit groups; bonded workers; persons with stigmatised and debilitating ailments; urban homeless men, women, boys and girls, and residents of urban slum shanties. The chapters in this report elaborate their special social and economic vulnerabilities; estimates of their numbers and locations; the nature of and reasons for their intense nutritional denials; and the barriers to their access to food, livelihood and social security schemes of the government.

Each chapter ends with a set of detailed recommendations for public policy, and for consideration of the Supreme Court of India, to help surmount or dismantle these barriers, and ensure better access of these most vulnerable people who routinely subsist at the edge of starvation, to adequate and assured food with dignity. There is considerable diversity between the groups; therefore the recommendations are also specific. However, for convenience, some of the most important recommendations are summarised below.

Identification

1. One feature which is common to public policy relating to each of these dispossessed groups is the fact that for almost all, there is very little authentic official data, about their numbers and lists.

This is not a chance or random default. It is the outcome of what we describe as ‘**invisibilisation**’ of these powerless people by the state.

We therefore recommend an effort at least once every two years to not just estimate these groups, but to conduct a full listing. This should be undertaken in each district of the country, led by the state government and district collectors, but with active participation of local bodies such as gram sabhas and municipalities, professionals, experts, civil society groups and representatives of these populations. These lists updated every two years, and form the basis for them to receive the entitlements detailed in this report.

2. It is remarkable that although persons deemed by the state to be ‘below poverty line’ in rural areas have been surveyed and listed, no such survey has been undertaken for urban areas since Independence, although around a third of the country’s poor live in cities. Targeted schemes like the TPDS are then accessible to them only when they apply to the concerned officials, who make their estimates of whether the applicant is ‘poor’ in each specific case. But directly asking people’s incomes is not a reliable and verifiable criterion. And asking people only to certify income without any objective criteria is bound to be misused, leading to corruption, and the poorest will be left out.

It is proposed to identify and list the most poor and vulnerable segments of urban population by identifying them along objective and verifiable criteria of vulnerability and denial of rights. These are: a) place of residence and access to public services: (shelterless, unauthorised slum dwellers, authorised slum dwellers and residents of resettlement colonies); b) social vulnerability: children without protection and child headed households, single women and single women headed households, disabled people and family with PWD, old people without care givers, people in destitution; c) vulnerable occupational categories: such as rag pickers, casual daily wage workers, rickshaw pullers, porters, construction workers, street vendors, domestic help etc; and d) affirmative action categories: Scheduled Castes/ Scheduled Tribes, Muslims.

The details of the proposed process of identification (which incidentally has been approved recently by the Delhi government on the recommendations of the Commissioners, and endorsement by the Planning Commission) are given in the pages of this report, but all state governments should be directed to survey the urban poor on these objective and verifiable criteria.

3. Single adult women who live with or without dependents, as well as old people, who live with relatives by blood or marriage under the same roof, should be treated for purpose of all food schemes as separate families. Specifically this means that single adult women and old people will be eligible for separate ration cards, even if they live under the same roof and share the same kitchen. This will assure them greater dignity and autonomy. The same would of course apply to bonded workers who may stay with their employers.

Subsidised food grains under AAY

1. It has been recommended that almost all the groups identified in this report as most vulnerable are assured highly subsidised food grain under AAY (35 kilograms a month at the rate of two rupees a kilogram of wheat and three rupees a kilogram for rice). The only group that would be eligible for BPL rather than AAY grain are urban slum residents, who may not be the poorest of the poor.

The Supreme Court already in its interim order of 2nd May 2003, deliberated on the Antyodaya Anna Yojana (AAY) and directed the Government of India directed “to place on AAY category the following groups of persons:

- 1) Aged, infirm, disabled, destitute men and women, pregnant and lactating women, destitute women;
- 2) widows and other single women with no regular support;
- 3) old persons (aged 60 or above) with no regular support and no assured means of subsistence;
- 4) households with a disabled adult and no assured means of subsistence;
- 5) households where due to old age, lack of physical or mental fitness, social customs, need to care for a disabled, or other reasons, no adult member is available to engage in gainful employment outside the house;
- 6) primitive tribes.”

The only additional groups to this order that the Commissioners recommend for inclusion for universal coverage under AAY, are (a) urban homeless people; b) persons undergoing treatment for stigmatised ailments of TB and HIV AIDS; c) most discriminated dalit groups (identified by criteria and processes listed in this report) and d) Released bonded labourers.

However, we have found that interim order of 2nd May 2003 of the Supreme Court is one of those least implemented by most state governments. We believe that there are 3 main reasons for this wide failure: a) the political powerlessness of these groups and the absence of authentic data about the groups; b) state governments have not interpreted the orders to be one of ensuring, in a phased manner, universal coverage of these groups with AAY cards, although in the absence of such universalisation, the most vulnerable will slip through this social security net; and c) the quotas for AAY in most states were already exhausted before the said 2003 order.

In order to remedy these problems, it needs to be reiterated by explicit Court directions that all members/households of the following social groups must be covered by AAY cards within a maximum of 2 years, without being bound by BPL identification or state BPL quotes: a) Primitive Tribal Groups; b) identified ‘most discriminated against’ dalit groups, starting with the Musahars, the Madigas, and all households engaged in socially despised ‘unclean occupations’ such as manual scavenging, disposal of dead bodies and sewer workers; c) single women headed households (except income tax payers); d) households with disabled heads of families or dependents (except income tax payers); e) released bonded workers; f) urban homeless people and households; g) aged people (except income tax payers); and h) people undergoing treatment in government hospitals for TB and HIV/ AIDS, and the households to which they belong. As stated earlier, every district collector in collaboration with civil society groups and local bodies should ensure the comprehensive survey of each of these groups every two years.

A special additional AAY quota should be approved for each state government by the central government, by an amount which is not less than 50 percent of the present AAY quota, and this should be used exclusively for the universal coverage of each of these groups. In case the surveys reveal that eligible members of these most identified social groups are left out even with this additional quota and after state governments weed out ineligible members from existing AAY cards, they will make special demands on the central government for additional AAY quotas specifically to ensure full coverage of these groups as a preventive measure against their slipping into destitution and starvation.

2. Migrant workers who move with their families should be permitted to use their ration cards anywhere in the country, in situations in which they migrate with their families. This should be an automatic process, not requiring additional paper work, because any further bureaucratic interface would result in dangers of corruption and harassment.
3. State governments should be advised to enable and encourage tribal (especially PTG) panchayats; and dalit SHGs to run their own ration shops, with adequate grants from the departments.

Social Security Pensions and Stipends

1. Every aged person must have access as a legal right to a pension that is sufficient for a dignified, active and healthy life. All designated BPL aged people above the age of 65 years have recently been made entitled to a pension of 200 rupees from the central government; with the state governments encouraged to at least match this amount. This is welcome. But it needs to be expanded to ensure that all workers who are not part of the organised sector of the economy must be covered by pension benefits. The government should ensure within one year pensions for all aged people above the age of 65 years who in rural areas are landless, artisans, and small or marginal farmers, and all SC and ST aged persons; and in urban areas all aged persons who are residents of slums or homeless, and all unorganised workers.
2. Many state governments have indeed exceeded 400 rupees pension, which is also welcome. The matching contributions by the state governments should be made mandatory; and they should be directed to cover all aged people mentioned in the earlier paragraph with pensions within one year.
3. This pension must be secured as a universal entitlement to each of these men and women (in the way that mid-day meals have become for all school going children in government and aided schools). This means that central and state governments cannot plead financial constraints or fix any quotas on the numbers of such persons who are to be covered.
4. A centrally sponsored scheme should be introduced to ensure pensions of the same amount to all BPL single women and disabled adults.
5. Central Government employees and pensioners get an increment twice a year that is pegged to the Consumer Price Index (CPI). Likewise, the pension amount should also be linked to inflation in the economy and appraised every half a year, using Rs. 400 in the year 2007 as the baseline.
6. Pensions must be paid by the seventh of every month, regardless of the availability of specific budgetary allocations.
7. Arrangements must be put into place in one year for either payment into bank accounts, or doorstep delivery of pensions to all rural and urban aged, disabled people or single women. Any commission payable to the Postal Department or banks for making these payments should be waived or borne by the Ministry concerned.

Special food credit under NREGA

Many families will have the modest resources required for monthly purchase of the highly subsidised food grains under AAY. But in case they do not, those who rural residents should be permitted to draw their ration on credit, against their future labour in NREGA works. Since

NREGA is a demand led legal guarantee, there is little risk of failures to recover the required amounts. This should apply particularly to released bonded workers; but also to single women, old and disabled people.

Special Feeding Arrangements

1. All old people from the neighbourhood should be permitted to share in the school mid-day meal of hot cooked meal in schools or ICDS centres without any conditions, as practiced in the state of Tamil Nadu. This serves as a last defence against starvation of the aged destitute, without requiring any additional administrative costs. This may become possible without significant additional resources, by merging present allocations under the Annapoorna Scheme (which was meant to provide 10kg to old people not covered by pensions, but which has now become superfluous because the scheme has been universalised) with food allotments with the mid-day meal.
2. Establish community kitchens across cities and urban settlements to provide inexpensive, subsidised nutritious cooked meals near urban homeless and migrant labour settlements, with committed source of external funds (preferably government funded or in partnership with civil society: both citizens and private sector), which are managed by community groups of homeless people, preferably women, and will provide employment as cooks to homeless people themselves (at least 50 such kitchens per city with population more than one million; and 100 with populations more than one million, and 500 in those more than ten million).
3. Hot cooked meals should be provided to all children who attend all alternative educational settings, such as remedial schools, bridge classes, extension schools, and evening schools.

ICDS

1. Children of migrant workers should be admitted and permitted to avail of all facilities and services in ICDS, regardless of their place of origin, with no paper work required by their parents/guardians.
2. State governments should be directed to ensure full coverage of urban slums latest in 2 years.
3. In urban areas, ICDS should develop prefabricated structures, to enable it to function in unauthorised slum settlements, or construction and brick kiln sites.
4. In rural areas, care should be taken to locate ICDS centres on priority within one year in all settlements of PTGs and most discriminated dalit settlements, without any ceiling of minimum children; and all other hamlets with more than 50 percent SC/ ST/minority population within a maximum of 2 years. In all these centres, ICDS staff should be local from the discriminated communities, and two hot meals served instead of one to children of 3 to 6 years; and double weaning foods given to children below 3 years.
5. Data should be disaggregated at the ICDS level for enrolment and actual coverage, to reflect the numbers and proportion of disabled children; and children from vulnerable local SC /ST minority communities; and poor coverage should be penalised.
6. ICDS centres should extend their nutrition and health services which at present cater to expectant and lactating mothers, also to all categories of single women, recognising them to be intensely nutritionally vulnerable.

NREGA

1. Ensure that single women, aged and disabled people in practice enjoy at least equal legal claim to employment in NREGA works as households 'led' by able-bodied men, and that their work guarantee should be extended to 150 days.
2. NREGA guidelines and handbooks in each state should carefully identify specific tasks in public works which can be undertaken by disabled adults and aged people; and they should be encouraged to undertake such tasks when people of these categories apply for work.
3. The NREGA Standard Schedule of Works should be modified to include and give priority to these categories to be hired to fill temporary vacancies (when the staff are unavailable due to maternity leave, vacations, election duty, vacant posts etc.) across other social welfare programmes of the government on a time-rate basis for example as cooks or helpers or additional teachers in schools, as Aanganwadi helpers, additional helpers in ICDS centres, caregivers for disabled children etc. Likewise The NREGA Schedule of Work should identify physically less demanding work which should be prioritised for these categories like standing guard at the sites, the work of 'mates' who supervise and measure the work, taking care of children, serving water, filling stones and soil in baskets, and planting and irrigating saplings etc.
4. Special proactive campaigns should be undertaken by panchayats and district authorities, with support from civil society groups, to create awareness and mobilise and assist to enrol persons from each rural vulnerable categories mentioned in this report, to get job cards and demand as a legal right guaranteed days of wage work per family.
5. Provide separate NREGA job cards for all 'single' women, regardless of whether they live alone, with dependents, or in their natal or husband's home. Likewise for aged, infirm and disabled people who may or may not live with 'able-bodied' caregivers.

Residential Care for food security of most vulnerable children

1. For children of rural seasonal migrants, the village school should be converted into a community based temporary residential school, to enable the child to access food and education, without having to migrate every year with their guardians. The aged of the village, who are often left behind in destitute conditions, may take care of the children in return for sharing the food in the community based hostels. This model has been adopted by Orissa government for Bolangir district, and is widely recognised internationally as a best practice, applauded among others by Dr Amartya Sen.
2. For children who still migrate, it should be the duty of the education department of the host state to provide education in local language at work sites, and permit the child to access mid-day meals at the nearest government school. This is again a best practice adopted by the governments of Andhra Pradesh for migrant families from Orissa.
3. For children who live and work on the streets, the only way to secure their right to food (and with this their rights to education, health and protection), is to provide them alternatives to move decisively away from the streets and any kind of work. This is possible only through guarantees of comprehensive long term care in open voluntary residential homes. Every city would need a large network of such schools. This could be done by converging the Sarva Shiksha Abhiyan (a programme to bring every child to schools) and the Women and Child Department's night shelter programmes, as well as Labour Department programmes for child workers, to pool resources

to create hostels for urban street and working children, and greatly enhancing allocations. This best practice has been adopted by the governments of Andhra Pradesh and Delhi. The aim should be in the first phase of 3 years to start at least 100 such centres in all metropolises; and 50 in all other urban areas of population more than 5 lakhs.

A prodigious amount of work that has been put in for more than a year by our young colleagues in the office of the Commissioners to the Supreme Court, without whose industrious research, this report would not have been possible. They are led by our very capable Principal Advisor Biraj Patnaik, and also include a committed team of Dipa Sinha, Tanveer Ahmad Dar and Oommen C. Kurian, who contributed significantly to the work of the Commissioners.

We would also like to acknowledge the support received from our research staff Swati Narayan, V. Manikandan and Arpan Tulsyan. We have also been assisted by our friends in the right to food campaign, like Kavita Srivastava, Jean Dreze, Colin Gonsalves, Aruna Roy and Nikhil Dey, committed official colleagues like Rakesh Mehta, K. Raju, Alok Shukla, Vijay Dev, Debashree Mukherjee, Rashmi Singh and Rajeev Jaiswal; and also our Advisors like Veena Shatrugna, Kodandaram, Arundhati Dhuru, Rama Melkote, Anuradha Talwar, Vandana Prasad, Ginny Srivastava, Joseanthony Jose, Sunil Kaul, Samir Garg, Pradeep Bhargava, Rajkishore Mishra, Tarun Bharatiya, Mihir Shah and Chingmak Chang, among others. We are also deeply indebted to the network of other State Advisers who voluntarily undertake the responsibility of monitoring the food and employment schemes in the States.

This is a report about some of the most excluded, destitute, socially devalued, invisible people for whom hunger and food denials are a way of life. It is constructed around the conviction about the intrinsic equal human worth of every human being, regardless of whether and what they produce and contribute; of their difference; their departures from social norms; their physiological and social diversity from the majority; their disenfranchisement and powerlessness.

Gandhi offered us a 'talisman' to use in moments of doubt and confusion. He asked us to recall the face of the poorest, most defenceless, most powerless man we have encountered. (Today he would have recognised that she would probably have been a woman!). Ask ourselves whether what we are attempting has meaning for this person: does it touch her life with dignity and worth? Does it augment her power and self-reliance? If it does, it must surely be the right thing to do. It is this talisman that this report strives to hold up to public policy, but ultimately also to ourselves.

NC Saxena
Commissioner

Harsh Mander
Special Commissioner

Single Women

Introduction

Women produce between 60 and 80 percent of the food in most developing countries, and are culturally food providers in most homes. Yet social and cultural practices determine in India that within households, women not only eat least and last, but in situations of absolute household food insecurity, they may not eat at all. 'Single' women face additional discrimination and social barriers to food and livelihood, even if not within their homes if they live independently, but as they battle alone the world beyond.

Single women are of many kinds, and they face discrimination in similar and different ways. They may have never married; they may have left their spouses or have been abandoned by them; they may have been widowed young or old; they may live with natal families, or with the family of their spouse, or with children, with unmarried partners or alone; they may be rich or poor; and may have been born and married into varied caste or faith groups with their diversity of rules and norms. But what binds them all together is the absence of male 'protection', 'security' and eventually *control*. This erodes their social status in our largely patriarchal society.

Social exclusion

Irrespective of whether she is from a wealthy or impoverished household, widowhood has a deep social stigma attached to it in most communities. But it is most severe among upper caste Hindus. Women are seen as protecting the 'honour' of the family. There is a perceived threat to this notion when she is widowed (especially when she is young), as it makes it difficult to control her sexuality, fertility and control of property, unless she is completely isolated. Paradoxically, a widowed woman (as also other single women without male 'protection') is also seen as sexually 'available'. Women widowed in the Orissa cyclone of 1999, and the Gujarat earthquake of 2001, confided about horrific sexual exploitation even by close family members within days of the calamity. Likewise, widows of the communal carnage in Gujarat in 2002 experienced stigma and exploitation within their families and communities.¹

Whatever their age, there persist formidable social barriers to the remarriage of Hindu widows. A woman once widowed is not treated with respect and a lot of restrictions are imposed upon her. At times she is still expected to shave her head, wear extremely simple and coarse white clothes and, not wearing symbols of marriage ('*sindoor*' or vermilion in the parting of the hair), eating separately a frugal vegetarian diet, not participating in auspicious occasions. The rituals of widowhood signify symbolic rejection/deprivation of the widow's sexuality.

The widow has no perceived value to the family after the death of her husband. She is considered to be a burden who will need to be given a share in property and her presence at festivals and family occasions is viewed as inauspicious. Young widows are even considered to be responsible for the death of the husband. Sati as a practice evolved based on the belief that a woman doesn't deserve to live without her husband.

Even more ostracised are women who are alone despite living spouses. Many married women are trapped in dehumanising personal situations in the family. A large number persist in tolerating battering,

¹ Discussions with Harsh Mander, based on his work with the survivors of these 3 disasters

humiliation and physical and mental cruelty, unable or unwilling to strike out on their own. This inertia in degradation may be for a variety of reasons, such as social and cultural beliefs that enjoin that it is the duty of a woman to continue to live with her husband even if she suffers cruelty, and that a woman's social acceptance and security in the community necessarily derives from her married status. Even if a woman is able to herself overcome such beliefs, her parents are frequently unwilling to accept back a married daughter who leaves her husband and, therefore, a woman is trapped also because she has nowhere to go if she breaks ties with her husband's home. She may lack education and professional qualifications, and therefore lack the confidence that she would be able to survive economically alone. And finally she may be paralysed by concern for the welfare of her children.

The peculiar culturally imposed tragedy of widows, particularly in Hindu society, is not only one of condemnation to live cold, deprived and unfulfilled lives in either their parents' or husband's homes, vulnerable always to sexual exploitation. It is also one of destitution and abandonment, in religious towns such as Vrindavan and Varanasi, or on the streets. The North Indian religious cities of Varanasi and Vrindavan contain hubs of widows. From the early nineteenth century onwards widows, especially from Bengal, were sent on a pilgrimage to these 'holy' places. Often they were taken on a pilgrimage by family members and abandoned there. Widows from different parts of the country continue to migrate to these cities in search of a life of security and some peace², but in these towns a vast multitude of widows live forgotten in conditions of appalling neglect and deprivation. The number of widows living in Vrindavan, especially those from West Bengal, has been increasing over the years. A Vrindavan Nagar Palika survey in 2004 enumerated 3,105 widows and the figure is estimated to be anywhere between 5,000 and 6,000 now³.

Magnitude

6.9 percent of women in India are widows, while 0.5 percent are divorced or separated.⁴ Further, another 1.4 percent of all women above the age of 30 are unmarried (0.5 percent of all women) and can also be considered to belong to the category of 'single women'.⁵ In total, at least 7.5 percent of Indian women are single – i.e. 40 million women (more than the entire population of Canada).

In India's largely patriarchal society, 10.4 percent of households are headed by women.⁶ A third of these are managed by married women largely in unique matriarchal communities⁷ or due to the local prevalence of mass-migration of men in search of livelihoods. The remaining two-thirds are headed by single-women - largely widows but also women who have left or been left by their husbands- who either live alone or take care of all their dependents. Female headed households are growing rapidly across the world. This is the cumulative outcome of stresses and breakdown of family, such as by violence, alcoholism, divorce, separation, widowhood, and male or female migrations. These may be lone family units with single females, households in which women earners receive significant remittances from absent males, or homes in which single women are the principal earners, and they support young or aged dependants.

² See the studies conducted by 'Guild of Service' for more details on status of widows in Varanasi and Vrindavam. For e.g. Guild of Service (2002) 'Status of Widows of Vrindavan and Varanasi: A Comparative Study', http://griefandrenewal.com/widows_study.htm (last checked by the author May 2008) and Guild of Service (2007) 'Spirituality, Poverty, Charity Bring Widows to Vrindavan'.

³ Tripathi. P.S. (2006), 'The living dead' Frontline Volume 23 - Issue 16 :: Aug. 12- 25, 2006

⁴ Census 2001

⁵ Based on Census 2001 figures almost 99 percent of women in India are married by the age of 30, and therefore 30 is taken here, as the cut-off age for determining those who come in the 'single women' category

⁶ This paragraph draws from Census 2001. The percentage distribution is similar to NSS 61st round

⁷ The Khasi and Garo tribes of Meghalaya, Nair and Mappilles communities in Kerala and the tribal groups of Minicoy Island in Lakshwadeep

Almost 58 percent of widows (20 million women) are more than 60 years of age. Incidence of widowhood among the total female population rises sharply with age. In other words, two-thirds of women who cross their seventieth year outlive their husbands. Also, 45 percent of women who complete their sixtieth birthday are widows. They face the double burden of age and a lonely future without the companionship of their lifelong partner. This undoubtedly has important implications both for policies relating to single women as well as those for the elderly.

Lack of support

Although widows are traditionally supposed to be taken care of by the husband's extended family; this does happen very often. Widows typically find themselves under pressure in their homes by marriage to part with their share of property, and are unsafe physically. The crumbling of joint families, with their assurances both of security and patriarchy, have led women to either the threshold of their natal homes, if their parents and brothers are willing and able to take them and their dependents in, or to tenuous and arduous independent living. This section analyses the economic plight of single women and their daily struggles for food and livelihood. To earn more money when in distress, women often engage in self employment, sell or mortgage their assets in distress, beg, send their children to work, or are even involved in undignified appeasement of those who can help them.

Almost 80 percent of widows either take care of themselves or are dependent on their son/s (if they have one).⁸ Very few who live alone receive any 'maintenance' or food on a regular basis from other households. They have to fend for themselves. The 'Living with Hunger' study in three states indicates that 47 percent of single women earn to support themselves, 27 percent primarily depend on government programmes, 20 percent get support from other family members, 3 percent live on the money from sale of assets/land and another 3 percent depend on charity/begging. More than half the women studied not only supported themselves but also had dependents to look after.⁹

In instances where widows, depend on their family, it is usually in the home of one or more of her sons. But here, she is even more likely to be neglected unless she is able to contribute to the household in terms of childcare, housework, land, other assets, wages or a pension. Many widows often also need to repay the debts incurred by their late husbands or to pay for his medical treatment before he died or death ceremonies¹⁰.

Property rights

Widows in India have a legal right to their husband's property. While these legal entitlements exist for women's rights to property, the inheritance rights of the majority of Indian rural widows are governed by actual practice (which is influenced by traditional or customary law). Practice can differ from village to village, caste to caste, but even in the same region and among the same caste.

But actual legal ownership is a rarity. Just the process of establishing one's rights over the land and getting the property/land registered can be quite daunting for a widow with no family support. Even where use-rights have been established, control often doesn't lie with her.

Access to livelihood and employment

Even though the need for gainful employment is great among single women, finding such work is fraught with difficulties. Social exclusion includes economic deprivation due to the taboos regarding

⁸ Chen. M. A. (1998), *ibid*

⁹ Mander and Rai (date), *ibid*

¹⁰ Chen. M. A. (1998), *ibid*

what a woman can and cannot do. One of the most direct impacts is restricted mobility. It makes widows, in particular, invisible and they are unable to access work outside the home.

Worse still, is the vulnerability and stigma associated with being a widow. This amounts to highly unequal access and unfair treatment in the 'job market'. Young single women, who live on their own, though able-bodied are systematically secluded from outside work because of the burden of household work; need to fetch water from distance sources (many kilometres away) and to cook food, without any familial support. The other reason in-laws do not allow them to work outside, is that it could lead to the financial independence of women which is resented by traditional communities.

But due to the acute need and desperation of single women to support themselves and their dependents, they are compelled to find work outside the home. Female-headed households participate as much as 74 percent in the labour market as compared to 54 percent of married women in male-headed households.¹¹ The National Family Health Survey also reveals similar results amongst able-bodied women largely in the age group of 15-49 years. Despite the innumerable barriers they faced, more single women are forced to work outside the house in the absence of any family, community or state support.

But since most widows in India are above 60 years of age, the vast majority of them are unable to undertake hard physical work.¹²

Even if they were able to find work, however, single women invariably face barriers in relation to the type of work they can take up. That apart, they also face gender discrimination in the payment of wages. The average agricultural daily wage for women in 2006 is estimated at only Rs 48.6 for women, against Rs 69.7 for men.¹³

1. Access to credit

Single women also face severe restrictions in trying to access credit. Even if she has the same earning capacity as a man or a married woman, she finds it more difficult to get a loan. At best they receive charity or loans in-kind. Shopkeepers charge them more and give them less than their due because they are too weak to protest. They are therefore forced to work at very low wages and for long hours. This ordeal is even harder for elderly women. Single women report that even formal banks turn them away, as do self help groups.

2. Poverty

Economists acknowledge a phenomenon of what is described as the "feminisation of poverty", i.e., poverty among women is rising faster than poverty among men. It has many related faces: women have a higher incidence of poverty than men; women's poverty is more severe than that of men; and that there is a trend to greater poverty among women, particularly associated with rising rates of female headship of household.

Based on data from Karnataka, Jean Dreze analyses that households with a widow have low per capita expenditure levels. Those with both widows and their young children have higher-than-

¹¹ Panda, P.K. (1997) *Female Headship, Poverty and Child Welfare: A Study of Rural Orissa, India*, Thiruvananthapuram: Centre for Development Studies

¹² Chen, M. A. (1998), *ibid*

¹³ Available on website of Press Information Bureau, <http://pib.nic.in/release/release.asp?relid=24579> (last checked by the author May 2008)

average levels of poverty¹⁴. Similarly, at an all India level, households headed by widows have lower consumption levels and higher levels of poverty compared with other households¹⁵.

Food deprivation

Due to the undue disadvantages in the access to livelihood and assets, single women are more food insecure when compared to others who probably belong to the same economic category. They have to struggle harder in order to access food. Even in cases of single women living with families, of which they are the not the primary earning members, they do have an equal access to food as a result of their low status in the household.

To cope with their hunger pangs they employ a range of strategies. The common ones include - rationing of food, substitution by inferior foods, cooking only once a day, sharing from the same vessel, sacrificing their share of food for the children.

There is an identifiable difference in the proportion of single women in comparison to married women who consume less than 90 percent of the required calorie norm. The calorie consumption of an average married woman each day is 2086 calories, of widows is 2005 calories and for divorced/separated women 1989 calories (NSS, 61st round).

Access to food schemes

There are various schemes that exist in the country that can potentially contribute to the food security of single women. But most often they prove to be beyond their reach. Single women face many barriers to access them. The greatest impediments are their invisibility, powerlessness and even lack of knowledge about these schemes.

The choice of beneficiaries of each of these schemes is often arbitrary and dependent on the hands of local elites. A review of these schemes shows that although they have laudable objectives, there are serious problems in implementation: access, regularity and corruption.

1. Swadhar Scheme

There are no major schemes of the Government of India for widows or single women, in general. The only scheme that is available is Swadhar Scheme, run by the Ministry of Women and Child Development, which is a shelter based scheme “to cater the requirements of various types of women in distress in diverse situations including destitute widows. The package of services made available under the Scheme include provision for food, clothing, shelter, health care counselling and legal support, social and economic rehabilitation through education, awareness generation, skill up gradation and behavioural training”.¹⁶ Currently, there are 208 shelter homes running under this scheme in the entire country. In a positive step, the budget for this scheme has been increased to Rs. 15 crores from Rs. 8.7 crores last year, but it is patently microscopic in relation to the need and scale of the problem in the country.

¹⁴ Dreze, J. (1990) *Widows in Rural India*, Discussion Paper No. 26, Development Economics Research Programme, London School of Economics

¹⁵ Dreze, J. and P.V. Srinivasan (1997) ‘Widowhood and poverty in rural India: some inferences from household level data’ in M.A. Chen (ed.) *Widows in India: Social Neglect and Public Action*, New Delhi: Sage Publications

¹⁶ Ministry of Women and Child Development’s response to Lok Sabha Unstarred Question No. 4681 answered on 25.04.2008. This same response also stated “The Ministry of Women and Child Development has no proposal for the remarriage of young widows in the country.” contrary to newspaper reports quoting the Minister.

The scheme since its inception, has reached out to very few beneficiaries. In no year since it started in 2001 was the number of beneficiaries more than about 3000. This renders the scheme tokenistic. Further, the expenditure of the budgets allocated under this scheme also has been low. The Planning Commission mid-term appraisal notes, “The Tenth Plan outlay for Swadhar is Rs. 100 crore. The progress under the scheme is not satisfactory. Only 35 projects have been sanctioned so far and utilisation of funds has also not been up to mark. Though the outlays were Rs.14.46 crore and 14.02 crore in 2002-03 and 2003-04 respectively, only Rs. 3.90 crore was utilised in 2002-03 and Rs. 1.05 crore in 2003-04. Such under-utilisation of funds defeats the objectives and concerns with which the scheme had been launched.”

State governments have various schemes for the benefit of widows. Most state governments have widow pensions of some sort or the other. Further, some state government’s offer monetary support for re-marriage of widows, for the marriage expenses of daughters of widows, scholarships in government schools for the children of widows and so on.

2. Pension schemes

Widows constitute the single largest proportion of ‘single’ women. 58 percent of them are above the age of 60 years and excessively vulnerable not only because of old-age and their inability to work but also because of regressive social customs which makes them suffer from daily indignities. Their social security needs are therefore acute.

Although several states have schemes for widow’s pensions, the amount of pension allotted is abysmally low and the actual coverage even worse. For instance, calculation based on an estimation of the number of eligible beneficiaries and the actual number of beneficiaries in Maharashtra and Delhi shows that the coverage is only 19.5% and 24.4% respectively¹⁷. A study in Rajasthan found almost 50% of BPL widows to be widow non-pensioners¹⁸.

Moreover, the eligibility criteria of age restrictions and absence of sons (irrespective of whether they take care of their mothers) are often quite restrictive making it very difficult for women to access the scheme.

The process of application can also be quite cumbersome with many bureaucratic hurdles, making it very difficult for single women to access these schemes. Often beneficiaries have to miss their entire day’s work (and hence wages) to travel to the panchayat and block offices to get what they are rightfully entitled to.

However when pensions do reach they offer an invaluable sense of dignity for elderly widows; providing a sense of freedom and autonomy to fulfil their small wishes without depending on others. There is therefore a need to have a uniform central scheme offering pensions to poor widows, with no additional restrictions such as having adult sons and so on.

Given that many widows are also old, effective implementation of this scheme and the universal coverage of all who are eligible would also ensure that some economic support is available, however

¹⁷ Calculations made by the Office of Commissioners to Supreme Court CWP 196/ 2001, based on data received from state governments

¹⁸ BARC(2007), *ibid*.

minimal, for their survival with dignity. However often if an elderly person does receive an old age pension they are often denied widows' pension or vice-versa.

Studies do show that for those women who do get pensions, it represents a significant source of independent support for widows who live as dependents. But they do not enable a widow who heads a household to support her dependents¹⁹. The quantum of pension therefore needs to be revised to at least Rs 500 for all social security schemes. This would make it about 50 percent of the current deemed poverty line, assuming that a widow supports on an average 3 dependents²⁰.

3. National Family Benefit Schemes

Single women could potentially substantially benefit from this scheme which provides one-time cash assistance of Rs. 10,000 when the primary breadwinner of a family dies. It can provide immediate relief to women who have lost their husbands and are suddenly left on their own to support their children.

But it suffers from abysmal implementation. In the year 2006–2007, it reached only 30 percent of the eligible beneficiaries.²¹ In the previous year, states such as Haryana, Karnataka and Delhi reported NO beneficiaries under the NFBS²², which should be viewed as a grave abdication of official responsibility to a segment of people who are most in need. The procedure to benefit from the NFBS is lengthy and bureaucratic. The bereaved family needs to present several supporting documents such as death certificate etc. which are often practically very difficult to obtain.

4. Public Distribution System / Antyodaya Anna Yojana

The Public Distribution System which is a household based scheme has the obvious problem of not addressing intra-household inequities. The ration card is usually in the name of the man and in case of separation the wife is not given another card.

The Antyodaya Anna Yojana scheme as part of the PDS is supposed to reach out to the poorest of the poor. The Supreme Court order dated 2nd May 2003 specifically, stated that 'widows and other single women with no regular support' should be included in the scheme. However, the selection of families is often quite arbitrary. None of the states even collect data on how many AAY cards have been issued to the various vulnerable groups, including single women. This remains significantly one instruction of the Supreme Court that has been ignored by most state governments.

5. National Rural Employment Guarantee Scheme

The NREGS which provides employment on demand, for 100 days a year, is also a household based scheme. One job card is issued per household, typically in the name of the male member. Even when the work is done by others, the wage is paid to this man. Therefore single women, who are part of larger households and not provided an 'independent job card' often do not have access to their own wages.

¹⁹ For details on old age pensions in different states see the chapter "Burden of Age" in this report

²⁰ The current All India poverty line is around Rs. 360 per capita per month. Assuming a family of three, the poverty line for the family would be Rs. 1080. Rs. 500 is about 50% of this.

²¹ The total number of beneficiaries reported from all the States/ UTs is 1,71,232 as against a numerical ceiling of 5,71,500.

²² Saxena, N.C. and H. Mander (2007) 'Seventh Report of the Commissioners', presented to the Supreme Court, CWP 196/2001

Another common reason why single women fail to get work is that it is often handed out to pairs of male and female workers. Instead of creating slots for single women workers, the programme has effectively eliminated them.

Women are also paid far less than men²³. The culprit is the Standard Schedule of Rates (SSR) which makes invisible the work of women. While the extent of digging and soil conditions forms the basis of payment for men's work; the carrying of load, its weight, the underfoot conditions and its distance do not figure in wage calculation. So if two men dig and four women carry the soil, the two men collectively want as wages half the payment while the four women are left to divide the other half between them. This leads to wage differential especially as there is a clear cut sexual division in such works. Further, men work with tools while women do not but no efforts are made to compensate their contribution, much less consider the drudgery of the tasks done by them.

Recommendations: Single women

It is grudgingly and belatedly acknowledged today that most government policies and laws are 'blind' to the lower power – economic, social, political and administrative – of women. Therefore they fall very short of redressing gender inequalities. This is even truer of women who are single, by choice or circumstance. They grapple with patriarchal social norms, which create tall and diverse barriers to their access to food, livelihoods and food schemes. These have been illustrated in this chapter, and government food and livelihood programmes need to be resolutely refashioned to reach and partner single women as they battle the world alone.

Identification

1. Conduct a periodic **census** of single women every two years through panchayats, urban local bodies and women's group to ensure universal coverage of all social security, food and livelihood schemes.
2. Recognise single women and their dependants if any as separate family units for all purposes such as job cards and ration cards, regardless of whether or not they live with their natal or husband's family and share a common kitchen. Even single women alone or with joint families should be accepted as separate family units, and this should be explicit in all government instructions. If single women have no permanent address (on the streets or in professions like casual sex work) this should not be a bar to eligibility to all the programmes listed below.

Cash Entitlements

3. Create a centrally sponsored scheme (with central government contributions of 50:50) and implement for all single women (including widows, separated, divorced, deserted, unmarried women) who are below the poverty line (BPL), scheduled caste (SC) or Scheduled tribe (ST) and from minority communities, similar to the old-age pension, a **universal pension scheme**. All eligible single women should be covered with no limits or quotas imposed.
4. **Increase the amount** of pension to a minimum of Rs. 400 for all social security schemes, and revise these every year based on the Consumer Price Index (CPI).
5. Ensure that single women pensions **do not have any restrictions** on their own age, or the age and sex of their children.

²³ Gopal K.S. (2007), op.cit.

6. Ensure that separated and abandoned women are accepted as ‘single’ for the purposes of all government social security support and food schemes, even if they are not formally divorced, based on a written undertaking by the woman confirming her separation.
7. Ensure that a person entitled to two or more **pensions receives all** of them e.g. widow and old-age pension
8. Universalise coverage of the National Family Benefit Scheme and **reduce the red tape** for its eligibility, ensuring mandatory payment within 3 months of the death of the bread-winner.

Food Entitlements

9. Provide **separate ration cards** for all single women, whether or not they live with their natal or husband’s family
10. Ensure that all these single women have access to the **Antyodaya Anna Yojana**. This would require the central government to make specific additional allocations of AAY cards to cover all single women households, as per the order the Supreme Court to universalise AAY for this group²⁴
11. Extend **ICDS food provisions**, currently available for nursing and expectant mothers, to all single women, in recognition of their special vulnerabilities
12. For all single women who are head of households with dependent children or living alone provide high protein **dry take home rations (THR)** once a week from the ICDS aanganwadi centres
13. In addition to these dry rations, single women should be entitled to enrol and eat hot cooked meals at ICDS centres of their choice.

Provide Special and Differentiated Treatment

14. Children of single women should be entitled to assured **admission in SC/ST hostels** run by state governments, where their education and food security would be better secured
15. In cities and towns, government should start **residential hostels** with priority to children of single women, especially those who are homeless. All children of urban homeless single women should be taken into hostels and governments should confirm this within a maximum period of 2 years, and adequate financial provisioning should be made for this.
16. Process all social security application at the **panchayat level** where a **list** of all single women should be maintained and updated every month
17. Provide **funds for training** and making single women aware of their rights and entitlements with the aim of creating a federated association of single women.
18. Allocations for **shelter homes** for women survivors of domestic violence should be expanded manifold to ensure at least one in every district of the country, and women’s organisations,

²⁴ On 2nd May 2003, the Supreme Court directed that all households belonging to six “priority groups” would be entitled to Antyodaya cards. “Widows and other single women with no regular support” was one of the groups identified.

especially those of single women, encouraged to run these. These homes should provide for women in distress a safe place to go with children in safety; psycho-social and family counselling services; legal advice and assistance; vocational guidance and training; creches for children; financial assistance; assistance in employment/self-employment in secure vocations; assistance to find homes for eventual self-reliant rehabilitation; and long stay homes for older destitute widows.

19. Likewise the allocations on the excellently conceived **Swadhar** scheme, which provided for food, clothing, shelter, health care counselling and legal support, social and economic rehabilitation for women in most difficult circumstances should be greatly expanded to cover as a priority programme every district in the country.

Employment Guarantee

20. Provide **separate NREGA job cards** for all 'single' women, regardless of whether they live alone, with dependents, or in their natal or husband's home
21. Ensure that single women in practice enjoy **at least equal legal claim to employment** in NREGA works as households 'led' by men, and that their work guarantee should be extended to 150 days
22. Modify the NREGA Standard Schedule of Works (**SSW**) to identify and calculate **women's share of work** and compensate them equitably and justly
23. The NREGA Standard Schedule of Works can be modified to include and give priority to single women to be hired to fill temporary vacancies (when the staff are unavailable due to maternity leave, vacations, election duty, vacant posts etc) across other social welfare programmes of the government on a time-rate basis for example as cooks or helpers in schools, as aanganwadi helpers, additional helper- teachers in schools and ICDS centres, caregivers for disabled children etc
24. Single women should be paid **daily wages**, rather than weekly or fortnightly.

Impoverished and Old

From a social security and policy point of view, the largest concern of the elderly in India is poverty. Thirty percent of the elderly in India are estimated to live below the poverty line. Another one-third is not even acknowledged to be poor; even though live marginally above the poverty line. National policy on older persons estimates that about seventy percent of the population above 60 are economically 'fragile', of whom half are BPL and the other half APL, belonging to the low income group. However, it is often observed that the assessment of only one-third of the elderly being BPL, is an understatement.²⁵ With their bodily capacities already under the stress of years, most are unable to engage in active employment. Their impoverishment is even more crippling.

Double burden of widows

The chances of being taken care of are greater when ones spouse is still alive. One-third of the elderly population is however widowed, and faces a precarious existence.²⁶ There is also a marked gender disparity in the case of widowhood. Though the incidence of widowhood among elderly women is declining, it remains an important social phenomenon affecting more than half of the women who are more than 60 years. The reason for the acute gender disparity in widowhood is largely three-fold. The life expectancy of women is greater compared to men. Secondly, in Indian society, men largely marry women who are younger. Again, due to societal customs widowed men are more likely to remarry than women.²⁷

Ageing population

The population aged 60 and above is expected to increase from 77 million (7.5 percent) to 301 million (17 percent) in the fifty years since 2001 with a marked increase in the elderly aged more than 70 years. The structure of the population would be undergoing some dramatic changes in the next fifty years or so²⁸. Unlike many parts of the world, in India sex ratios show that for most aged cohorts across time, men outnumber women. This situation is interesting because female life expectancy in India at 60 and 70 is higher than male life expectancy. Some reasons for this higher number of males in old ages are given to be "under-reporting of females, especially widows, age exaggeration, low female life expectancy at birth, and excess female mortality among infants, children and adults".²⁹

Multiple vulnerabilities

Poverty has many dimensions of deprivation and denial – social, political, economic, psychological - therefore estimates of income and expenditure have limited utility in capturing the depth and range of the deprivation of the impoverished. Where large proportions of the population are subject to high morbidity and mortality, poor access to even minimal healthcare, lack of clean water and sanitation, inadequate housing, lack of education, social exclusion, etc along with hunger and malnutrition, income poverty measures tend to underestimate the degree of poverty.

²⁵ Sujaya, CP (2000), National policy on older persons, *Seminar*, April.

²⁶ Gopal, Meena (2006) 'Gender, Ageing and Social Security', *Economic and Political Weekly*, 41 (42), 4477-4486

²⁷ Gulati, Leela; and Irudaya Rajan, S. (1999). 'The Added Years: Elderly in India and Kerala', *Economic and Political Weekly*, 34(44), 46-51

²⁸ Moneer Alam and Mehtab Karim (2005), *Beyond the Current Demographic Scenario: Changing Age Composition, Ageing and Growing Insecurities for the Aged In India and Pakistan*: IUSSP International Population Conference, France

²⁹ S Irudaya Rajan (2006), *Population Ageing and Health In India*, The Centre for Enquiry into Health and Allied Themes (CEHAT), Mumbai

This is particularly the case for groups like the aged whose needs and risks are different than the general population. Their material deprivation is exacerbated by their powerlessness and marginalisation, and ultimately their social dispensability. They end up being more vulnerable to risks than the general population, even when they might be technically ‘above the poverty line’ constructed by planners and economists.³⁰ There is therefore an acute need to define poverty in a way that takes into account the needs of the aged as different from young men and women. The dependency ratio in India has been sharply on the rise. On an average every 1000 persons in the working age in the rural areas had to provide support, physically or otherwise, to 141 aged persons, to maintain their daily life, as opposed to 94 aged persons in 1981. In the urban areas, the number of dependent elderly persons rose to 107 from just 71 in 1981.³¹

National Sample Survey Organisation (2006),
Morbidity, Health Care and the Condition of

Field studies have illuminated the anatomy of such dependency of the aged. A study by Kumudini Dandekar of the aged in rural Maharashtra (EPW, June 5, 1993) found that unlike the small section of the elderly who can fall back on their provident fund, pension, savings, insurance or property, 33 percent in the rural and 37 percent in the urban areas are totally economically dependent. Of these, 9 percent depended on their spouse, 50 percent on their children, and 6 percent on their grand children and the remainder on others. Their dependence is aggravated because most elderly people have no financial assets. For the country as a whole, for 1,00,000 old men and women, only 581 and 482 respectively had some financial assets.

Nearly 80 percent of the dependent elderly expressed a need for old age pension. The fact that they are so dependent does not mean that there are social and cultural guarantees that the family members on whom they are dependent will necessarily provide for them. The state has an obligation to the fully dependent elderly to ensure for them economic support in old age; as many are below the poverty line and suffer multiple disabilities, therefore they should be assisted with poverty alleviation and social security programmes.

But it cannot be assumed that those who are not ‘dependent’ need no state support. On the contrary, more than 15 percent of all the elderly live alone or only with their spouses. The study by Kumudini Dandekar of the aged in rural Maharashtra (EPW, June 5, 1993) also found 18 percent old people in villages lived alone, comprising of 4 percent men and 14 percent women. Often, economic ‘independence’ is forced upon them. Such pseudo- independence, therefore, cannot be taken as a proxy for well-being and there are chances that some amount of poverty gets invisibilised amongst those elderly persons who are technically perceived to be ‘not dependent’. The enormity of the degree of dependence is undeniable. 65 percent of the aged depend on others for their day-to-day existence³². Women are particularly vulnerable. 85 percent of women are economically dependent on others, largely because of cultural constructions of gender relations and opportunities and preparation for self-reliance.

³⁰ Chandrasekhar, C.P. Jayati Ghosh (2004) *The Market That Failed A Decade of Neoliberal Economic Reforms in India*, LeftWord: New Delhi.

³¹ National Sample Survey Organisation (2006), *Morbidity, Health Care and the Condition of the Aged*: Report No. 507, NSS 60th round.

³² National Sample Survey Organisation (2006), *Morbidity, Health Care and the Condition of the Aged*: Report No. 507, NSS 60th round.

The mere process of ageing - the continuous decline of functional ability of the body and to a point the mind, over time – often creates and exacerbates intra and inter-household inequalities. Visual impairment, hearing problems, difficulty in walking and speech are the most common forms of disability among elderly³³. Senility and neurosis are also common. Without familial or institutional support, these added disadvantages seriously affect their ability to survive and fend for themselves³⁴. 45 percent of the elderly suffered from chronic health problems in both rural and urban areas. The percentage of physical immobility due to chronic illness and old age was found to be consistently higher for women than men in all states of the country.

Poor health, unfavourable socio-economic conditions, widening inter-generational gaps and non-working status contribute towards added vulnerability to the aged.³⁵ Even meagre financial assistance would substantially alleviate their burden. Their relatively lower bargaining power make them vulnerable to a higher risk of poverty, especially at the time of contingencies.³⁶

Amongst the elderly; poor people, widows and disabled people are invariably the most disadvantaged. Widows, in particular, face direct and indirect forms of cultural stigma linked with their gender accentuated by their marital status. In comparison to aged widowers, women suffer from lack of ownership of property and financial assets. Even in cases where they may legally inherit such property, they often fail to gain actual control over the property and are harassed by male members of their deceased husband's family. This deprivation, in turn, adversely affects their access to food, housing and health.

Social security in many developing countries like India largely focuses on the workforce in the formal sector. Other provisions that have an old age focus largely 'exist on paper' with their effectiveness 'hardly ever analysed'. Research on old age itself largely has a bias towards the middle class and basic issues like old people's access to food and livelihood are largely left unexplored.

It has been observed that the elderly from indigent groups, when their dependence is accompanied by ill-health, no savings and no assets, complicated further by cultural biases such as against widows and economic pressures faced by poor families such as for distress migration, are viewed as a burden by their families, and are often denied their basic needs in life, including food. They are routinely subjected to neglect, indignity and ill-treatment.

It is estimated that at least 50 percent of the population of the elderly in this country, especially among the indigent, are in need of some form of supportive services. An analysis of their problems reveals the following major areas of need, namely:

- economic deprivation and insecurity
- restricted mobility due to ill-health
- physical insecurity
- reduction in dignity, self-esteem
- loneliness due to rejection

³³ National Sample Survey Organisation (2006), *Morbidity, Health Care and the Condition of the Aged: Report No. 507, NSS 60th round.*

³⁴ Chatterjee, Chandrima and Gunjan Sheoran(2007), *Vulnerable groups in India*, CEHAT, Mumbai.

³⁵ Dandekar (1996) cited in S Mahendra Dev et al (2001) *Social and Economic Security in India*, Institute of Human Development, New Delhi.

³⁶ Agarwal (1990) cited in S Mahendra Dev et al (2001) *Social and Economic Security in India*, Institute of Human Development, New Delhi

- lack of meaningful occupation, leisure activities, and
- lack of protective supportive shelter.

Government programmes for the aged

Historically, the focus of social security measures in India has been promotive rather than the protective; justified by the unacceptably high incidence of poverty, the scarcity of resources, and the tacit assumption of the lower claim of those who are perceived to be no longer ‘productive’. At the same time, it is well recognised that to achieve higher levels of human development societies need a judicious mix of both forms of social security.

Even though the elderly were identified as a priority group for social protection from the initial years of India’s independence, policy initiatives like old age pensions were pioneered by various state governments and not the Centre. It was only in 1995 that an all India pension scheme was introduced, with very small financial provisioning for small numbers of aged people. In effect, to date, pension is not perceived as a right of unorganised workers.

From 2002-03, NOAPS as well as Annapoorna have been transferred to the States; money being given in the form of Additional Central Assistance. Every year, the Ministry of Finance, Government of India, releases funds to the states in equal monthly instalments till December, and the payment for the remaining three months is conditional to “reporting of satisfactory progress of implementation of the Schemes and utilisation of funds”. The ACA thus provided could be utilised by the States/UTs “by taking up one or two or all of the three (schemes³⁷) or in any other combination in accordance with their own priorities and needs”. The guidelines categorically state that failure to submit physical and financial progress reports will result in the non-release of funds for the last quarter of the financial year.

This was done, according to the government, to provide States with the required flexibility in choice and implementation. However, in practice, this shift has affected performance of the scheme. Even after the pension amount got enhanced from Rs 75 to Rs 200, many state governments did not pay pensions for more than six months, due to inordinate delays. Old people are politically powerless, and the stepping back of the central government after their belated entry as late as 1995 to first introduce a national programme of (highly modest) pensions for aged people, has tended to erode even the small gains that aged people had secured. The central government even stopped reviewing the performance of state governments in extending pensions to old people, and it required an order of the Supreme Court to direct them to restart monitoring the programme.

The central government contributes collectively to a combination of three schemes and the states determine the proportion to be spent on each of the three schemes. The total allocation by the Central Government compared with the actual expenditure reported for all the states indicates that the money utilised was close to optimum with less than 5 percent of the funds left unused in 2003-4.

But since then, the expenditure reported has declined steeply. Unused balances were as high as 29 percent in 2004–2005 and 22 percent in 2005–2006. Last year, however, showed lowest levels of utilisation with almost half the funds allocated left unused. This surprisingly, despite the fact that the old age pension was increased from Rs 75 to Rs 200.

³⁷ Pensions, Annapoorna and NFBS

2007 was perhaps the most significant year for public policy for the aged. The Prime Minister announced in his politically significant address to the nation from the Red Fort in Delhi on Independence Day that old age pensions would at last be universalised for the poor. Accordingly, NOAPS was replaced by the Indira Gandhi National Old Age Pension Scheme³⁸, which would provide a monthly pension to *all* people over 65 years and who are identified by government to be living below the poverty line. The quantum of pension would also be enhanced. The central government would provide Rs. 200 to each beneficiary and the State were expected to contribute an equal amount.

But the actual disbursement varies significantly across state governments. Till the close of the financial year 2007, the coverage of the pension scheme was also been far from satisfactory. However, with the introduction of IGNOAPS, there seems to have been a dramatic improvement, as shown in the following table. However, it must also be borne in mind here that, coverage on paper often does not translate into benefits reaching the needy.

Gap between IGNOAPS beneficiaries (2007-08) and the number of eligible persons (2004-05 poverty estimates) (in Lakhs)

Bihar	1.120670
Goa	0.065790
Gujarat	3.946050
Haryana	0.390940
Kerala	2.510440
Maharashtra	11.092840
Orissa	3.727600
Punjab	0.826890
Tamil Nadu	3.405660
Uttar Pradesh.	2.240870
Uttaranchal	1.255160
A & N Island	0.022360
Pondicherry	0.105460

Calculations by Ministry of Rural Development, Government of India.

1. Antyodaya Anna Yojana Scheme

Directions from the Supreme Court of India (order dated of May 2, 2003) specifically instruct that all aged, disabled persons and single women should be given Antyodaya cards which entitle them to 35 kilograms of rice or wheat every month at the rate of 2 rupees per kg for wheat and 3 rupees per kg for rice, which is well below the soaring market rates. However, in reality, some have BPL cards at best, on which the government subsidy is less.³⁹

Distance to government institutions often acts as an access barrier. In some Orissa villages, old people and even those with disability have to trudge more than 7 kilometres to collect their pensions and their rations. However hard and painful it is for them to walk, they have to do so two or three times a month to check whether grains have arrived.

³⁸ The earlier criteria of 'destitute' was removed

³⁹ Mander, Harsh (2008) *Living with Hunger*, EPW

When the rations do arrive, they have to trudge back carrying the heavy load over long distances. Each day spent visiting the ration shop or the office to collect pensions means the loss of earnings or foraging for food. Often at the beginning of each month, the delayed grain arrives earlier than the pension, which causes the elderly much anguish as they do not have the money to buy the grain.

To compound these issues, there are illegal restrictions on the amount of grain that they get from the cards. Most of the elderly reported that they get 4, 8 or 16 kilograms on grain against their BPL cards as against an entitlement of 35 kilograms every month. Many are convinced that they are duped or short-changed by the ration shop dealers, but feel powerless to resist.⁴⁰

2. Able to Work

NREGA which in principle gives every person who is willing to work, the statutory right to 100 days of guaranteed wage labour at minimum wages per family, is legally open to all destitute persons including the elderly. But in practice, it is found that to most it remains barred. Old people report that they are discouraged to apply for work, with commonplace remarks such as: *'you are too old and will fall sick because of the heavy work involved'*.

Most of the NREGA work involves digging of soil which is often too hard and unyielding. Also workers are paid based not on the time worked but the actual work accomplished, which further leaves them with small earnings. Instead of identifying less physically demanding work like standing guard at the sites, taking care of children, filling stones and soil in baskets, and planting and irrigating saplings, they are given the most back-breaking work, and are therefore themselves eventually compelled to opt out.⁴¹

Recommendations: Old age security

Oommen C. Kurian, 2007, Chhattisgarh

The nation must at last redeem its duty to its senior citizens, who have contributed to it in many ways: built it up through difficult times, raised its young, and enriched its diverse wealth of wisdom, songs and material well being. People in the formal sector have pensions to fall back on, but for the vast majority of men and women who toil in the unorganised sector, there is no retirement: they still have no pension without work, and no food without work. Sickness is an inevitable companion of age, but each time it falls, it is a calamity. We need to ensure that as people grey, they can live with dignity and self reliance, with adequate food and health care, with protection, rest and recreation. This is a public policy imperative that can brook no further delay.

Cash transfers

1. Every aged person must have access as a legal right to a pension that is sufficient for a dignified, active and healthy life. This means that all workers who are not part of the organised sector of the economy must be covered by pension benefits. The government should ensure within one year pensions for all aged people above the age of 65 years who in rural areas are landless, artisans, and small or marginal farmers, and all SC and ST aged persons; and in urban areas are residents of slums or homeless, and all unorganised workers.
2. This must be secured as a universal entitlement to each of these men and women (in the way that mid-day meals have become for all school going children in government and aided schools). This means that central and state governments cannot plead financial constraints or fix any quotas on the numbers of such persons who are to be covered.

⁴⁰ Mander, Harsh (2008) *Living with Hunger*, EPW

⁴¹ Mander, Harsh (2008) *Living with Hunger*, EPW

3. The gram panchayat, youth and womens' groups, and literacy activists, and college NSS groups may be involved in a campaign to cover all eligible elderly people with old age pensions in a campaign mode. Transparency in selection and disbursement should be ensured by involving the Gram Sabhas, pensioners' organisations, and citizens' committees.
4. The quantum of pension should be adequate. In line with the Working Group on Social Protection Policy's recommendation, the rate of minimum pension should be fixed at Rs.400/- per person and the State governments may be required mandatorily to contribute their share of the pension. This can best be done by treating the Scheme a Centrally Sponsored Scheme under which the expenditure is shared by the Central and State Governments in the ratio of 50:50
5. Central Government employees and pensioners get an increment twice a year that is pegged to the Consumer Price Index (CPI). Likewise, the pension amount should also be linked to inflation in the economy and appraised every half a year, using Rs. 400 in the year 2007 as the baseline.
6. The pension should be paid through banks or post offices either via money order or in cash or deposited in the nearest bank accounts. Any commission payable to the Postal Department for making these payments should be waived or borne by the Ministry concerned.
7. Based on the Supreme Court Order dated 28th November, 2001 pensions should be paid to the beneficiaries by the 7th day of each month. Even if the budgeted funds from the central or state government are unavailable or delayed, the state government should make use of alternative arrangements to arrange these funds and prevent delays in disbursement. In the way that salaries and pensions of public servants are not delayed despite delays in financial allocations and disbursements, the pensions of aged people should also be seen as having a 'first call' on state finances, because they are essential for the survival of a highly vulnerable group.
8. The minimum age criteria for pension eligibility should be reduced to 60 years instead of 65 years, as has already been implemented across many states.
9. Whereas non-pensioners are in most desperate conditions, pensioners, especially those from lower rungs of government and corporate hierarchies, tend to suffer from delays of sanction and disbursements, and other forms of harassment. At present, there are about 25 lakh pensioners of central government and there is an addition of one lakh every year. There is almost an equal number of pensioners drawing pension from state governments. The government pensions include family pensions. More than one lakh persons draw pension from banks, insurance companies and public sector undertakings. In mid 1980s a Supreme Court decision added nearly 10 lakh more pensioners. In 1985, the central government took a policy decision that minimum pension it will pay will be Rs.375/-p.m. Pensioners frequently suffer harassment, humiliation and long delays in disbursement of pensions. For this, a single-window payment with simple procedures for pension disbursement involving also pensioners' groups and local bodies to control corruption in the disbursement needs to be ensured.
10. District officers must held responsible to personally monitor the timely processing of pension claims of all governments servants due to retire in the next three years. Paper work should

commence at least two years before the date of retirement, and special pension camps for disposal of pending cases may be organised from time to time. The target should be to hand over pension papers to the retiring functionary on the date of superannuation.

11. National Family Benefit Scheme amount must be increased to Rs 25,000 and must cover deaths of any 18 – 64 year old member of the family in a BPL household. The ratio of 36 percent applied to the current population estimates for 2006–2007 must be used to calculate the percentage of persons eligible. The amount of insurance must be pegged to the Consumer Price Index (CPI) and upwardly revised accordingly at least once every two years.
12. Payment under NFBS must be disbursed to the family within 3 months of the death, failing which interest at the rate of 5 percent per month should be payable.
13. Families of persons who died allegedly of starvation, farmer suicides, natural and human-made disasters should get first priority in NFBS releases.
14. Measures have to be taken to check and reduce underutilisation of funds in various programmes serving the elderly
15. Ensure that a person entitled to two or more pensions receives all of them e.g. widow and old-age pension.

Social Safety

16. In view of the universalisation of IGNOAPS, if all the eligible persons over time are covered under the NOAPS, the eligibility for the Annapoorna Scheme would become defunct. However, given the multiple benefits of the scheme of direct food transfers, it is instead suggested to modify the programme to
 - a. continue to serve as an additional assistance to the most vulnerable groups amongst the elderly, who have multiple vulnerabilities (such as single women, disabilities or debilitating ailments) and
 - b. Merge its food allotments with the mid-day meal, and all old people from the neighbourhood should be permitted to share in the school mid-day meal of hot cooked meal in ICDS centres without any conditions, as practiced in the state of Tamil Nadu. This serves as a last defence against starvation of the aged destitute, without requiring any additional administrative costs. The presence of aged people when mid day meals are served leads also to greater transparency in the implementation of the programme, as destitute older people, even though relatively powerless, may still have greater voice than children in case food served in schools is of poor quality or of less than prescribed quantities.
17. All old age pensioners should also be given Antyodaya cards which entitle them to subsidised grain. This is in conformity with the orders already issued by the Supreme Court of India dated 2nd May 2003.
18. Modify the NREGA Schedule of Work to specify that all persons above 60 years of age should be paid based on a time-rate of the applicable minimum wages for every day of work

19. The NREGA Schedule of Work should identify physically less demanding work which should be prioritised for older persons like standing guard at the sites, the work of ‘mates’ who supervise and measure the work, taking care of children, serving water, filling stones and soil in baskets, and planting and irrigating saplings etc.

Health Care Facilities

20. Keeping the health needs of the elderly in mind, existing government and on-government health facilities in the district may be equipped with geriatric OPD and emergency and special geriatric wards. Elderly typically suffer from arthritis, failing eye sight, hearing impairment, respiratory and cardiac problems, diabetes, blood-pressure, constipation etc. Many, due to these health problems, may not be mobile. Mobile pathological lab equipped to provide physio-therapy, dressing of wounds, checking blood-pressure, blood sugar and other services would go a long way in meeting at least some of their needs.
21. In addition, we may organise systematic treatment of common disabling geriatric problems (e.g. diagnostic and treatment health camps for cataract, hearing, dentistry, arthritis etc.

Measures for self-esteem, support services and morale

22. Elderly people usually have a wealth of untapped experience and wisdom and potential talents and skills. Their competencies can be effectively utilised for socially productive activities, provided they are properly approached and organised. This would also greatly help build up their morale, e.g. tuitions, adult literacy classes, visiting patients in hospitals, Red Cross activities, humanising children’s/women’s institutions as visitors or foster-grandparents.
23. Self-help groups such as pensioners’ associations, senior citizens’ clubs can, in conjunction with youth groups, provide supportive services to the aged. A whole range of services can be envisaged : transportation, hot meals, friendly visitors visiting lonely house-bound old people, services like collecting ration from ration shop, marketing, clearing, payment of electricity bill/ house/property tax, sponsorship, ambulance services, escort services for banking, visiting friends.
24. Elderly people are not the easiest people to work with. They may be stubborn, habituated, fussy, and forgetful. Therefore, training of volunteers working with the aged is a must.
25. Wherever possible, separate counters and queues at hospitals, ticket counters, bill collection centres for the elderly may be provided. Concessions on bus/rail for the elderly and their escorts may be made available especially for pilgrimage tour packages.

Old Age Homes and Alternatives

26. As a last resort, for physically dependent and economically destitute persons, it may become necessary to create old people’s homes. At present, only 68 and 40 persons in 10,000 from rural and urban areas respectively live in old age homes. Surveys reveal that not more than 20 percent of even the elderly who are living alone, are prepared to live in old people’s homes, provided it is not too distant from their original homes. In establishing such homes, governments should ensure clean cheerful surroundings, simple nutritious food with variation, a daily routine including

recreation and minimal productive activity (e.g. horticulture, chalk-making), structured regular friendly visitors, and trained and motivated managers.

27. Governments should also finance local initiatives to provide care and protection of the dependent elderly in rural areas. In some states, groups of five or six dependent elderly men and women are looked after in a cottage by the entire village. These cottages not only provide meals, but in some cases, also provide day care, leisure activities to other elderly of the area.
28. Perhaps the best alternative for lonely old people with means is to facilitate group housing schemes by convergence of various government and private housing schemes e.g. by earmarking and allotment of suitable land for housing schemes, formation of housing co-operatives, channelising of soft housing loans, allotment of houses under Indira Aawas Yojana and other housing schemes wherever eligible etc. Governments should have a much more expanded programme not so much of institutionalised old age homes, as much as old age communities, where housing schemes are undertaken of old people who do not have or do not wish to live with their younger care givers. These should have free public health care and recreational services. Homes for children in care of need and protection under the JJ Act (like street children) should be converged with such old age communities, so that children bring cheer in the lives of the elderly, and they get meaning in their lives as foster grandparents.

Persons with Disability

(In)visible handicaps

In every village and town across the length and breadth of the country, frequently hidden way behind the walls of homes and institutions, unsuspectedly large numbers of these disabled women and men, boys and girls subsist. Rarely do we encounter disabled people in schools, farms, factories, playgrounds, cinemas, streets, markets, temples, mosques, churches, or in family celebrations. Arguably more than any other large dispossessed social group, people with disabilities are invisible also in political agendas, in human rights struggles, in development strategies, and in social science research. Disabled people are disproportionately numerous amongst the poorest of the poor across the world⁴², but special schemes for their upliftment are few. Instead, as they struggle to achieve their potential of a fulfilled, dignified and useful life, they are most frequently victims of extreme, even savage, social prejudice and ostracism.

For disabled persons who also belong to traditionally socially discriminated categories such as females, backward castes, tribals, and minorities, social ostracism is likely to be further greatly enhanced. Since the exclusion that disabled persons face is mediated by social prejudices, a person who is disabled because of leprosy may be much more stigmatised than a moderately mentally slow person, and a woman more than a man. When a *dalit* woman, a homeless man or a tribal child also suffer from disability, they have to contend with vulnerabilities from all extremes. The discrimination is often so strong that it forces them to live in extremely inhuman conditions.

Gaps and failures in village infrastructure like roads, drinking water sources and school buildings disproportionately constrain people with disabilities from moving out of their houses. Temples are built on hill-tops, and roads uneven. Greater barriers are erected by social attitudes, of shame and ridicule, beginning often within the family, which further immobilise people with disabilities. The result is a sense of isolation, dependency and pervasive low self-esteem and compounds their confinement to their homes and their consequent invisibility.

Definition

In accordance with the WHO definition, we may understand 'impairment' as the loss or reduction of normal functioning of any physiological function. When such impairment results in partial or total inability to perform any bodily or mental function in the manner or within the range considered normal for a human being, it is described as a 'disability'. The sum-total of separate disabilities, that limit or prevent the fulfilment of a role that is normal (depending on age, sex, social and cultural factors) for the individual, is 'disablement' or 'handicap'. It would be clear that this definition hinges critically on the word 'normal' with its vast and problematic normative baggage.⁴³

Disabilities are variously classified as locomotor, visual, speech and hearing, mental (mental retardation, mental illness, autism, other emotional disorders), specific learning disabilities, cerebral palsy and so on. Another set of classifications are based on diseases which cause these disabilities, such as polio, leprosy, cancer, multiple sclerosis and others. These disabilities may further be classified as mild, moderate, severe and profound, depending on their severity.

⁴² Yeo Rebecca (2001) *Chronic Poverty and Disability*, Somerset :Action on Disability and Development.

⁴³ Mander and Rao, *Agenda for Caring*

Incidence

The Census 2001 counted 2.1 percent of the population i.e. 22 million people to be disabled. The NSSO 58th Round (July-December 2002) has an even lower estimate of 1.8 percent.⁴⁴ However these estimates are contradictory in themselves too. The NSSO estimates that 51 percent of the disabled population has locomotor disabilities while only 15 percent are visually impaired. In contrast, the Census which enumeration of the entire population finds that almost half of the disabled population suffers from varying degrees of blindness while only 28 percent are movement impaired.⁴⁵

Other estimates⁴⁶ double the extent of disability in India to around 40 million people. More inclusive definitions of mental illness and retardation increase the population size to 80 – 90 million. Disabilities like autism, thalassemia and many learning disabilities rarely find a mention in these surveys.

WHO estimates that as many as 10 percent of world population is disabled, which in the Indian context would mean as many as around 103 million persons. However, Dr. E. Helander who had arrived at this 10 percent estimate in 1974, writes in 1990 that the moderate and severe disability which calls for rehabilitation efforts is 5.2 percent which in the Indian context would mean around 53 million persons. The UNDP estimates that on an average the global disabled population is 5 percent.⁴⁷ In other words, one person in 20 has a disability and more than 3 out of 4 of these live in developing countries.⁴⁸

These are likely to be more accurate estimation of the magnitude of the problem.

Cycles of poverty and disability

Families in which either the bread winner or a dependent is disabled is more likely to be impoverished; likewise members of indigent families are at greater risk of disability. Of the six hundred million people with disability in the world, over 70 percent live in the ‘developing world’⁴⁹. Disabled people are estimated to make up 15 to 20 percent of the poor in ‘developing’ countries.⁵⁰ Reports indicate that a higher proportion of households with self reported disabled members were below the poverty line, had lower total assets, smaller land holdings, and greater debt than households without disabled members.

⁵¹ Disability affects not only the individual, but their families and careers too. The Asian Development Bank estimates that 25 percent of the population in the Asia-Pacific region is impacted by disability.⁵²

⁴⁴ The share of *households* estimated by NSSO to have a disabled member was 8.4 and 6.1 percent in rural and urban areas respectively (though this share seems high given the number of disabled individuals and survey results on their household size), cited in O’Keefe Philip (2007) *People With Disabilities in India : From Communities to Outcomes*, India: The World Bank.

⁴⁵ The difference in numbers between the NSSO and Census is because of the different methodology and definitions adopted for identifying disabled persons. NSSO uses only a representative sample whereas Census is the enumeration of entire population. Because of the different definitions adapted by Census and NSSO the estimates of different categories of disability also varies between the two sources

⁴⁶ The National Centre for the Promotion of Employment for Disabled people (NCPEDP) estimates that approximately 65 to 70 million people or 6 percent of India’s population are affected by disability. The Ministry of Social Justice and Development, in its annual report 1999-2000, has given a figure of 43.99 million disabled persons in the country (Labour File, A monthly Journal Of Labour and Economic affairs; Volume 7) Yeo Rebecca (2001) *ibid*.

⁴⁸ Mom Beverly Beckles (2004) *Poverty and Disability : Advocating To Eliminate Social Exclusion*, Trinidad and Tobago : National Centre for Persons with Disabilities

In 1981 WHO studies estimated that on average 10 % of national populations are disabled.

However in 1992, this estimate was modified to 4 percent for developing countries and 7 percent for industrialised countries. Because of the different estimates also there is no agreement on which figures to use USAID use 10 percent, DFID use 4-7 percent.

⁴⁹ Mom Beverly Beckles (2004) *ibid*,

⁵⁰ Elwan Ann (1999) *Poverty and Disability: A Survey of the Literature*, Social Protection Unit: World Bank.

⁵¹ Elwan Ann (1999) *ibid*

⁵² Thomas Phillipa (2005), *ibid*

Disabled people are more vulnerable to poverty and its financial repercussions. One is their increased requirement for expenditure on health care, basic needs, accessibility and transport. Second is their limited capacity to earn partly due to the impairment and partly lack of access to opportunities. And the third is the indirect cost of care givers. In most disabled families, one adult member misses work because they have to provide care to the disabled members.

In Uttar Pradesh and Tamil Nadu it is reported that in 45 percent of households almost everyday for an average of 2.5 hours, an adult care giver needs to miss work in order to support their family member with disabilities.⁵³ This exemplifies the indirect cost of disabilities.

Other studies even indicate that disability is more prevalent in poor, scheduled caste⁵⁴, OBC and rural households.⁵⁵

Poverty is both cause and consequence of disability. Living in poverty increases the likelihood of having some impairment, because of poor nutrition, health care, immunisation and physical security. Disabled people generally experience higher rates of poverty as a result of being disabled and when people living in poverty become disabled they are often more severely marginalised than are wealthier people.⁵⁶

Barred from schooling

People with disabilities are also more likely to be illiterate. They also constitute a lower proportion of students in higher education. There is almost 52 percent illiteracy among people with disabilities against a 35 percent average for the general population.⁵⁷ This is mainly because the education needs of disabled adults and children have been neglected for a long time. It is only in recent years that their special needs have received focus. Illiteracy is high across all categories of disability, and particularly for children with visual, severe and mental disabilities. The differences in educational attainment are strong even among people with disabilities. The illiteracy rate among female persons with disabilities is 64 percent while its 43 percent for men⁵⁸. Amongst visually disabled persons with disabilities the illiteracy rate is 73 percent.⁵⁹

The share of disabled children who are out-of-school is around five and a half times that of the general population. It is even around four times worse than that of the tribal population.⁶⁰ Even in the best performing states like Kerala (27 percent) and Tamil Nadu (33 percent), a significant share of out-of-school children are those children with disabilities.⁶¹ Also the gap in the education achievement further increases with higher education from secondary school onwards, which can be attributed mainly to infrastructural inaccessibility and lack of proper facilities and support⁶².

The Sixth All India Educational Survey of 1993 conducted by NCERT says that 12.59 million children of school going age suffer from one kind or the other kind of disability. Both approaches, special schools

⁵³ O'Keefe Philip (2007) *ibid*

⁵⁴ The differences by SC/OBC status are slight between PWD and non-PWD households but are of significance in terms of likely poverty rates.

⁵⁵ O'Keefe Philip (2007) *ibid*

⁵⁶ Yeo Rebecca (2001) *ibid*

⁵⁷ O'Keefe Philip (2007) *ibid*.

⁵⁸ O'Keefe Philip (2007) *ibid*.

⁵⁹ O'Keefe Philip (2007) *ibid*.

⁶⁰ O'Keefe Philip (2007) *ibid*.

⁶¹ O'Keefe Philip (2007) *ibid*.

⁶² O'Keefe Philip (2007) *ibid*

and integrated education, have been reached only 1,81,693 children with disability out of 12.59 million children with disability. The remaining 98.5 percent are out of schools and their educational needs are not met. They are also denied nutritional supplements in mid-day school meals.

Health care

In India, people do not have proper access to health care. Therefore, the health care support system for the disabled too is extremely weak. Overall people with disability tended to have low use of health services relative to the general population. Among disabled persons, there are variations in their accessibility to health care depending on the type of disability, their gender, rural or urban location of residence etc. The reasons for not accessing health care are manifold. A number of areas do not have adequate health services available, if available lack of transportation makes these facilities inaccessible, the buildings of the health care centres may be inaccessible in themselves, and the staff are inadequate or without special training to care for the disabled.

One of the reasons is also that a large number of people with disabilities do not have the aids and appliances available with them to help to access services and facilities including the health care system. In Uttar Pradesh and Tamil Nadu, the lack of services is one of the main reasons for not accessing health care.⁶³

Barriers to food and employment

In most cases disability contributes to a near closure of opportunities in the local economy. Even in cases where the disability is in no way going to decrease their efficiency of work, disabled people are denied work, or exploited and given work that nobody else is willing to undertake. The pervasive prejudice that they daily grapple leaves them no choice to bargain for better employment. This hinders their struggle to come out of the poverty and usually burdens their children into abandoning school or engaging in hard labour or even bondage.

Food and livelihood security are interlinked to a greater extent. A sustainable source of livelihood to a large extent ensures access to food. Low and uncertain incomes mean that many people with disabilities and members of their family routinely live with hunger. Even the coping mechanism of seasonal distress migration is usually barred to such people. The survey⁶⁴ encountered very few people with disabilities who received any kind of disability pension, or food aid, to protect them through seasons of hunger. The situation is even more tenuous for old persons with disabilities who lack younger care-givers.

The discrimination of disabled persons gives a way to their exclusion and in most cases establishes barriers to their access to food and livelihood which results in hunger among the destitute disabled persons with which they struggle unequally to cope.

1. Unemployable or unemployed

People with disability who are unable to find employment are driven into deeper poverty. Disabled people also have significantly lower employment rates (approximately 60 percent) than average, and this gap has been increasing over the past fifteen years.⁶⁵ A recent adverse development is the decline in the employment rate of working age disabled people, from 42.7 percent in 1991 to 37.6 percent in 2002.⁶⁶

⁶³ O'Keefe Philip (2007) *ibid*.

⁶⁴ Mander, Harsh (2002) 'At the precipice of despair', *ibid*

⁶⁵ O'Keefe Philip (2007) *ibid*.

⁶⁶ O'Keefe Philip (2007) *ibid*.

Controlling for other factors, having a disability reduces the probability of being employed by over 30 percent for males in rural Uttar Pradesh and Tamil Nadu, though the effect is lower for women.⁶⁷ It has also been found that mental illness and particularly mental retardation have a strong negative impact on the probability of being employed, even in cases where such disabilities are not severe⁶⁸.

Almost all people with disability interviewed in Andhra Pradesh in the *Living with Hunger* study⁶⁹ found wage employment – as farm labour, or basket weaving, or selling *sandhi* or country liquor and so on - but men were paid at half-rate which is perceived as ‘women’s wages’ of 25 rupees a day. It is mainly those who are severely mentally challenged or mentally ill who find their way to temples and mosques to beg.

Mere ownership of land as a productive asset also does not mean that it will guarantee livelihood security. The persons with disabilities should be able to cultivate the land either themselves or with the assistance of their families. 22.5 percent of the respondents in a study on hunger and disability in villages of Andhra Pradesh, Orissa and Rajasthan, state that they do not have the capacity to invest financially in agriculture. Further 34 percent of people with disabilities due to their health or severity of impairment are not able to cultivate their own land.⁷⁰ The study also finds that approximately 14 percent of the disabled population covered did not have a house of their own and thus were without a roof on their head.⁷¹

2. Insufficient calories

Although the sample was too small to generalise, the *Living with Hunger* study seems to indicate that familial support for persons with disabilities is declining. Almost 76 percent of the disabled respondents⁷² indicated that they had to primarily work to meet just their minimal survival needs like food. Government support as the second most important source of food security catered to only 11 percent of the disabled respondents, though most indicated that it was able to only partially able to meet their food needs.

Food gathered in charity is largely provided without dignity, as the disabled people have to sit for hours at the courtyard of religious places of worship like temples, gurudwaras and mosques and roadside pavements from where they are often chased away (in urban areas) by the police. Even after the hard day’s struggle, one can hardly fill the empty stomachs of the whole family.

Most poor and vulnerable disabled persons have learnt to live with hunger pangs. On the day of their investigation, CES researchers found that almost one-fifth of the disabled people had not eaten in the morning, three-fifths had foregone their lunch in the afternoon and about 8 percent, similarly, skipped dinner⁷³.

⁶⁷ O’Keefe Philip (2007) *ibid*.

⁶⁸ O’Keefe Philip (2007) *ibid*.

⁶⁹ Mander Harsh, EPW 2008 *ibid*.

⁷⁰ Mander Harsh, EPW 2008 *ibid*.

⁷¹ Mander Harsh, EPW 2008 *ibid*.

⁷² 135 disabled respondents were interviewed across three villages each in Orissa, Rajasthan and Andhra Pradesh for the study.

⁷³ Mander Harsh (2007), *Living with Hunger*, Centre for Equity Studies:india

Figure 3: Reduced Food Security in Households with People with Disability (percent)

	HH PWD	without	HH with PWD
Three meals per day year round	47.9		36.7
Source: O'Keefe Philip (2007) <i>People With Disabilities in India : From Communities to Outcomes</i> , India: World Bank			

Another World Bank study⁷⁴ which compares food security of households with and without people with disability finds a ten percentage point difference in their access to three square meals round the year.

3. Consumption of pseudo foods

Of all ways of coping with hunger, many disabled people wilfully ration their daily intake to levels well below what is being estimated to be absolutely necessary for human survival. Many disabled persons fill their stomachs at night with water or cheap country liquor, rather than food.

4. Cause and effect of hunger

One hundred million people worldwide have impairments caused by malnutrition and poor sanitation⁷⁵. The World Health Organisation estimates that up to 70 percent of childhood blindness and 50 percent of hearing impairment in Africa and Asia are preventable or treatable.⁷⁶ These preventable impairments caused by communicable, maternal and prenatal diseases and injuries are particularly common to poor families with insufficient resources to satisfy their basic needs. Malnutrition can lead both to the direct impairment of mental and physical functioning, as well as indirectly to the weakening of the body causing it to be disease prone and likely to suffer impairment⁷⁷. Some common micro-nutrient deficiencies that affect disability include:⁷⁸

- ▶▶ Vitamin A deficiency – blindness
- ▶▶ Vitamin B complex deficiency – beri-beri, pellagra and anaemia
- ▶▶ Vitamin D deficiency – rickets (soft and deformed bones)
- ▶▶ Iodine deficiency – slow growth, learning difficulties, intellectual disabilities and goitre
- ▶▶ Iron deficiency – anaemia, which impedes learning and activity, and is a significant cause of maternal mortality
- ▶▶ Calcium deficiency – osteoporosis (fragile bones)

Barriers to food and employment schemes

There are on paper several official facilities and provisions for the empowerment of disabled persons. The Persons with Disabilities Act 1995, extends reservation of 3 percent to all government jobs and poverty alleviation programs including Swarnjayanti Gram Swarozgar Yojana (SGSY) (providing subsidised credit for livelihoods), Indira Awaas Yojana (IAY) (free rural houses for the homeless), and the Swarna Jayanti Rozgar Yojana for wage employment for poor rural households, among others.

⁷⁴ Uttar Pradesh and Tamil Nadu village survey, 2005 quoted in O'Keefe Philip (2007) *ibid*.

⁷⁵ Yeo Rebecca (2001) *ibid*.

⁷⁶ Yeo Rebecca (2001) *ibid*.

⁷⁷ Grech Shaun (2006) 'Words for Numbers: Exploring the Cycle of Poverty and Disability in Rural Guatemala', Research Report Submitted to University of London, Imperial College, London.

⁷⁸ NHRC (2005) 'Disability Manual', India :NHRC

The exclusion of people with disabilities from these schemes and development programmes is manifold. They are still rare in pre-school aanganwadis, in schools and work sites. This raises a number of questions on the effective implementation of these schemes, their sufficient financial allocation, awareness of their existence and more importantly whether there has been inclusive participation of disabled persons in their design and formulation.

1. Ineffective state pensions

There is no central government scheme for disability pension, but several state governments have established their own schemes. This results in different eligibility criteria across the country. In Tamil Nadu the eligibility criterion is based on so many 'exclusions' to make it virtually redundant. It applies only to physically handicapped persons with more than 50 percent permanent disability, who are destitute with no source of income or means of subsistence, but should not be a professional beggar, should not be supported by son or sons aged 20 years or above and should not own property valued above Rs.5000/-, and finally should necessarily be aged 45 years and above. It is hard to understand how such a person who is completely destitute, unsupported and yet does not beg, would have survived before she would access the government pension.

Across states the same trend persists – the eligibility criterion seeks to exclude rather than cater to the special needs of the disabled. In Chhattisgarh, the disability pension is given only to those identified as 'destitute' which is often difficult for the disabled persons to prove. In Gujarat disability pension caters to a very small section of families which have a severely disabled person (with more than 75 percent disability) and whose family income is below the poverty line.

These archaic eligibility criteria support a very low coverage. The coverage of disabled persons under disability pension schemes is lesser in almost all the states. To arrive at some conclusion if we assume that the disabled population is equally distributed among all the socio-economic groups, even if it is more in poor households, and take into consideration the Census estimates of disability (2001) which is gross miscalculation and seven years older, still then almost 72 lakhs disabled persons are BPL in only 21 States listed in the Annexure 1. However, among these BPL disabled persons only about 27 lakhs are being covered in these 21 states which is just 37 percent of the BPL population. Further the coverage varies among the states and states like Delhi (1 percent), West Bengal (1 percent), Jharkhand (3 percent) and Tripura (3 percent) show almost negligible coverage. The coverage of Disabled Persons under Disability pension schemes by other states is mentioned in **Annexure 1**.

Another reason for the low coverage could also be extremely low awareness of the existence of the scheme among the eligible beneficiaries. A study conducted in three states Orissa, Madhya Pradesh and Karnataka finds that only 60 to 65 percent in the 1st and 2nd income quartile⁷⁹ were aware about the disability pension.⁸⁰

⁷⁹ The differences in awareness about the disability pension among all the four quartiles were not found too much but as the programme is usually targeted to the poor households with PWD, therefore, the 60 percent awareness among the first two quartiles which are potential beneficiaries has impact on the overall performance of programme.

⁸⁰ Mahendra Dev S, K Subbarao, S Galab, C Ravi (2007), 'Safety net programmes: Outreach and effectiveness', *Economic and Political Weekly* (September) :3555-65

2. Few children with disabilities in Aanganwadis

It is very rare to encounter a child with disabilities in an ICDS aanganwadi centre. It is not only their impairment but also the environment that places barriers on their mobility. Aanganwadis do not have ramps and the rural roads to the centre are typically uneven.⁸¹ This need not be a barrier, because children below the age of 6, who are eligible to attend an ICDS centres, are almost always accompanied by adults and often carried even if they are not disabled. More pertinently, aanganwadi workers are not sensitive to the needs of disabled children, and not welcoming. In the capital city, no child with disability was found to be registered with an aanganwadi and only 3 percent of aanganwadi workers had received any special training on disability.⁸²

In a field study in 14 villages in 4 states of Andhra Pradesh, Chhattisgarh, Jharkhand and Uttar Pradesh,⁸³ the most striking finding was that in none of the surveyed villages, the study teams came across any registered disabled children, let alone any who actually visited the centre. The parents of many challenged children feared to send their children even outside home, apprehensive about harassment from other children and taunts from adults including the official care givers. The additional reason for not sending the children was the preoccupation of the parents with wage employment and food security.

3. Mid-day meals not for out-of-school children

Disabled children are five and a half times more likely to be out-of-school than 'normal' children and even four times more likely to be excluded than children of scheduled tribes.⁸⁴ They are comprehensively denied their fundamental right to education. They are also invariably not covered by the mid-day meal scheme which applies only to children who attend school and plays an important role in preventing classroom and childhood hunger.

Most children with disabilities remain uncovered as they are unable to come to school, which are often inaccessible and they suffer from insensitive treatment by teachers. To date, pre-service training of regular teachers includes virtually no familiarisation with education of special needs children.⁸⁵ Further, there exists a lack of access, awareness and financial assistance to avail of appropriate aids/appliances.⁸⁶

One of the prominent initiatives adapted under SSA is to provide home based education for children with severe disabilities. Official statistics indicate that this strategy of home based education has benefited almost 61,290 children with severe disabilities so far.⁸⁷ But they are not provided with any mid-day meals from the nearest schools.

⁸¹ A visit by a team of office of the Commissioners of the Supreme Court (CWP 196/2001) in April 2008, to the two AWCs of Okhla Zakir Nagar Slum (Delhi) observed that both the AWCs in the slum are totally inaccessible to disabled persons, even it would be difficult for the non-disabled children to access those AWCs because of the type of the entrances the AWCs have. In one other visit to the Viklang Basti it was found the AWCs were too far from the slum instead of the fact that the habitation is mostly occupied by the disabled people who don't find time and energy to take their small children to the far AWCs.

⁸² Neenv Delhi Forces (2007) *ICDS in Delhi, A Reality Check*, Delhi : Neenv Delhi Forces

⁸³ Mander, Harsh and M. Kumaran, *SOCIAL EXCLUSION IN ICDS: Universalisation with Quality and Equity*, 2006, mimeo.

⁸⁴ O'Keefe Philip (2007) *ibid.*

⁸⁵ O'Keefe Philip (2007) *ibid.*

⁸⁶ O'Keefe Philip (2007) *ibid.*

⁸⁷ Sarva Shiksha Abhiyan (2006) 'Discovering New Paths In Inclusion : A Documentation of Home- Based Education Practices for CWSN in SSA ', India :SSA

4. Limited quotas for Antyodaya Anna Yojana (AAY)

On May 2nd, 2003, the Supreme Court passed an order, in the Right to Food case that six “priority groups” including those households with a disabled adult and no assured means of subsistence would be entitled to Antyodaya cards. However, the government is yet to implement an effective mechanism to ensure that all households in these priority groups are identified and covered.

A very large number of deserving disabled persons therefore still have not been provided their AAY cards. An important barrier, is that their disabilities make it difficult for them, because of their limited capacity and inaccessibility of government buildings, to struggle for and compete to receive an AAY from the limited (often inadequate) quotas amongst the six vulnerable categories. Also, in practice, the beneficiaries for the AAY card are being selected from amongst those on the BPL list despite conclusive evidence that these selection surveys are unreliable. Most destitute disabled persons, therefore, don’t possess an AAY card and are consequently left out.

The Supreme Court Advisor in Assam conducted a survey recently in 2008 on access to food and work schemes and discovered that all the 18 disabled respondents in Guwahati, who were also homeless and unemployed, and depended on food distributed at the Sukreswar Temple and Ulubari Mazhar for their survival, did not have AAY cards.⁸⁸ Government authorities⁸⁹ claimed that the AAY quota allocated for Assam had already been distributed, though records on beneficiaries had not been maintained category-wise despite the explicit orders of the Supreme Court, and new cards had not been issued for the past few years.

5. No special provision in National Rural Employment Guarantee Act (NREGA)

Nothing in NREGA prevents disabled people to work in theory. Nevertheless, the lack of explicit mention, results in the local panchayat and officials assuming that people with disabilities are unable and ineligible to apply for guaranteed wage work.

The Persons with Disability (PWD) Act of 1995 clearly mention that there should be 3 percent reservation in all poverty alleviation programs and is therefore applicable to the NREGA as well. Further the Operational Guidelines issued by the Ministry of Rural Development explicitly state that “*If a rural disabled person applies for work, work suitable to his/her ability and qualifications will have to be given*” However, in reality disabled persons are largely unable to access NREGA work. Field studies show that the root of the problem is often that disabled people are not even aware that they can demand work under NREGA. Their exclusion starts from the very first step, and often are not provided with separate job cards nor is their name included in the job cards owned by their family. Out the 19 disabled people interviewed in Sitapur block of Chhattisgarh in December 2006, 15 had no job cards.⁹⁰ In Deogarh panchayat, the sarpanch has refused to issue job cards to all disabled applicants with the disdainful explanation, “*You cannot take care of your own bodies how will you work?*”⁹¹ In Bardihi Panchayat though 6 disabled people had their names on the job cards, but they are not called for work.⁹²

⁸⁸ Talukdar Anju (2008) Brief Survey of Access to Food Rights by Disabled urban poor in Guwahati, Assam

⁸⁹ A meeting with Md. Alaudin, Secretary, Food and Civil Supplies Dept, Govt of Assam, revealed that around 7,04,000 Antyodaya cards have been issued in Assam so far. It was not possible to ascertain how many Antyodaya cards have been issued to persons with disabilities or their family members, as the cards were issued to various identified categories, but no separate record was kept of the number of cards issued under each head e.g. disability. Md. Alaudin expressed his inability to rectify the situation till there is a change in policy whereby the quota is increased and new cards

⁹⁰ G Praveen Kumar (2006) ‘NREGA and Inclusion of Disabled People’, India: Chhattisgarh Disability Network.

⁹¹ G Praveen Kumar (2006) *ibid.*

⁹² G Praveen Kumar (2006) *ibid*

The problem also lies in the attitude of the community, local panchayat and government officials, who presume that people with disability are unable to do work. The exception is Badwani block in Madhya Pradesh, where a concerted community-based movement and pressure more than 200 people with disabilities have participated in NREGA work.

Almost 20 percent of disabled persons usually find their place in among the poorest. It is therefore ironical that poverty alleviation programs including the dynamic NREGA exclude this vulnerable section of society in violation of the PWD Act 1995.

6. Other Poverty Alleviation programmes

Most poverty alleviation schemes like the Swarnjayanti Gram Swarozgar Yojana (SGSY), Indira Awaas Yojana (IAY), Swarnna Jayanti Shahari Rozgar Yojana (SJSRY) have stipulated in their guidelines or budgets that a 3 percent reservation of coverage or finances is mandatory for disabled people. However these targets are invariably not met. In 2006-7 (up to Jan 2007)⁹³, disabled people constituted only 1.07 percent of Swarozgaris and were allotted only 0.94 percent of IAY houses. While the performance of SJSRY was better in aggregate terms, it is still below the 3 percent norm and in the case of states like Arunachal Pradesh, Meghalaya and Goa according to official data is a stark 0 percent.⁹⁴

The minimal participation of disabled persons in government schemes is a result of a range of issues including lack of awareness about these poverty-alleviation schemes and their specific entitlement based on reservation. It would also be faulty to assume that disabled people through mere information alone would be in a position to come forth and claim the benefits. Societal prejudice and the physical inaccessibility of government offices serve as important barriers. To ensure inclusion, regular awareness campaigns combined with rigorous door-to-door identification of poor disabled persons is a first and necessary step.

Recommendations: For People with Disability

1. Work is the right of every adult individual, not only because it is the source of economic self-reliance but also because it leads to dignity and self-esteem. The state must accept and operationalise **the right to work** of persons with disabilities. Special employment agencies should be created for disabled people. In guiding, training and placement of the disabled for livelihoods, the key is to recognise and build upon the unique strengths of disabled persons; one may be led even to tasks which the disabled can do better than non-disabled. The hearing impaired for instance, can do all jobs except those in which speech and hearing are essential, and would be in fact at an advantage in situations of high noise level such as the aeroplane industry, and have been found to be more accurate in computer data entry work. The mentally slow may be better equipped for assembly-line simple repetitive tasks, as well as tasks requiring physical stamina. In China, under what is described as a 'special warmth' schemes, a number of 'welfare factories' have been established in which the majority of workers are disabled. Able-bodied workers undergo sensitisation workshops to develop appropriate attitudes to the disabled. Such factories are functioning at a profit, and have greatly built the morale of the disabled workers.

⁹³ Ministry of Rural Development (2007), *Annual Report 2006-07*, *ibid* Letters of the Ministry of Housing and Urban Poverty Alleviation to the office of the Chief Commissioner for Disability.

⁹⁴ *ibid*.

2. Likewise, the state must be serious about implementing its constitutional and statutory duty to **educate every disabled child**. Education may be defined as guided learning to help a child gain skills and understanding for meeting life's needs. The school is an important institution for education, but even countries which have successfully implemented programmes for universalising elementary education have often excluded the disabled. It is important for policy makers and teachers to understand that many disabled children have quick minds, and can do as well or better than other children, but only if they have certain basic facilities and support. What is more, schooling may be even more important, say, for physically disabled children than for able-bodied children in villages, because they may not be able to perform hard physical farm labour, but have a good chance for employment or community leadership through schooling.

The preference should be for the integrated and not segregated special schools, in which model all motor disabled and other mild or moderately disabled children attend regular schools. This is not only cost-effective because it utilises the existing school infrastructure, but it also enables disabled children to aspire for and achieve higher goals and helps disabled and able-bodied children to understand and work and play comfortably with one another. Even for severe disabilities, there may be a special class in a normal school, with shared eating and recreation spaces.

3. Special bus/transport services should be provided for disabled students to go to school/college. For issuing disability and income certificates, and identity cards for availing concessions, district officials may **recognise certificates** issued by notified and specific NGOs especially disability rights organisations, instead of insisting on government doctor's certification.
4. Wherever a disabled children enrolls herself into a school, ramps or other required aids should be put in place within a period of one month and the specific class/group should be made to sit at the ground floor to ensure that the child is **not excluded** from mid-day meals and supplementary nutrition programme (SNP).
5. In all the aanganwadis or school where a disabled child has been enrolled, the aanganwadi worker or one teacher from the school should be **trained within 3 months** specifically on the disability needs and rights.
6. All aanganwadis and schools must consistently show at least **5 percent attendance** of disabled children, else the CDPO and District Education Officer must be held personally responsible
7. Any education provided in an alternative setting should be of equal quality, recognition and value as the general school system. Children with disability face both direct and indirect discrimination and exclusion. They are out of school and pre-school ICDS centres mainly due to the inaccessibility of schools, attitude of teachers and workers and lack of proper support for their equal participation in education. There is a strong case, to make arrangements to provide all disabled children (both moderately and severely disabled) who are registered with the nearest schools (but do not attend regularly for any reason⁹⁵) with **mid-day meals and supplementary nutrition** in the school and ICDS centre during feeding time if the child comes from the nearest school or aanganwadi, or at home in the way of weekly dry rations, irrespective of whether they receive home-based education.

⁹⁵ Due to a variety of factors including inaccessibility and insensitivity of the classroom environment

8. The government should actively promote **organisations and self-help groups of the disabled** and their families, and work mainly with them. These should not be dominated by middle class, male and urban persons with disabilities but include rural village level groups of disabled people and their families, with equal representation to girls and women. This helps them to realise that they are not alone, promotes mutual support and assistance, and provides important resources for many community based activities. It ensures that government programmes are designed and implemented with the real needs of persons with disabilities. The slogan of disabled people worldwide must be respected, '*Nothing about us without us*'.
9. There should be a **mass education and mobilisation** programme with *jathas*, banners, posters, wall-writing, discussions in schools and colleges, use of mass media and so on on the abilities and rights of persons with disabilities. The success of the campaign would be measured firstly by the extent to which the community begins to introspect about its prejudices regarding the disabled and overcomes these prejudices, recognising both the potential and the right of the disabled to a life of dignity and self-reliance; and secondly to how much more inclusive schools, public buildings and work places become for persons who live with disability.
10. All the states governments should conduct detailed **surveys** to understand the prevalence of disability in total and also separately in different socio-economic groups. It would be useful to commence with a **detailed house-to-house survey of disability**, through youth volunteers including many disabled youth. The surveyors should be sensitised and trained in advance not only with regard to identifying and classifying disability, but also appropriate attitudes towards the disabled, otherwise they would also invisibilise the disabled like census workers. Alternatively, as was successfully tried out in Pakistan, the survey may be conducted through school children.
11. State governments should also undertake a special campaign for the **identification** of disabled persons as beneficiaries for the range of existing government schemes without any ceiling on the number of beneficiaries. All the disabled persons who qualify to be eligible should be able to avail the benefits without any ceiling on number of beneficiaries.
12. All disabled persons should be given '**entitlement cards**' with all benefits - both specific and general - clearly mentioned based on the gender, age and eligibility. The procedure for application for these benefits should also be mentioned, in two languages including the local language.
13. In all **poverty**-alleviation and feeding programmes including the ICDS, MDM, NREGA, AAY, etc state governments should gather information separately on the **coverage** of disabled persons vis-à-vis the total number of the PWD eligible for the scheme.
14. Provide **free healthcare** in government hospitals for all disabled persons without any ceiling on the extent of severity of disability or obligation to produce a disability certificate or BPL card
15. Most disabled persons require some kinds of **aids and appliances** for a fuller life, for mobility and communication. For mass and locally appropriate production, the best approach would be to develop local design of these aids and appliances using local materials and skills and to train local artisans for cottage-based or cooperative workshop manufacture. Organising training of disabled persons as artisans for this purpose would be an excellent idea, and distributing these through disabled peoples' organisations.

16. The quota of Antyodaya Anna Yojana (AAY) should be increased to provide universal coverage among all disabled-headed families or families in which there are disabled children or in which disabled adults are dependent, who are BPL or SC or ST.
17. There should be **clear directions** to issue NREGA job cards and to provide on priority work when demanded by people with disabilities. The Schedule of Works should also be modified to provide a listing of all the physically **light tasks** like carrying drinking water for labourers, looking after children in the creche who are accompanying nursing mothers, maintaining muster rolls and attendance register etc. which can be allocated for disabled persons.
18. In most families in which disabled children or adults need home based care, one adult member normally misses work in order to provide care for the disabled person. Therefore, all families with a disabled member should be allocated a minimum of **150 days** of work under NREGA.
19. All disabled children under eighteen who cannot take care at themselves should be allowed to join the **worksite crèche** for children under six. Women preferably from the families with disabled children should be deputed to look after the children in the proportion of one woman for every five disabled children and they should be provided the full applicable NREGA minimum wage.
20. Create a **centrally sponsored scheme** for disability pension scheme of a minimum of Rs 400 covering all BPL, SC and ST disabled persons with a centre-state contribution of in the ratio of 50:50.
21. Ensure that a person **entitled** to two or more **pensions receives all** of them e.g. old-age and disability pension, because such a person suffers from multiple disabilities.
22. Enforce uniform **guidelines** for the **construction** of buildings, roads and other infrastructure to make them equally accessible to the persons with disability
23. All the **pre-service training** programmes should include a component on sensitisation to the needs and rights of the disabled.

Annexure 1:

Coverage of Disabled Persons under State Disability pension schemes				
S. No.	States/UTs	No. of BPL disabled Persons*	Coverage under Disability Pension Schemes by the States**	Percentage Coverage
1	Andhra Pradesh	350527	200000	57
2	Bihar	1037431	150000	14
3	Chhattisgarh	178536	63865	36
4	Goa	2350	4257	181
5	Gujarat	253107	174642	69
6	Haryana	113988	116444	102
7	Himachal Pradesh	63721	26922	42
8	Jharkhand	246428	7980	3
9	Karnataka	311917	453331	145

RIGHT TO FOOD

10	Kerala	218900	176596	81
11	Madhya Pradesh	598906	183620	31
12	Maharashtra	578548	313911	54
13	Orissa	495960	203000	41
14	Punjab	49966	91338	183
15	Tamilnadu	575367	81137	14
16	Uttar Pradesh	1410701	400000	28
17	Uttarakhand	79563	26216	33
18	West Bengal	658702	8264	1
19	Tripura	24083	839	3
20	Chandigarh	1764	1590	90
21	NCT Delhi	34652	200	1
22	TOTAL	7285117	2684152	37

* Calculation based on Census Data 2001 and taking into consideration the BPL percentage what MoFCS is using and assuming that Disability is equally prevalent among all the sections of Society.** Estimates from Ministry

Urban Homeless

Homeless people on city streets are invisible to public policy, though they are visible daily to policy makers as they drive the same city streets. Homeless women, men and children share the cities virtually as non-citizens. Many die unmourned in the bitter winter cold, the merciless summer heat or in the deluge of the monsoons. They are forced to live and sleep each night under the open sky. Life for them is an unremitting struggle against hunger, loneliness, sickness.

The bitter winter often proves to be a messenger of death.⁹⁶ In 2002, the police found 3040 corpses of homeless people defeated by Delhi's harsh winters. 400 of these were victims of a single cold wave. The onus lies entirely with the government to build a comprehensive policy to support the city's most marginalised residents, but the governance amnesia across the nation has been acute. India is estimated to have the largest population of street children in the world.⁹⁷ Often, they escape from abusive homes and get caught in yet another world of exploitation, hunger, physical violence and sexual abuse.⁹⁸ Poor education and the bitter reality of their lives kill any hope of a better future.

'Houseless people', of all age-groups, are defined by the census as those who do not live in 'census houses' i.e. a structure with roof. Enumerators are instructed to observe possible locations where the houseless populations are likely to congregate: roadside, pavements, drainage pipes, under staircases, or in the open, temple-mandaps, platforms, welfare institutions.⁹⁹

Based on this restricted vision, in 2001, the census enumerated 1.94 million homeless people, of whom almost three-fifths live in villages and remaining 0.78 million live a precarious existence in India's cities and towns. However, these numbers are likely to be gross underestimates, because people without a home tend to be a highly invisible especially to officialdom. In Chennai city, a civil society survey in 2003 was able to list twice the official estimate of homeless people (i.e. 40,500 persons from 11,000 households) and also revealed that 83 percent of them are *dalit*.¹⁰⁰

The largest majority of homeless people sleep on pavements and sidewalks, under ledges of shops and homes, in market corridors, at bus-stands and railways stations, outside places of worship often in daily danger to their lives from rash and drunken drivers. In some cities, single women seem to prefer shrines, children bus stands and railway stations and families pavements.¹⁰¹

Street children

Some estimates indicate that the number of street children alone is 18 million with twice as many boys as girls.¹⁰² Street children belong to two kinds: children *on* the streets and children *of* the streets. This distinction is very crucial for planning relevant intervention strategies. Children of the street are more vulnerable than children on the streets, because they have no adult protection. They either have no parents or have escaped on the streets abusive, violent, alcoholic or irresponsible parents.

⁹⁶ Zaidi, Annie. (2005) 'Homeless in Delhi', *Frontline* 22(01)

⁹⁷ Lal, Neeta. (2007), 'On the streets where they live', <http://infochangeindia.org/20070701248/Children/Features/On-the-streets-where-they-live.html> (last checked by the author May 2008)

⁹⁸ Tiwari, Poornima. (2007) 'Life on Streets', *The Indian Journal of Pediatrics* 74(3): 283-286

⁹⁹ Census of India, 1991: 64. The term welfare institutions inserted by (United Nations 1999).

¹⁰⁰ (2006), Pavement dwellers federation formed, Tamil Nadu, *The Hindu*, 12 September <http://www.hindu.com/2006/09/12/stories/2006091204090600.htm>

¹⁰¹ These choices are probably linked to preferred occupational choices and considerations of safety. Harsh Mander (2007), *Living Rough - Surviving City Streets*, Report of the Homeless Study done in Delhi, Chennai, Patna and Madurai, Centre for Equity Studies

They can be mainstreamed for formal education in schools; but they have no home to go back to, only the streets. They therefore need comprehensive long term residential care for the entire duration of their childhood and youth, but in ways that are voluntary and non-custodial.

As distinct from children of the street, children on the street do retain live contact with their families in the city, who may live on the streets or in slums. However, because of extreme poverty, substance abuse or irresponsible parentage, the children are left largely to their own devices especially through the day. At an early age, they often learn to beg, at places of worship or traffic lights, or they forage in rubbish heaps not only for food but also for various materials that can be sold for recycling. As they grow older, girls are often drawn into casual street-based sex work, whereas boys may diversify from rag picking to working in garages and catering establishments.

Undefined

It is remarkable that so little is known about the lived experiences of those without a home: why do they live on the streets, how do they survive; how do they manage to sleep, where do they bathe; what do they eat; what work they do, do they access public services?

As an itinerant population, they are almost intractably difficult to identify, reach and research for many reasons. First, the homeless population is extremely heterogeneous, in terms of age group, gender, livelihoods, place of origin and reasons for living on the streets.

Often the relationship between homeless families and the state is one of extreme mutual acrimony and distrust, an unending undeclared cold war. State authorities are distrustful of homeless people as parasitical, lazy, unhygienic, illegal and largely criminal. Homeless people return the compliment by regarding the government as implacably uncaring, hostile, corrupt and neglectful.¹⁰³

Criminalised

Homelessness itself is perceived to be a crime. Homeless families are wary of both the government and the middle class, particularly because both perceive homeless people of any age and gender to be vaguely dangerous and intractably on the wrong side of the law. Homeless people are taken as illegal elements who need to be weaned out of the city. Due to the above reason police brutality and harassment is more common for homeless people.

Worse still, vagrants, mentally ill itinerants, 'illegal' squatters, pavement dwellers, are all considered 'guilty' of violating penal statutes or those whose entire enforcement is at the mercy of the police and the junior magistracy.

Across India, large numbers of homeless people are routinely rounded up by the police. This is done usually to fulfil targets of 'preventive detention' as proactive measures to maintain civic peace under Sections 109 and 151 of the Criminal Procedure Code, 1973. Homeless people then languish for long periods in the jail, because they are too poor, asset less and without legal aid or literacy, to secure bail.

Even apart from their acute need for shelter, their daily efforts of survival are hindered at every step by their absolute 'illegality' of existence. At the heart of the problem are existing laws and policies of regulating urban land, which systematically exclude the poor from building or acquiring legal shelter.

¹⁰² Lal, Neeta. (2007), 'On the streets where they live', see end note 4 for details

¹⁰³ Mander, Harsh. (2007), *Living Rough - Surviving City Streets*, Centre for Equity Studies

As a result, even all self-help efforts of the poor to live are condemned by law to the twilight zones of illegality.

Invisibilised

The processes of illegalisation and criminalisation work together. Any state would prefer to take steps towards invisibilising the powerless. Imprisonment is one of the common tools. Another is de facto denial of citizenship.

In an age of targeting as opposed to universal access, the fate of the poor increasingly hinges on possession of ‘legal’ documents. These have become indispensable not only for protecting citizenship and assets but also as instruments for the needy to rightfully avail of the services of a welfare society as enshrined in the constitution of the land.

In the case of homeless people, the very concept of citizenship is denied by the State itself in India. Two basic documents that are widely perceived as de facto proof of citizenship - ration card and voter’s card - are not available to the overwhelming majority. The reason often cited by the authorities is their unavailability of a permanent address.

Informal jobs

The majority of homeless people survive through casual, unprotected, uncertain and hard labour, through a range of occupations like daily wage work, construction labour, pulling rickshaws, carrying and pushing loads, domestic work, street vending and of course soliciting alms. A small number admit to living by professional blood donation and casual street based sex work (both male and female), although the actual numbers in these professions that are in conflict with law and routinely stigmatised, is likely to be larger.

India has an estimated six million beggars.¹⁰⁴ The Delhi School of Social Work reports that over 71 percent of Delhi’s, estimated 60,000 beggars, are driven to solicit alms by poverty.¹⁰⁵ But India’s anti-beggary laws are derived from obsolete European vagrancy laws, which hold the hapless poor criminally responsible for their situation. The Anti-Beggary laws in particular are used as weapon against homeless people. Some state laws actually assume that all who are houseless are no more than beggars. The Bombay Prevention of Begging Act, 1959 and its later avatar Delhi Prevention of Begging Act, 1960 define begging as soliciting or receiving alms in a public place and includes any one having no visible means of subsistence and, wandering about or remaining in any public place in such condition or manner, as makes it likely that the person doing so exists by soliciting or receiving alms. This amounts to criminalising destitution and homelessness and even stigmatised ailments like leprosy. This broad definition allows the police to arrest anyone who looks poor and unfairly targets those who are houseless and live in public places such as pavements or parks¹⁰⁶

Last year, more than half the people surveyed by the Centre for Equity Studies¹⁰⁷ reported that work is not available on a regular basis. In Delhi, Chennai and Patna more than three-fifths held the same

¹⁰⁴ Laurie Goering (2008), ‘India reviews wisdom of beggar haven’, World, Chicago Tribune http://www.chicagotribune.com/business/chi-beggars_goering_mar12.0.367079.story

¹⁰⁵ Rani Sudha, (2008), ‘Begging: A viable profession!’, March 12, <http://www.merineews.com/catFull.jsp?articleID=131968> (last checked by the author May 2008)

¹⁰⁶ Pushkar Raj (2004), ‘Criminalising poverty: Houseless and anti-beggary law in Delhi’, PUCL Bulletin, <http://www.pucl.org/Topics/Industries-envirn-resettlement/2004/criminalise-poverty.htm> (last checked by the author May 2008)

¹⁰⁷ Mander, Harsh. (2007), *Living Rough - Surviving City Streets*, Centre for Equity Studies

opinion. Only in Madurai, where the dominant occupation is begging, did 90 percent of homeless people report regular earnings.

Even these meagre urban livelihoods of the poor are subject to a great deal of harassment by the municipal and police authorities. Despite the Supreme Court's ruling, that their informal occupations merit protection based on their fundamental right to livelihood under the Constitution, street vendors conduct their business amidst ominous insecurity. Whenever eviction drives are conducted their wares are confiscated or even destroyed. Section 34 of the Police Act empowers the police to remove any obstructions on the streets. Even licensed street vendors can be evicted under this law.

Often the street vendors organise themselves into unions or local associations who negotiate with the local authorities for occupying public space. This invariably means offering bribes to the authorities for warding off eviction drives or forewarning them of impending drives. In some cases local musclemen, more often than not with the backing of local political leaders, collect protection fees through threats.¹⁰⁸

Delhi itself has about two lakh rickshaw pullers and more than three lakh street vendors, mostly run by first-generation rural migrants. But the city government has put a limit of 50,000 on licences to pull rickshaws. Therefore, every day about 1.5 lakh rickshaws operate illegally in the city. A vast majority of street vendors have no license either. They all operate outside the legal economy and are routinely harassed by the police and municipal authorities. The licence-permit raj remains as entrenched as ever for the poor to earn their livelihood. The formal economy is closed to them and so is formal housing. They are compelled to get their *roti* (livelihood) and *makaan* (living space) from the informal sector, in their case from the road itself.¹⁰⁹

Debt bondage

As homeless people find their income streams become increasingly insecure in the informal sector and state interventions fails to bring them in the ambit of policy spaces, homeless people are increasingly pushed into unmanageable hunger, debt, sometimes forced to take loans from private money lenders who charge exorbitantly high rates of interest. While this might ease immediate consumption needs, mainly food expenses, it creates a mountain of future problems.

In fact, there is a great amount of distrust that the moneylenders have for people without homes. If they do manage to procure loans, the interest rates vary between 10-30 percent per month, which is again very high compared to the common bank interest rates. However, they are left with little other options to access credit.

Lack of access to public services

The urban homeless people often have little and troubled access to even the most elementary public services much of which people who are privileged to live on homes take for granted. Worse still, everything that they can use has to be paid for - every visit to the toilet, every bath - must be paid for, in cash, immediately. The wider range of services, including healthcare, education and law and order, on the grounds of cost and discriminatory practices, remain a distant dream.

¹⁰⁸ Saxena, N.C. (2007), 'National Strategy for Urban Poor', Mid Term Evaluation Report of GoI – UNDP Project

¹⁰⁹ Planning Commission, Mid-term Appraisal, IX Plan, as quoted in 'National Strategy for Urban Poor' by Dr N.C. Saxena

The Centre for Equity Studies survey revealed that 45 percent of homeless respondents pay for to relieve themselves in public toilets. Drinking water, often not potable and erratic in supply, is however available free at roadside taps. In Chennai, however, women complained that they have to wait at public taps for long, until other more authorised citizens including even slum dwellers, fill their needs before homeless people get their turn.

Even the night shelters sometimes charge a fee. In Delhi, the Municipal Corporation runs 12 night shelters with a total capacity of 2,500. But the occupancy rate is minimal as each person has to pay Rs 6 for 12 hours, but the basic facilities like toilets, blankets, mats, clothing and sense of safety are rarely available or are in terrible disrepair.¹¹⁰

Homeless life can therefore be paradoxically costly! Especially in urban areas, the costs of living are higher than rural areas as all essential items including food, rent, energy, transport, water from private vendors, and sanitation from pay-as-you-use facilities have to be purchased. Poor people's capacity to meet these needs is purely dependent on having a secure to live preferably close to their work, their capacity to sell their labour for money, and their ability to draw on and use social support systems¹¹¹ – all of which are prohibitively difficult for homeless people.

Hunger on the city streets

The availability of food to urban homeless people is mixed. The quantities may (but are not always) sufficient. The quality however uniformly tends to be monotonous, elementary, often of poor nutritional value and (in the nature of their existence) unhygienic. It is indeed the search of food which has led many to the streets.

Sufficiency of the food seems far more important to the homeless than the nutritional content. Except those with families in the streets, they rarely get home cooked food. Many buy cooked food, sometimes from humble eateries on the pavements themselves. Homeless people are forced to depend extensively on external sources for their food – through purchase, foraging, or receiving food in charity.¹¹²

Many who live by soliciting alms, eat only what they get as charity and save all the cash they are given as alms to send back to their village. At times, they have to be content with only one meal, but usually they are able to manage two half meals a day. Leprosy patients in Madurai, Patna were found to depend upon stale leftovers that they are given as they beg in the day. But at night, they try to set up a makeshift stove between two bricks, and boil some hot rice.¹¹³

Street children buy their food from food stalls. On bad days, some eat at *dargahs*, *gurudwaras* or temples, and the younger ones even forage for food in rubbish heaps. The rag pickers start their day with a single cup of tea as they can spend only a little money and only after they complete their work by late afternoon do they buy their first meal of the day from the stalls. When they have enough money, they eat from relatively good places as violence of the streets makes it difficult to save money. Later they forage in the bins for bits of biscuits and samosas, and sometimes beg at temples.

¹¹⁰ Zaidi, Annie. (2005) 'Homeless in Delhi', *Frontline* 22(01)

¹¹¹ Susan Loughhead, Onkar Mittal and Geof Wood (2001), *Urban Poverty India*, DFID India, www.worldbank.org/html/fpd/urban/forum2000/papers/india.pdf (last checked by author May 2008)

¹¹² Mander, Harsh. (2007), *Living Rough - Surviving City Streets*, Centre for Equity Studies

¹¹³ *ibid.*

Unhealthy diets

Recurring bouts of irregularity in food consumption also deprives them of nutrition and poor health. Repeated infections result in low food absorption, further worsened by their substance abuse, including excessive drinking of tea in cold winters. Yet they spend the greatest part of their earnings in the daily struggle to feed themselves and their dependents.

In Chennai, homeless women set out their stoves only close to midnight after the streets are emptied of pedestrians, and they wake their sleeping children to groggily eat their only 'home'-cooked meal for the day. But during the rainy season, it is an almost impossible luxury as their fires burn under the pouring rain. Many resort to other modes of foraging their food.¹¹⁴

Nearly half of the respondents of the CES study reported that they have taken ill during that last one month due to which they could not continue their work and had to forgo their earnings. Nearly one fourth of those who experienced illness were unable to access any medication. 56 percent who were advised to be hospitalised, were unable to afford to enter one. Shockingly, hazardous drug usage is found more among the street children than adult homeless persons. In Bangalore city¹¹⁵, seven of every ten street children were found to be drug users. These habits add to their poor health.

In Patna, none of the homeless respondents store any food due to its perishable nature. Besides, fuel is something that is beyond their means. Often they cook on fires burning between bricks with dry twigs or cakes of cow dung collected with great difficulty.¹¹⁶

Myth of public help for the urban homeless¹¹⁷

Across cities, invariably 60 percent or more of the homeless people reported never receiving any form of assistance either from non-government organisations or the government. This assistance mainly consisted of provision of food or shelter during rains and a few relief measures during the tsunami in Chennai.

Some charitable organisations are focused on not serving any able bodied homeless person with free food but only the elderly, disabled and mentally disturbed. However, there is a singular lack of a long term vision for rehabilitation.

There is also a general but illusory idea that the free food provision in religious places serves the homeless people. In Madurai Meenakshi Temple preference is accorded to devotees and homeless people are served only left overs, if available. In major Gurudwaras of Delhi like Sis Ganj in Chandni Chowk, our researchers have observed that it is often college students, who eat the free food while homeless people often are not allowed to enter the premises, which is a grave distortion of the religious teachings on which the practice is based.¹¹⁸

¹¹⁴ *ibid*

¹¹⁵ Benegal, Vivek., Kul Bhushan, Shekhar Seshadri and Mani Karott (1998), Drug Abuse Among Street Children in Bangalore, www.nimhans.kar.nic.in/deaddiction/lit/Drug%20Abuse%20_Street%20Children_Bangalore.pdf. (last checked by author May 2008). Monograph funded by CRY. It is a project in collaboration between the National Institute of Mental Health and Neurosciences, Bangalore and the Bangalore Forum for Street and Working Children.

¹¹⁶ Mander, Harsh. (2007), *Living Rough - Surviving City Streets*, Centre for Equity Studies

¹¹⁷ Most of the observations in this session draw from Mander, Harsh. (2007), *Living Rough - Surviving City Streets*, Centre for Equity Studies

¹¹⁸ Based on the personal conversation with the Madurai Meenakshi temple authorities and personal observations in Delhi Gurudwaras

Schemed out

Food and livelihood schemes of government often fail to reach poor men and women, boys and girls who live in urban slums and shanties, because they most frequently face a hostile administration who believes they should not live in the city, and wishes only to break their makeshift homes and drive them out. But those who are most comprehensively excluded are those who are forced to make the pavements and railway platforms their home - because they need to save every rupee to keep alive family in their villages, or because they are brutalised and abandoned by those who should have cared most are also those who are most comprehensively barred from every government initiative.

1. Integrated Child Development Services (ICDS) and Mid-day Meals

In any Indian city, one would invariably come across homeless children playing on the streets and dirty by-lanes, who never go to schools or aanganwadis. This stark exclusion of homeless children in the two major food schemes of India is very visible across cities. Either the schools or aanganwadis do not exist at a convenient location, or what is much more the case, the homeless are routinely turned away, for want of a permanent address and also because of stigma.

Chennai seems to be the interesting exception. Homeless children have been found sometimes to be allowed to join government schools, on the basis of their living in the same pavement for generations. But mothers reveal that most of the children go to school but on an irregular basis.¹¹⁹

As for those street children who live away from their families, there arises no question of admission without familial or external support. In Delhi, even children of rag-pickers, construction workers and migrant labourers were found to be left out from the ICDS.¹²⁰ Irregularities and the inconsistencies with the aanganwadis that are function in urban areas is a different issue altogether.

2. Public Distribution System (PDS)

Not having any proof of identification and address proof means not being able to claim BPL or Antyodaya cards and the other food schemes, which in practice depend on this. The other menace that homeless people face is the perpetual threat of being forcibly displaced or dislocated from their place of stay.

Only one-fifth of the respondents of the CES study possess ration cards and the rest either have never been issued one, or have it in their village address which cannot be used once they migrate. Others have lost them in their transition from the native houses to the homeless life. Some lose it of they lived in slums earlier and these were demolished without notice.

Of course, mere possession of a ration card does not assure them any food security. There are often discriminated against them in the PDS outlets. Even if majority of adults without a home are aware of ration card and voters id, due to their powerlessness they would be able to rarely access it.

Due to the recent civil society efforts, some state governments have considered the need of homeless people for having a ration card.¹²¹ In Chennai in early 2007 many homeless persons had been issued with a ration card recently but had yet to start availing the benefits. Other were denied the cards as they claimed

¹¹⁹ Mander, Harsh. (2007), *Living Rough - Surviving City Streets*, Centre for Equity Studies

¹²⁰ (2007), ICDS in Delhi: A Reality Check, Delhi FORCES (Neenv), <http://www.righttofoodindia.org/> (last checked by the author May 2008)

¹²¹ In Chennai, in 2006 the Engal Chennai Pavement Dwellers Federation was founded.

“We are also denied ration cards as the officials fear that we may claim for houses and televisions¹²² by showing the BPL cards”.

3. Other Welfare Programmes

Other social assistance programmes such as old age pensions, NFBS (death insurance) and NMBS (maternity benefit) are simply out of the reach of urban poor, either due to their contested citizenship because of no permanent address, or due to the lack of political will and administrative rigour in delivering the benefits to the homeless.

Rashmi Singh¹²³, Joint Director, Social Welfare Department, in a recent consultation in Delhi¹²⁴, emphasised the need for the convergence in the social sector programmes to reach the urban poor, as there was lack of clarity in the official mandate which was unable to fix the responsibility of service delivery with any particular department.

Recommendations

The homeless have a seamless continuum with those who are precariously housed under a plastic sheet, often on pavements or construction sites, and those who live in illegalised and insecure slum shanties. Therefore recommendations have been listed together for all these segments of the city’s poorest, and the end of the subsequent chapter on slum dwellers.

¹²² Interestingly, provision of colour televisions to the poor is something promised by the present ruling party in its last election campaign.

¹²³ Joint Director, Social Welfare Department, Government of Delhi (2008)

¹²⁴ Workshop held at Indian Institute of Planning and Management (IIPM), Delhi on Jan 23, 2008

URBAN SLUM DWELLERS

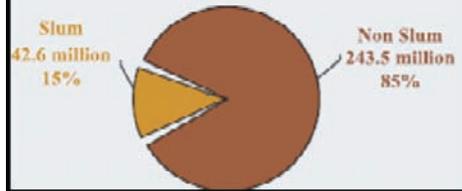
The term ‘slum’ is used in a loose sense to designate such settlements of the urban poor, that are overcrowded, dilapidated, faultily laid out and generally lacking in essential civic services. NSSO defined ‘slum’¹²⁵ as ‘a compact area with a collection of poorly built tenements, mostly of temporary nature, crowded together usually with inadequate sanitary and drinking water facilities in unhygienic conditions’. UN HABITAT¹²⁶ has officially defined as, “a heavily populated urban area characterised by substandard housing and squalor.....and lacking in tenure security.....usually inhabited by the very poor or socially disadvantaged. Most slums lack clean water, electricity, sanitation and other basic services”.

In 2001 census enumerators estimated that 42 million people live in slums, in 640 cities and towns spread across the country. They constituted 4 percent of the total population and a seventh of the total urban population and almost a quarter of the population in the 640 cities and towns which officially report the existence of slums. However, even this is likely to be a gross under-estimate, due to definitional problems, and problems of dealing with the transience of marginal populations, forced on to the wrong side of the law. Many slums are not recognised by the state, as it can then refuse to provide it any amenities. Independent studies have established that any thing between a quarter or one-third of the population in most cities and towns lives in slums or are precariously housed or houseless, and that at least half the population in slums are below the official poverty line.

India is home to two-thirds of all slum dwellers in South Asia¹²⁷. The distorted world map indicates that 17 percent of the world’s slum dwellers reside in India (represented by the orange bulge). These 170 million urban dwellers with legally insecure housing and poor conditions are spread across 640 cities and towns in India and constitute 32 percent of the urban population.¹²⁸ Today, there are about 52,000 slums in India, but only half are ‘legal’ or slums which are authorised and recognised by governments.

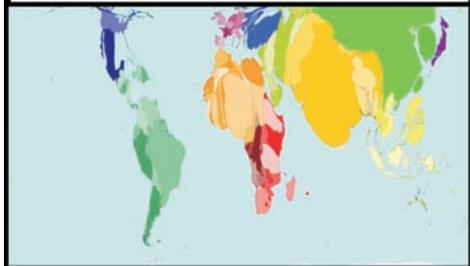
Most urban poor people are believed to be migrants from villages i.e. as temporary visitors to cities. Therefore, governments and city dwellers themselves regard them as a corrupting influence, disregarding their contribution to the city economy and its development. Rural and urban poverty

Figure 3: Slum and Non -Slum population in urban India (millions)



Source: Slum population report, Census 2001

Figure 2: This distorted world map in proportion to the number of slum dwellers indicates that two-thirds live in South Asia



Source: worldmapper.org

¹²⁵ For the purpose of its 49th Round Survey ‘Slums in India’

¹²⁶ Many slum definitions also require some minimum settlement size for an area to be considered a slum, so that the slum constitutes a distinct precinct and is not a single dwelling. For example, the Indian census definition requires at least 300 people or 60 households living in a settlement cluster. The Challenge Of Slums, Global report on human settlements, 2003, UNHABITAT

¹²⁷ UN- HABITAT(2000), The Challenge of Slums: Global Report on Human Settlements, UN

¹²⁸ Census 2001, Slum Population report, Government of India

are inextricably inter-linked and urban poverty is not merely a spill-over of rural poverty. They must therefore be seen together and addressed simultaneously as two aspects of a single problem and at the same time as autonomous problems that need to be addressed in distinct ways.¹²⁹

A profile

Interestingly, the male population in slums is far more predominant on an average. The sex ratio is skewed in favour of men. For every 1000 men there are only 876 women, which is lower the proportion in the general urban population. The only exception is in states with matriarchal communities like Meghalaya, Pondicherry and Kerala.

But the sex ratio in slums is lower than non-slum urban population in 9 states and union territories, while in the remaining 17 states/union territories the sex ratio of slum population is higher than the non-slum urban areas of the respective states. Contrary to the expectation that migration to slum areas would be of males initially and is followed by their families which would give a lower sex ratio in slum areas, the higher sex ratio in slums for many states is suggestive of the migration to slums more often of the complete families.

More than 6 million children i.e. 16 percent of the total child population live in slums. In other words, every sixth urban child in the country who is less than six years is a slum dweller.

In another contrast, while 81 percent for male slum dwellers are literate, only 64 percent of women have been imparted the same skills. The 16 percentage point differential in literacy levels is large and the male-female gap among slum dwellers is highest in Rajasthan at 26 percent. Across cities and towns, the literacy level among the slum dwellers is lower than the general population.¹³⁰

Surrounding insecurities

*Livelihoods of slum residents are typically unorganised, insecure and the wages irregular, uncertain and nominal. Many a times, their occupations are even illegalised.*¹³¹ For children in slums who are forced to work, conditions are particularly precarious.

Despite all their toil, the sense of social security is minimal. Slum dwellers constantly live with the fear of losing their homes (where they have often invested their life savings) and their possessions due to demolitions. Many settlements have been demolished repeatedly. Though many of these people have proper legal documentation (ration cards, voter ID cards) to prove their domicile, there is often no justice. Often the residents are not even provided advance notice, which is mandatory, to at least recover their valuables. After all, demolitions are perfect opportunities for money to pass hands between the police, criminal gangs and corporations and for grabbing of prime urban real estate.

Slums are the direct outcome of the failure of state policy and law to intervene effectively to ensure legal access of the urban poor to land and financial resources, which would be necessary to enable them to construct for themselves legal and adequate shelter.

¹²⁹ Saxena, N.C. (2007), 'National Strategy for Urban Poor', Mid Term Evaluation Report of GoI – UNDP Project

¹³⁰ Meghalaya is the only exception.

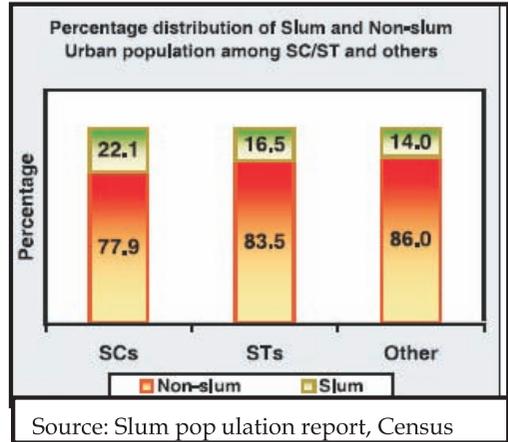
¹³¹ http://www.commoncauseindia.org/amended_memorandum.htm

Despite stated commitment in official documents to ensuring access of housing to the poor, we shall see that actual investments in this regard have been niggardly and misdirected. Law as well as administrative and judicial prejudices aggravate this. In effect, these have not only consistently blocked the access of the urban poor to shelter, but have actually rendered illegal and criminalised the spirited, sometimes valiant, endeavours of the poor to survive, not with the help of but despite the state.¹³²

Exclusion path

Often the urban poor, residing in slums, are worse off than their rural counterparts. They face issues of legitimacy, insecure tenure rights, are cut off from their community and are thrown into anonymity and formality of urban life. They have to pay for every civic amenity like, toilets and water.

Urban slums are characterised by unhygienic and unsanitary conditions, high levels of environmental pollution. The poor repeatedly confront the police and civic authorities, face exploitation because of their low literacy and are highly dependent on the government to provide legal housing, livelihoods, health care etc.



India's slum population has double since the eighties¹³³ as rising urbanisation has not been coupled with rise in infrastructure facilities. But governments have sought to reduce the visibility of mushrooming slums by pushing them to periphery and refusing to notify or legalise them. Further, slum dwellers face constant neglect from the administration and are forced to live in terrible squalor. Given the commercial value of every square inch of urban space, every attempt is made to push slums to periphery, deny them any access to sanitation facilities, credit, legality and often even citizenship.

One-fifth of the slum dwellers belong to either the scheduled caste i.e. *dalits* (17 percent) or scheduled tribe (2 percent). The *dalit* population is far higher in the slums than in non slum areas (11 percent). In fact, of the total *dalits* in urban areas, 22 percent live in the slums. Similarly, 17 percent of scheduled tribes find themselves in the same situation compared to only 14 percent of the general population.

Food insecurity and issues of malnutrition

In the city, the poor are necessarily immersed in a cash economy and informal employment. Their incomes are often erratic and meagre. The purchase of basic food is therefore often threatened by employment and income crises.

Slum dwellers not only suffer from lack of nutrition but since they are able to buy only in small quantities, they also spend more. In urban areas, the higher prevalence of stunting implies that malnourishment is not as much a function of lack of access to food; but is primarily because of lack of access to infrastructural and institutional factors like health care, clean drinking water, mother's nutrition.

¹³² Mander, Harsh. (2004) *The Ripped Chest*, Bangalore: Books for Change

¹³³ http://www.infochangeindia.org/UrbanIndiaItop.jsp?section_idv=24

Absorption or assimilation of food by the slum people constitutes the major barrier as it makes them food insecure. They largely live in unsanitary conditions, amidst high levels of pollution, with limited access to clean drinking water and sanitation facilities. Within a city, per capita availability of water varies ten times between rich and poor areas.¹³⁴ Lack of public health facilities is also pitiable in most slum areas.

More than half of the children under six years were found to be malnourished in the slums in Rohtak town in Haryana.¹³⁵ But the situation is even worse across the country. 70 percent of slum children are malnourished compared to the national average of 46 percent. Due to low calorie intake, children suffer the most as they need a proportionately higher intake for their growth and development.

Long term food security is dependent on livelihood security. However, most slum dwellers continue to work in the informal sector, with harsh work conditions and payment much below minimum wages.¹³⁶

State and the schemes

1. Public Distribution System: Low coverage, lower consumption

At the turn of this century, the average cereal consumption of the poorest decile in cities was 9.55 kg/month¹³⁷ and less than 1 kg of this was obtained through the PDS. More recently, the 'National Sample Survey Organisation (NSSO) 61st round report'¹³⁸ indicates startling facts:

- Since the launch of Targeted PDS in the late nineties¹³⁹, BPL card holders in urban India have risen only by 10.5 percent
- Among the poorest decile, only 29 percent hold BPL cards (as against 41 percent in rural areas)
- PDS rice is consumed by only 5 percent of urban households in West Bengal, 2 percent in Assam and 0.7 percent in Bihar, even though rice is the major cereal food
- Only 9.5 percent of the urban poor have benefited from any government food assistance scheme

People's tribunals in Mumbai and Delhi found that unlike for rural areas, there are no systematic BPL surveys. People apply for BPL ration cards, and food department officials estimate people's income, processes testified to be corrupt and arbitrary. Almost every state has faltered on conducting regular urban BPL surveys, while it has been done regularly for rural areas. Regular surveys are necessary to eliminate the bogus cards¹⁴⁰, renewal of old cards and sanction of new cards to overcome exclusion errors and also ensure that the food grains meant for the poor actually reach them.

¹³⁴ NFHS – 3

¹³⁵ On 540 children aged 1-6 years and the relation of under-nutrition with age, sex, birth order, and type of family, literacy, and calorie intake were studied and analysed. 57.4% (310) of the children were undernourished and less than 16% of the undernourished children were consuming not more than 90% of the recommended calorie intake and intake of calories decreases significantly as the nutrition status of the children deteriorates.

¹³⁶ Rukmani R. (2002), Urban food security – Small town cry for attention, The Hindu, November 23, 2002

¹³⁷ Swaminathan M.S. (2002), The Food Security Atlas of Urban India, M.S. Swaminathan research foundation and World Food Programme, Chennai

¹³⁸ NSS Report (2004-05) No. 510: Public Distribution System and Other Sources Of Household Consumption, Government of India

¹³⁹ Before 1996, PDS was universal, in that every household regardless of income was free to access it. The Targeted PDS (TPDS) controversially restricted access only to families designated to be BPL by governments.

A pilot study from Cuttack¹⁴¹, Orissa, estimates that as many as 78 percent households in the surveyed slums of the city have no ration cards. From amongst those who do have cards, only about 15 percent have Antyodaya cards (although 40 percent of all BPL persons are deemed eligible officially for Antyodaya cards. Not only the quality of food grains was rated as bad, the quantity was insufficient and most families had to buy rice also from the local market. The shops usually open only for 2-3 days or even if it opens regularly, they are allowed to collect their ration during certain days of a month. From amongst families without ration cards, about 42 percent of them have not even applied for cards. The most commonly encountered reason is lack of awareness of procedures and documents to be submitted. Next is because the process is cumbersome and results uncertain. From amongst those who have applied, most cite the elected councillors' and government officials' negligence for rejection. About 31 percent are not sure why their application has been rejected, whereas, 12 percent were refused ration cards for lack of documents.

For migrants, accessing the PDS has become increasingly difficult. Those who move from other states generally do not have ration cards. This restricts their ability to economise by purchasing food at lower cost from PDS. A study in Bhuj town¹⁴² revealed that only 22 percent of migrants were able to purchase food from the PDS largely due to difficulties in the application process, eligibility requirements and distance.

2. Aanganwadis (ICDS)

Swati Narayan, Zakir Nagar, Delhi, 2008

Every sixth urban child in India who is less than six years is a slum dweller. Nevertheless, although government claims that a little more than one-third of the urban poor are covered by the existing 360 ICDS projects,¹⁴³ the coverage of the poor in slums and on the streets is probably even far less. Only 10 percent of the aanganwadis are located in urban areas. The National Advisory Council in 2004 recommended that 2970 additional ICDS centres need to be operationalised in urban India to ensure universal coverage. All of these need to cater to the poor in slums.

As many as 40 percent of slums are routinely excluded from ICDS coverage as they are construction is 'illegal' or 'unauthorised'. Further, BPL lists used to identify ICDS beneficiaries may exclude the 'hidden' construction site workers, pavement dwellers and other homeless populations. This is despite the Supreme Court order¹⁴⁴ to ensure the coverage of all children below six years, all pregnant and lactating mothers and adolescent girls in all urban slums with all nutritional and health services of the ICDS in a phased manner latest by December 2008.

¹⁴⁰ CVC recommendations, as cited in Seventh Report (2007), Commissioners of the Supreme court in the case: PUCI v. UOI & Ors. Writ Petition (Civil) No. 196 of 2001

¹⁴¹ Manikandan (2008) Centre for Equity studies, Cuttack Pilot Study Report, Orissa

¹⁴² Emergency food security network and FAO, *City level assessment and consultation on food and nutrition security in seven slum areas in Bhuj, India*.

¹⁴³ As per official data from Dept. of Women and Child Development (2005), Govt. of India, there were 360 urban ICDS projects catering to about 90 million urban poor.

¹⁴⁴ Supreme court Commissioners, (2007) seventh report: 28.11.2001 interim order: 'We direct the State Governments/Union Territories to implement the Integrated Child Development Scheme (ICDS) in full and to ensure that every ICDS disbursing centre in the country shall provide as under: (a) Each child up to 6 years of age to get 300 calories and 8-10 grams of protein; (b) Each adolescent girl to get 500 calories and 20-25 grams of protein; (c) Each pregnant woman and each nursing mother to get 500 calories & 20-25 grams of protein; (d) Each malnourished child to get 600 calories and 16-20 grams of protein; (e) Have a disbursement centre in every settlement.' 29.04.2004 interim order: 'We ... direct that the sanctioned AWCs shall supply nutritious food/supplement to the children, adolescent girls and to pregnant and lactating women under the scheme for 300 days in a year'

Of the existing ICDS centre in urban areas, only 40 percent have adequate separate cooking space. Cooking utensils were also available in only 49 percent of aanganwadis¹⁴⁵.

In Madanpur Khadar slum pocket of Delhi city, Mobilie Crèches¹⁴⁶ ascribes high frequency of diarrhoea and other illness among children to lack of child care facilities and supplementary feeding. Dehydration due to diarrhoea and acute respiratory tract infections are the largest reason for mortality and malnutrition for children under six. Only 53 aanganwadis of the 67 allotted are functional in Madanpur Khadar. In Dakshinpuri, “the aanganwadi is merely a distribution centre for some food like biscuits, bread. Even this has not been available for many months. Aanganwadi workers have not received either rent or salary for about a year”. The aanganwadis in slum areas are clearly crying for attention.

As another disturbing example, in Cuttack city¹⁴⁷ though most of the Aanganwadis open everyday, the supply of food grains to aanganwadis is irregular and it takes a fortnight to replenish the stock. As a natural consequence no supplementary nutrition (either cooked meal or raw material) could be provided and the attendance of children falls very low in these no-food days.

3. Mid-Day Meal: Contractor’s quality

In many urban areas, mid-day meals are contracted out to either NGOs (many with religious identities) or contractors who use centralised kitchens to prepare in bulk and supply to several schools. There have been a few media reports that this food is served stale and the quantities are inadequate or excessively wasteful. On the other hand, in urban areas due to lack of space, it has also been argued that, it makes sense to have centralised kitchens.

The Comptroller and Auditor General’s (CAG) 2006 report, however, has indicated that a large proportion of the children in the urban areas of Arunachal Pradesh (87 percent), Chandigarh (95 percent), Mizoram (84 percent) and Punjab (88 percent) do not receive mid-day meals. There is also the possibility of false reporting by schools and diversion of funds allotted.

Low financial allocations are a major problem as suppliers get only Rs 2 per child. There are also delays in reimbursement for upto 3 months. Foodgrains provided by the government are also erratic, insufficient and of very poor quality. Nutrition Federation of India¹⁴⁸ found that the minimum goal of 300 calories and 8-12 gms of protein was rarely met.

Further, the dominance of the suppliers is so entrenched that in none of the 60 households visited across Delhi was any parent involved in cooking or distributing the meal (as part of a SHG or an NGO). Neither did were they involved in monitoring the mid-day meal (by tasting it at the school) or in giving the authorities feedback on the content, quality or quantity of the food. Dalits, scheduled castes (SCs) and scheduled tribes (STs) are also not given preference in appointment as cooks and helpers. But fortunately there have been no reports of segregated distribution of food as in some rural areas.

4. Swarna Jayanti Shahari Rozgar Yojana (SJSRY)¹⁴⁹

This centrally sponsored scheme was launched afresh in 1997 in lieu of the erstwhile urban poverty alleviation programmes. Its two main components are Urban Self Employment Programme (USEP), and Urban Wage Employment Programme (UWEP).

¹⁴⁵ NIPCCD, ICDS evaluation, Ministry of women and child development, Government of India

¹⁴⁶ Mobile Creches (2004) Early Child Care Practices, New Delhi

¹⁴⁷ Manikandan (2008) Centre for Equity studies, Cuttack Pilot Study Report, Orissa

¹⁴⁸ 2003, cited in De Anuradha, Claire Noronha and Samson Meera, (2005), *ibid*

¹⁴⁹ Saxena, N.C. (2007), ‘National Strategy for Urban Poor’, Mid Term Evaluation Report of GoI – UNDP Project

However, it is questionable to which extent these wage schemes are of real help to the urban slum dwellers (and even less the homeless). As for the self-employment component, many small entrepreneurs face genuine problems, such as lack of markets and infrastructure which is not addressed by SJSRY. It is based on the simplistic assumption subsidised credit alone will help in creating new entrepreneurs and augmenting incomes. However the high cost of appraising, monitoring and enforcing small loan agreements deters the banks from extending credit and therefore the overall coverage of the scheme is still limited. It is also inconceivable that traditional banks, with their emphasis on collateral and credit-worthiness, would provide loans to homeless people irrespective of their entitlement under the scheme.

Recommendations for urban slum dwellers and urban homeless

Urban governance in India and most parts of the world is not geared to identify and deliver social services to the urban poor, especially to the most vulnerable segments of society, in slums and on the streets. We therefore need to rise to the challenge.

1. Identifying the most vulnerable urban poor

The first challenge is to find a mode of identifying the urban poor and vulnerable people using the existing administrative machinery, with least dangers of corruption. This is possible if discretion is reduced, and the criteria are clear and verifiable.

Directly asking people's incomes is not a reliable and verifiable criterion. And asking people only to certify income without any objective criteria is bound to be misused, and the poorest will be left out.

The way forward: It is possible to identify the most vulnerable segments of urban populations by identifying them along objective and verifiable criteria of vulnerability and denial of rights. These are:

Place of residence and access to public services: (Shelter-less, unauthorised slum dwellers, authorised slum dwellers (both owners of the shanties who actually live in these and those who live on rent to owners or slum lords) and residents of resettlement colonies {only direct allottees of houses in resettlement colonies and not second or third purchasers})

Social Vulnerability: Children without protection and child headed households, single women and single women headed households, disabled people and family with PWD, old people without care givers, people in destitution,.

Occupational Categories: Rag pickers, casual daily wage workers, rickshaw pullers, porters, construction workers, street vendors, domestic help etc.

Affirmative Action Categories: Scheduled Castes/ Scheduled Tribes, Muslims.

Income Factor

It is important to note that these criteria do not address household income directly, because it is very difficult to assess and verify. But these are in the nature of reliable proxy indicators of income.

Household income is indirectly addressed by the occupational categories, because these characteristically have low and uncertain incomes. Also that this does not necessarily claim to be a *measure* of urban poverty, but of providing an instrument to identify the most vulnerable segments

of urban populations, so that government can better target these programmes to those who are genuinely most in need.

Higher income in itself does not mean better food, shelter, health and a better life. In the absence of public services, with high social vulnerability and in unprotected and unorganised occupations, the same income can amount to very little of nutrition, health and well-being.

Operationalising this identification process

Residence in authorised and unauthorised slums, and resettlement colonies { only direct allottees of houses in resettlement colonies and not second or third purchasers } would prima facie make you eligible for BPL or AAY, subject to further criteria as below:

For these residents, they will be considered BPL if they are also in the unorganised sector: such as rag pickers, casual daily wage workers, rickshaw pullers, porters, construction workers, street vendors, domestic help etc.

For these residents, they will be considered AAY if they belong to these socially vulnerable categories: Children without protection and child headed households, single women and single women headed households, disabled people and family with PWD, old people without care givers, destitute people.

All homeless people will be eligible for BPL with no other qualifying criteria. Homeless people will be included for AAY, if they are also in the unorganised sector: such as rag pickers, casual daily wage workers, rickshaw pullers, porters, construction workers, street vendors, domestic help etc.; and if they belong to these socially vulnerable categories: Children without protection and child headed households, single women and single women headed households, disabled people and family with PWD, old people without care givers, destitute people.

Conduct detailed surveys of urban slums with community participation, both authorised and unauthorised, and homeless populations to identify and officially legitimise their existence through provision of voter ID and ration cards and to make them aware of their rights and entitlements. The residential address can be the nearest building to where they reside, stating that they live on the pavement near it, or care of the nearest PDS shop.

2. Rationalisation of Schemes for the most vulnerable segments

i) **The Groups to be Served:** The existing range of food and livelihood schemes and programmes for the various departments need to be reviewed and only those retained which are most suited to the problems and needs of the most vulnerable segments of urban populations.

We should not take the schemes as given, and then try to adapt them into needs that they may not fulfil. Most schemes are inappropriate as they are designed with the rural poor in mind.

Let us first identify which groups we wish to serve. It must be those identified as most vulnerable:

- Shelterless, especially street children and single women
- Slum residents and residents of resettlement colonies { only direct allottees of houses in resettlement colonies and not second or third purchasers })

- Children without protection and child headed households, single women and single women headed households, disabled people and family with PWD, old people without care givers, destitute
- Unorganised workers especially in unclean, unsafe and hazardous occupations

Based on their need identifications, appropriate schemes can be identified and converged. To take one illustration, the Sarva Shiksha Ashiyan (a programme to bring every child to schools) and the Women and Child Department's night shelter programmes for hostels for street kids could be converged to meet the needs of these children for comprehensive long term care in open voluntary residential homes.

For those marginalised groups whose needs are unmet, there can be additional programmes.

- ii) **Adopt a single-window approach** to make all applicable social security schemes available for urban homeless people from a centralised location e.g. the municipal office, or the office of the district collector.

iii) **Distribute food and pensions**

- a) Identify the urban poor based on the process indicated above
- b) Provide AAY and BPL ration cards and pensions to *all* households who qualify by this identification process.
- c) Ensure that there is sufficient expansion of food and financial quotas to ensure universal coverage of all segments of the urban poor and vulnerable.
- d) Ensure that ration shops are open on all designated days throughout the month in urban slums
- e) Migrants should be allowed to use their ration cards across the country..

iv) **Cooked food**

- a) Establish community kitchens across cities and urban settlements to provide inexpensive, subsidised nutritious cooked meals, which are managed by community groups of homeless people, preferably women, and will provide employment as cooks to homeless people themselves
- b) Fulfil the Supreme Court order to ensure that aanganwadis cover all urban slum and street habitations, both authorised and unauthorised
- c) All old people from the neighbourhood slum area should be permitted to share in the school mid-day meal of hot cooked meal in ICDS centres without any conditions, as practiced in the state of Tamil Nadu
- d) Ensure the non-profit credentials of all centralised kitchens for mid- day meals and that they are not run by contractors based on the Supreme Court Order
- e) Ensure that all children receive hot cooked mid-day meals in sufficient quantity and of good quality
- f) Ensure that the cost of mid-day meals provided by the government is greater for urban areas (with a higher cost of living) and pegged to inflation (especially given the rising food costs)
- g) In an unauthorised slum, if there is no space for an aanganwadi, a pre-fabricated structure could be build to function as aanganwadi centre. In theory, if the slum is shifted, the building of the centre should be able to move with it.

- h) Create an ICDS aanganwadi in slum areas for every 1000 population
- i) Children of migrants should be permitted to receive the services of any ICDS centre with no requirement of any documentation. The mere presence of a child of the required age group should qualify her for ICDS services.
- j) Ensure that school authorities admit street children and those from homeless families without asking for any identity or address proof to ensure that they are not excluded from mid-day meals

v) Residential care of children most in need

- a) For children of rural seasonal migrants, the village school should be converted into a community based temporary residential school, to enable the child to access food and education, without having to migrate every year with their guardians. The aged of the village who are often left behind in destitute conditions, may take care of the children in return for sharing the food in the community based hostels.
- b) For children who still migrate, it should be the duty of the education department of the host state to provide education in local language at work sites, and permit the child to access mid day meals at the nearest government school.
- c) For children who live and work on the streets, the only way to secure their right to food (and with this their rights to education, health and protection) is to provide them alternatives to move decisively away from the streets and any kind of work. This is possible only through guarantees of comprehensive long term care in open voluntary residential homes. Every city would need a large network of such schools. As stated already, this could be done by converging the Sarva Shiksha Abhiyan (a programme to bring every child to schools) and the Women and Child Department's night shelter programmes for hostels for street kids, and greatly enhancing allocations.

‘Primitive’ Tribal Groups

Constituting about eight percent of the total population of India, the tribal people are among the most vulnerable groups in the country. Not only do they share with other disadvantaged groups the common travails of economic deprivation, they are also faced perennially with grave threats to their cultural integrity and socio-political freedoms, and their access and control over their natural environment and resources in ways that imperil critically their sustainable existence.

Due to faulty processes of declaration of forest lands in the past, the rights of the tribals over their traditional land holdings have gradually been extinguished. Insecurity of tenure and fear of eviction have led the tribal communities to feel emotionally as well as physically alienated from forests and forest lands. The condition of the tribals living in and around forests is becoming increasingly precarious and vulnerable due to displacement threats due to forest conservation initiatives etc.

The 2001 Census enumerated the total population of the country as 1027 million, out of which the population of Scheduled Tribes was 84.3 million, constituting 8.2% of the total population. The population of tribes had grown at the growth rate of 24.45% during the period 1991-2001. [Government of India 2005-06:39] India is by this count, home to more tribal people than any country in the world, exceeded only by the continent of Africa taken as a whole.

It has been observed that not all of these communities are at the same level of development. In fact, there are certain communities which are at a much lower level of development even compared to other Scheduled Tribe communities. In the matter of devolution of funds for the development of Scheduled Tribes, the major share was taken by those communities who are more assertive and in a better position to demand their rights. As a consequence, the marginalised Scheduled Tribes have been systematically left out of the process of development.

Officially ‘primitive’

In order to ensure the development of these communities, certain groups were identified, for the first time in 1975-76 and thereafter in 1993, which are regarded as the poorest of poor amongst the STs and were called Primitive Tribal Groups (PTGs). The criteria fixed for their identification was the presence of pre-agricultural level of technology; very low level of literacy; and declining or stagnant population. Seventy-five tribal communities were identified as PTGs spread over 17 States and one Union Territory (Annexure a). State Governments submit proposals for identification of PTGs in accordance with the prescribed criteria and their proposals are examined by the Ministry for Tribal Affairs in consultation with Planning Commission.

In fact even the usage of the word ‘primitive’ by the Government to define the most vulnerable tribal groups is highly debatable. The National Tribal Policy¹⁵⁰ proposes to use the alternative term Particularly Vulnerable Tribal Groups (PVTGs) instead of ‘Primitive’ Tribal Groups. However this report retains the word ‘Primitive’ but uses it in inverted commas to mark our disagreement with that usage.

¹⁵⁰ “The National Tribal Policy (A Policy for the Scheduled Tribes of India - Draft)” (2006), Ministry of Tribal Affairs, Government of India

The population of PTGs has increased marginally from 2.04 million in 1981 to 2.4 million in 1991.¹⁵¹ The PTGs have been systematically identified since 1975-76 to 1993-94. No additional PTGs have been included based on the 1991 census.

In its twenty eighth report, the Standing Committee on Labour and Welfare (2002)¹⁵², notes down that the Ministry of Tribal Affairs, Government of India has requested the States and Union Territories with PTG population to undertake a baseline survey. Accordingly, a set of questionnaires and schedules have been circulated to collect information on population, literacy etc. along with other required information on the socio-economic status of each group so that plans and programmes can be formulated for their overall development. The results of this exercise are yet to be fully disclosed till date.

Continuous negligence

Historically independent and relatively self-sufficient societies have succumbed to a variety of pressures, both external and internal, leading to a state of intense deprivation. Primitive Tribal Groups are characterised by low literacy rates, stagnant populations, lack of basic amenities, and virtually no viable economic options. The situation of children and women is particularly vulnerable since they are the last to gain access to basic services and decision-makers.

Figure 1: Population below poverty line in India and ST		
	India	STs
Rural Areas	27.1	45.9
Urban areas	23.6	34.8
Source: National Sample Survey Organisation 1999-2000		

Scheduled Tribes are far more likely to be poor than the average Indian (Figure 1).

The poverty ratios for ‘Primitive’ Tribal Groups are not available separately; but it is certainly even worse than that of Schedule Tribes as a whole. This report will illustratively focus on the conditions of three of these acutely marginalised ‘primitive’ groups: Pahadi Korwas of Chhattisgarh, Saharias of Madhya Pradesh and Chenchus of Andhra Pradesh.

‘Saharias’ of central India are a major ‘Primitive’ Tribal Group who traverse difficult terrains in attempting to strike a balance between forests, across states and between mainstream and community life.

93 percent of Saharia children are malnourished, with 15 percent of the children being found to be ‘severely malnourished’.¹⁵³ The percentage of children underweight, ‘wasted’ or ‘stunted’ are above 70 percent. With such high rates of malnutrition among children, one cannot expect to see healthy adults. Anaemia is found in close to 87 percent of adults with over half of them suffering from ‘mild to severe anaemia’. These figures are among the worst in the world.¹⁵⁴ An unpublished survey

¹⁵¹ 1981 and 1991 census figures respectively. The Ministry (Tribal Affairs) has indicated that it is yet to obtain the figures of 2001 Census from Registrar General of India.

¹⁵² Development of Primitive Tribal Groups, Twenty Eighth report, Standing Committee on Labour and Welfare (2002), Ministry of Tribal Affairs, New Delhi.

¹⁵³ Jain, Sachin. (2005) ‘Malnutrition Disaster in Madhya Pradesh’, www.righttofoodindia.org/data/mp-malnutrition-samvad.doc (last checked by author May 2008)

¹⁵⁴ Sen, Shonali. and S.Vivek (2003) ‘Sheopur Report: Functioning of food and food-related schemes in Sheopur District, MP’, <http://www.righttofoodindia.org/data/sheopur.pdf>. (last checked by author May 2008)

available with the Commissioners of the Supreme Court in the right to food case reveal that more than 95 percent children, 39 percent women and 29 percent men, suffered from chronic grade III malnutrition, which makes them persistently vulnerable to sickness and death.¹⁵⁵

The loss of their livestock due to the lack of water and food has further reduced their slender asset base and exposed them to greater risks. Although 26 percent of Sahariyas possess 5-8 *bighas* (1 bigha = 0.4 acre) of land, 70 percent of it is non-irrigated, stony and situated at mountainous slopes.¹⁵⁶ Unless these lands are developed properly, they cannot be put to any useful purpose. But the Government has not initiated any long-term plan for its development.

Unlike the central districts, the remote and densely forested northern and southern districts of the state Chhattisgarh remain poorly served by social infrastructure and demonstrate significantly worse levels of human development. It is in these areas where the highest concentration of tribal (including pahadi korwas) populations resides. Despite posing many challenges these are areas of acute destitution where targeted interventions could achieve substantial impacts on poverty reduction.¹⁵⁷

It is ironical though, that while the government has launched an ambitious project to help the Pahadi Korwas, a 'Primitive' Tribal Group (PTG) in Chhattisgarh, simultaneous plans are afoot to uproot them from their homeland on the ground that tribals are destroying the forest and damage the ecosystem. Living in abject poverty in mud houses in far-flung areas with no electricity, proper roads or safe drinking water, the tribals hardly present the face of the timber mafia that the forest department charges them with. The tribal people cut wood mostly for domestic purpose like building houses or lighting their *chulhas* (clay-burned stoves) and not for commercial exploitation. They depend on farming to sustain themselves.¹⁵⁸

The Chenchus are an aboriginal tribe of the central hill regions of Andhra Pradesh. Their traditional way of life has been based on hunting and gathering. In general, the Chenchu relationship to non-tribal people has been largely symbiotic. Some have continued to specialise in collecting forest products for sale to non-tribal people. The Chenchus are referred to as one of the Primitive Tribal Groups that are still dependent on forests and do not cultivate land but hunt for a living. They typify many PTGs who are living in the southern Indian hills.

Prof. Kodandaraman, Adviser to the Commissioners of the Supreme Court (CWP 196/2001), reports¹⁵⁹ based on a visit to the Nallamala forest areas of Mehboobnagar district in November 2007¹⁶⁰, that many of the Chenchus, in Appapur for example, live under the trees. Being a food gathering and forest dwelling community with unique way of life, Chenchus were provided with safeguards like the declaration of their area as 'Chenchu reserve' by the British and Nizam governments in the pre-Independence era. Even the latest Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 also recognised various individual and community rights for

¹⁵⁵ As quoted in 'Denying Starvation' by Harsh Mander.

¹⁵⁶ Jain, Sachin. (2006) 'Poverty, migration & national rural employment guarantee scheme a case study on Sahariya primitive tribal group in Madhya Pradesh', http://www.righttofoodindia.org/links/field_reports.html (last checked by author May 2008)

¹⁵⁷ 'Preliminary Indigenous People Development Program', www.adb.org/Documents/IndigenousPeoples/inid/IPDP-SuppApp-Chhatt-Final.pdf (last checked by author May 2008)

¹⁵⁸ Khattry, Rajendra. (2000) 'Missing the wood for the trees', <http://www.indianexpress.com/india-news/ie/daily/20000704/ian04058.html> (last checked by author May 2008)

¹⁵⁹ *ibid*

¹⁶⁰ *ibid*

similar forest dwelling communities. None of these safeguards however protect the Chenchus who are constantly harassed by the police and the forest department.

Livelihoods in peril

Developmental journalist, Sachin Kumar Jain, observes that if anybody visits any Saharia village¹⁶¹ in Madhya Pradesh, it is impossible for him not to come across the news of a child death or maternal death because of starvation. ¹⁶² Even to a lay observer, it is clear that there is an extremely grave persisting nutritional emergency among the Sahariya tribal community.

A sombre situation of chronic mass destitution among the Sahariyas is also confirmed by the study by the official Centre for Tribal Development. It reports for the year 2002 an annual per capita income among Sahariyas of Rs. 2691, which is around seven rupees a day. Not surprisingly, more than half the Sahariya households are in chronic debt to private moneylenders.

The low availability of food grains to Sahariya families, as it is reported only 65 kilos per year i.e. 180 grams per day per person. For other items like salt, pulses, vegetables, spices etc., they had to manage within their meagre income which turns to be the sole reason of malnutrition amongst their children. The average age of the Sahariyas is 45 years which is one-fourth less than the national average.

In case of Chenchus, if rice is not available they are forced to eat tubers, leaves and fruits gathered from the forest. Most tribals prefer to depend upon their forests to satiate their hunger. But even their most basic access forest resources often falls into question in this era of forest conservation by environment protection lobbies. The Chenchus collect gum, honey and seeds. Despite their hard work, no family is able to earn more than Rs 1000 a month. They walk long distances and stay in the forest for days together.

For centuries, the Chenchus have been living in their forest which they consider as their mother goddess. Now, authorities are ready to evict them, destroy their livelihood, having made several promises shifting them from place to place. Homeless in their own habitat seeking shelter here and there deprived even of drinking water, with no access to hospitals when sick, a local Telugu newspaper¹⁶³ reports that 60 Chenchus have died in the last year and half most of them being children and women. Starvation deaths among Sahariyas are something which is much discussed in the public domain and excessively reported in the media.

The Right to Food Campaign in Chhattisgarh has brought to light the condition of three of the highly marginalised primitive tribal groups, namely, Baigas, Pahadi Korwas and Kamars. These groups suffer from the worst levels of malnutrition and morbidity. Most of these tribes are settled in thick forests and remote hilly areas. ¹⁶⁴

Most of the mainstreaming efforts by the state and other agencies have succeeded only in distancing the tribal people from their indigenous way of living, but unfortunately (if not willingly) failed to promise them a healthy life. When their non-tribal poor counterparts at least struggle hard to smoothen

¹⁶¹ There are a total of 1159 villages

¹⁶² Jain, Sachin. (2007), 'The forgotten Saharias of Sheopur', http://www.indiatogether.org/2007/feb/hlt_saharias.htm (last checked by author May 2008)

¹⁶³ See VAARTA, 18th Feb, 2008 translated by Rama S. Melkote, as quoted in one of Dr. Kodandram's internal reports

¹⁶⁴ Garg, Samir. (2006) 'Grassroot Mobilisation for Children's Nutrition Rights', *Economic and Political Weekly* 41(34): 3694-700

their hardship, uprooted tribals are just left pathless. Their natural living is on the verge of being illegalised and they do not have the energy or resource to sustain a 'modern' existence.

State and Schemes

1. Integrated Child Development Services (ICDS)

In 2006, Madhya Pradesh Right to Food Campaign team which was investigating the incidence of malnutrition deaths amongst Saharia in Patalgarh village, found that there was only a temporary Aanganwadi in the village visited and the nearest aanganwadi was situated some 17 kms away. While, 70 children had been enrolled by the villagers in the Aanganwadi, Supplementary Nutrition Programme (SNP) had been unavailable from January - June 2006.¹⁶⁵

The 2006 Joint Commission of Enquiry (JCE) in Sheopur¹⁶⁶, found that 850 ICDS centres were required but at the time of the investigation in only 647 had been sanctioned and amongst them only 587 were actually functioning.¹⁶⁷

The greatest exclusion the Pahadi Korwas face too is in the ICDS programme. Out of their 500 odd habitations, only about 100 have *aanganwadis*. Of the remaining some children from 150 odd hamlets were able to partially access ICDS facilities. Therefore children from 50 percent of the Pahadi Korwa hamlets do not have any access to any of ICDS services.¹⁶⁸

The outreach of ICDS to these groups is minimal, because:

- (a) villages exclusively inhabited by these groups have not been allocated any AWCs (e g, in Achanakmar area of Bilaspur district, there are sufficient centres as per the population norm, but in a majority of the cases, the *aanganwadis* are located in non-Baiga villages);
- (b) They stay in hamlets which are far from the main village, where the *Aanganwadi* is typically located. In Beerupalli village in Andhra Pradesh, for instance, both the tribal and dalit hamlets were located at a far distance from the main village where the *aanganwadis* was located.¹⁶⁹
- (c) Their own hamlet is often considered too small to open even a mini-aanganwadi.¹⁷⁰

The main reason for this degree of exclusion is related to their settlement pattern. Pahadi Korwa habitations are often on the edge or on top of the hills while the nearest main village lies in the valley. The distance and terrain makes it difficult for them to access the aanganwadi. Despite Supreme Court orders, no preference has been given by the State Government to give a preference to Pahadi Korwa

¹⁶⁵ (2006), 'Unheard Whimpers, An Alert Note on Malnutrition Deaths in Patalgarh village of Sheopur district', Right to Food Campaign Madhya Pradesh Support Group, <http://www.mediaforrights.org/pdfs/reports/report1.pdf> (last checked by author May 2008)

¹⁶⁶ On 8th August, 2006 Dr NC Saxena and the Special Commissioner Shri Harsh Mander wrote to the Chief Secretary, GoMP informing him of their decision to constitute a Joint Commission of Enquiry (JCE) to examine cases of starvation deaths reported and to look into the status of implementation of food-related schemes in the district. With this mandate, a JCE consisting experts visited Sheopur district on 5-6 October 2006.

¹⁶⁷ Shah, Mihir. (2006) 'Report of the Joint Commission of Enquiry', <http://www.mediaforrights.org/pdfs/reports/report3.pdf>. (last checked by author May 2008) It is a fact finding report produced on the incidence Of repeated deaths due to malnutrition in Sheopur District, Madhya Pradesh

¹⁶⁸ Based on the field survey done by Samir Garg, State Adviser to the Supreme Court Commissioners, Chhattisgarh

¹⁶⁹ Mander, Harsh and M. Kumaran. (2006) 'Social Exclusion in ICDS: A sociological whodunit?', http://www.righttofoodindia.org/icds/icds_surveys.html (last checked by author May 2008)

¹⁷⁰ Garg, Samir. (2006) 'Grassroot Mobilisation for Children's Nutrition Rights', *Economic and Political Weekly* 41(34): 3694-700

habitations while opening new centres. The common excuse is being that Pahadi Korwa habitations are too small (average size 40 households) to deserve an aanganwadi.¹⁷¹

Other Primitive Tribal groups like Chenchus face similar tales of exclusion due to their remote settlement patterns.

2. Mid-day Meals (MDM)

A field visit by Harsh Mander, the Special Commissioner to the Supreme Court (CWP 196/2001) in Sahariya villages of Madhya Pradesh September 2004 found that children remained deprived of their daily food entitlements because the teacher came to school only twice a month. In some villages even if the school is functioning, children were given only a ladle each of *ghoogri* or dry wheat porridge each day. Some children took this dry food home as the only major meal for the entire family!

Given the destitution of several 'Primitive' Tribal Groups, it is pathetic state of affairs that a large proportion of children who have no access to schools either due to their non-existence or unwillingness of children to attend mainstream education. Absence of schools would be justified by the State based on the physically isolated lifestyle of 'Primitive' Tribal Groups. The official alibi of the alleged unwillingness of tribal children to attend schools which merits careful interrogation.

A child-protection action research undertaken in tribal villages of Rajasthan¹⁷² clearly elucidates the barriers which alienate tribal children within the mainstream schools. Urban-based curricula without any reference points to tribal history or culture, stigmatisation and racism against tribal students, timing of schools and teacher absenteeism are important hurdles. Tribal community members also were wary that after receiving an education (sometimes by staying in hostels) their children often did not identify themselves with their tribal community.¹⁷³

3. Targeted Public Distribution Scheme (TPDS)

In conditions of stark and extreme impoverishment, an overwhelmingly large majority of Sahariya households surprisingly had Above Poverty Line (APL) cards. In other words, according to the government survey they were not classified as poor, and therefore not entitled to subsidised grain. Even for those with cards, ration shops often did not function; therefore most villagers were compelled to purchase wheat from the open market as Rs. 8 a kilogram.

This situation is despite the Supreme Court order of 2nd May 2003 in Right to Food Case, which specifies that all Primitive Tribal Groups (PTGs) are entitled to an Antyodaya Card. There are also media reports which shows that fair price shops in Sahariya villages has been distributing rice to the Antyodaya Anna Yojana cardholders at twice the stipulated price (i.e. Rs. 6 per kilogram)

The Madhya Pradesh Right to Food Team found that in one of the Sahariya villages visited, only 70 Antyodaya Anna Yojana cards were issued last year despite the total population of the village being 580. However, even those villagers, who are fortunate enough to have a card, have not received rations for the past three months.

¹⁷¹ Based on the field survey done by Samir Garg, State Adviser to the Supreme Court Commissioners, Chhattisgarh
¹⁷² Meharu, Charumitra. and Tegan Wong-Daugherty, (2004) 'BAREFOOT DEMOCRACY: Tribal youth speaking up through right-based participatory research'. See end note 29 for details.

¹⁷³ *ibid*

The administration has opened temporary Fair Price Shops at the village but according to the villagers it rarely opens. When the fact-finding team visited the village it found about 36 quintals of grain in the shop. When the issue was raised with the local administration, the very next day the ration was distributed.

In case of Pahadi Korwas, the level of exclusion has come down in last four years after the State Government implemented the SC order on Antyodaya cards for all 'Primitive' Tribal Groups. Pahadi Korwa Mahapanchayat was instrumental in aiding the process of card distribution. Almost 98 percent of the surveyed families have received their ration cards at which they can get 35 kgs of rice at Rs 3 per kg per month. The only discrepancy is in the case of around 1000 Pahadi Korwa joint families who got divided after their son's marriage and now have only one card instead of two.

Most Pahadi Korwas reported that they were able to access their 35 kgs of rice every month at the stipulated rate. However they expressed one problem that due to the fair price shops (FPS) remaining open only for 2-3 days per month (in more than 50 percent of cases), they had to face problems in arranging lump sum money at a short notice. However, most were still able to access their quota and the rice reached the shops in the first week of the month.¹⁷⁴

4. National Rural Employment Guarantee Scheme (NREGA)

The Report of the Joint Commission of Enquiry found that some of the villagers have been registered and have also received their job cards but neither have they applied for work nor has work started in the village. The villagers had gone to meet the Panchayats Secretary, but he misled them by saying that there is no need for application and that the work would begin soon. The job cards were with the Panchayat Secretary, who makes all entries in the card and there were cases noted where the entries in the job card did not match the money reportedly received by the worker, which suggests leakages.¹⁷⁵

The media reported that in a Chenchu village the forest department stopped a scheduled NREGA work that was supposed to take place.¹⁷⁶ The government had promised Chenchus work under NREGA and inaugurated road construction. However, as the forest department objected to digging, the work had to come to a halt. Although all of them found work for a month, only half of them were paid their wages and the others have not been paid.

In Chhattisgarh, only 20 percent of the Pahadi Korwa households are estimated to have participated in NREGA works. The main reasons for low participation are twofold. Worksites are seldom close to Pahadi Korwa habitations. They have to come down from hills to work. Secondly, there are long delays in payment of wages (average delay of more than 2 months). Such uncertainty in timing of payment makes it difficult for the poorest of the poor like Pahadi Korwas to participate.

Recommendations

i) Dry Rations

- Ensure the distribution of Antyodaya Anna Yojana (AAY) cards to every single family of all designated primitive tribal groups (PTGs) as per the Supreme Court order of 2nd May 2003

¹⁷⁴ Based on the field survey done by Samir Garg, State Adviser to the Supreme Court Commissioners, Chhattisgarh
¹⁷⁵ Shah, Mihir. (2006) 'Report of the Joint Commission of Enquiry', see end note 33 for details

¹⁷⁶ See VAARTA, 18th Feb, 2008 translated by Rama S. Melkote, as quoted in one of Dr. Kodandram's internal reports

- Enable tribal panchayats to run their own PDS shops, with grants of working capital from the tribal department.
- Introduce mobile ration shops in all the PTG areas, where ration dealers are unable to establish their shops, and ensure their regular distribution of food grains on fixed days coinciding with the weekly *haat* or tribal market.

ii) **Cooked Food**

In primitive tribal group areas,

- Recruit local aanganwadi workers and helpers from amongst the local PTG itself
- Sanction mini-aanganwadis exclusively for PTG hamlets irrespective of their size without any ceiling of minimum population
- Ensure that aanganwadis or at least mini-aanganwadis are opened in every primitive tribal hamlet.
- Ensure that only hot cooked meals are served in aanganwadis cooked by PTG women's groups, mahila mandals etc. Make arrangements for the provision of supplementation of key nutrients in pockets of high malnourishment
- Provide additional foodgrain quotas to ensure that all old people from should be permitted to share in the school mid-day meal without any conditions
- Ensure that all PTGs are served by tribal hostels dedicated for their children, with majority staff, non-negotiably of care givers, and - if available- teachers, from the PTG community, as there is much higher chance that the PTG children will feel accepted and secured with them. A campaign should be run with the assistance of the tribal panchayat and village leaders, youth and women's organisations, for full enrolment of all PTG children in these homes.

iii) **Livelihoods and credit**

- All PTG households should be given job cards under priority, and 2 members of the family entitled to get employment under NREGA.
- To prevent further indebtedness, all released bonded workers should also be permitted to draw their full entitlement of grain on credit from PDS shops every month. This should be adjusted against one-third of their daily wages once NREGA works are commenced.
- Joint forest protection committees should be constituted in all PTG areas, giving full rights over non timber forest produce to these communities, and taking their active support to prevent timber mafias.
- A special task force should be created in all tribal districts to ensure time bound implementation of laws to restore land illegally appropriated from PTG members.
- Governments should abjure by law from further acquisition of land from tribal people who are designated to be 'primitive'.

iv) **Sentisation**

- Change the school curriculum with reference to the richness of tribal culture to arrest the drop-out rate of PTG children
- From PTGs, wherever first generation high school graduates are found, recruit them to give primary school instruction in the tribal dialect, and as care givers in tribal hostels.
- Ensure full implementation of the Panchayats (Extension to Tribal Areas) Act, 1993 (PESA) in PTG areas, which give control over forests and other commons to tribal communities.
- Adopt a single-window approach to make all social security schemes to reach out PTGs through the tribal panchayats

Annexure (a)

a. List of Approved Primitive Tribal Groups	
1. Andhra Pradesh	1. Bodo Gadaba 2. Bondo Poraja 3. Chenchu 4. Dongaria Khonds 5. Gutob Gadaba 6. Khond Poroja 7. Kolam 8. Kondareddts 9. Konda Savaras 10. Kuttiya Kondhs 11. Parangiperja 12. Thoti
2. Bihar (including Jharkhand)	1. Asur 2. Birhor 3. Birjia 4. Hill Kharia 5. Korwa 6. Mal Pharia 7. Paharias 8. Sauria Pahariya 9. Savar
3. Gujarat	1. Kathodi 2. Kotwalia 3. Padhar 4. Siddi 5. Kolgha
4. Karnataka	1. Jenu Kuruba 2. Koraga
5. Kerala	1. Cholanaikayan (A section of Kattunayakan) 2. Kadar 3. Kattunayakan 4. Kurumbas 5. Koraga
6. Madhya Pradesh (including Chhattisgarh)	1. Abujh Maria 2. Baiga 3. Bharia 4. Hill Korwa 5. Kamar 6. Saharia 7. Birhor
7. Maharashtra	1. Katkaria (Kathodi) 2. Kolam 3. Maria Gond
8. Manipur	1. Maram Naga

9. Orissa	<ol style="list-style-type: none"> 1. Birhor 2. Bondo 3. Didayi 4. Dongria-Khond 5. Juang 6. Kharia 7. Kutia Khond 8. Lanjia Saura 9. Lodha 10. Mankirdia 11. Paudi Bhuyan 12. Saura 13. Chuktia Bhunjia
10. Rajasthan	<ol style="list-style-type: none"> 1. Seharias
11. Tamil Nadu	<ol style="list-style-type: none"> 1. Kattu Naickans 2. Kotas 3. Kurumbas 4. Irulas 5. Paniyans 6. Todas
12. Tripura	<ol style="list-style-type: none"> 1. Reangs
13. Uttar Pradesh	<ol style="list-style-type: none"> 1. Buxas 2. Rajis
14. West Bengal	<ol style="list-style-type: none"> 1. Birhor 2. Lodhas 3. Totos
15. Andaman & Nicobar Islands	<ol style="list-style-type: none"> 1. Great Andamanese 2. Jarawas 3. Onges 4. Sentenelese 5. Shompens

Most Discriminated Dalit Groups

The word '*dalit*' in Marathi literally means 'broken'. Popularised as an assertion of social anger and self-respect by the father of the Indian Constitution, Dr. B.R. Ambedkar, it reflects to this day the situation of millions of *dalits* within South Asia, who are systematically deprived of their civil, political, economic, social and cultural rights. The caste system, which has existed for more than 3000 years on the principle of social and occupational segregation based on notions of purity and pollution, lies at the root of this ugly reality.¹⁷⁷ Traditionally treated as 'untouchables', *dalits* occupy the lowest position in this abhorrent social system. Untouchability is the practice of imposing social disabilities on persons by reasons of their birth in certain castes, and involves avoidance of physical contact with persons and things because of beliefs relating to pollution.

It is important to state at the outset that the central problem and paramount aspiration of *dalits* has not only been for economic emancipation and improvement in conventional quality of life indices, but also for equality and dignity within the traditional social order which has denied them justice and self-respect for centuries. This is by no means to deny that the 'pollution line' and the 'poverty line' do very substantially overlap.¹⁷⁸

Although untouchability is a feature of Brahminical Hinduism, it permeated even egalitarian religions such as Christianity and Islam when transplanted into Indian soil. For instance, the Helas of the Malwa and Nimar regions of Madhya Pradesh are manual scavengers, and no other Muslims are willing to share food with them or marry into their families. Similarly, the Pulaya Christians of Kerala, formerly untouchable Hindus, even after more than 80 years of conversion to Christianity, continue to be treated as untouchables even by the Syrian Christians.¹⁷⁹

Life at the margins

The constitutional abolition of untouchability implied that caste Hindus could no longer be able to force *dalits* to perform any "polluting" occupations. But even today, degrading tasks like sweeping, scavenging and leather tanning continue to remain the monopoly of scheduled castes who are threatened with physical abuse and social boycotts. Barriers to education and other forms of employment have ensured that these occupations continue to be hereditary.

The injustice of social discrimination based on caste is part of a shameful and troubled historical legacy, which compels modern day challenge for the people of India, from the standpoint of equality and democracy. It is varied in its dimensions and has a vast geographical spread. This report restricts its scope to focus on barriers that *dalits* face in accessing food (and livelihoods), and three most oppressed dalit communities have been purposively selected for a more detailed analysis, the *Musahars*, *Madigas* and *Safai Karmacharis*, as they represent some of the most extreme hardships of *dalit* life in India.

Musahars

The word Musahar literally translates into 'rat-eater' which is a pointer towards the extreme destitution (and humiliation) experienced by this community. Musahars live in Eastern Uttar Pradesh and the

¹⁷⁷ Not only is it integral to Hinduism, but is also practiced by Muslims, Sikhs and Christians. Indian society is accordingly divided into four hierarchical castes: Brahmins, Kshatriyas, Vaishyas and Shudras. The 'ati-shudras' or dalits, fall outside this fourfold hierarchy.

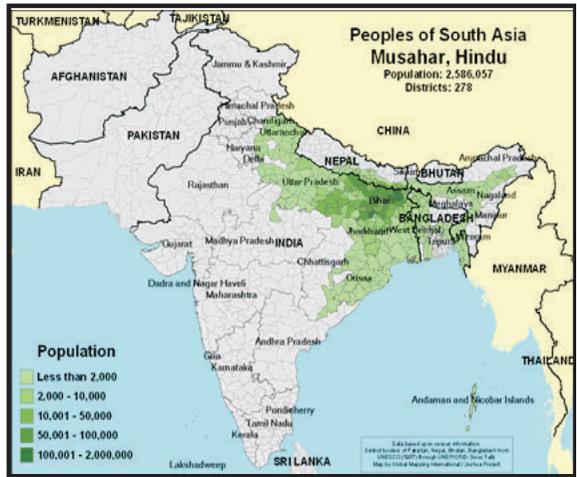
¹⁷⁸ Mander, Harsh. (2004) *The Ripped Chest*, Bangalore: Books for Change

¹⁷⁹ Mander, Harsh. (2004) *The Ripped Chest*, Bangalore: Books for Change

East Champaran¹⁸⁰ district of Bihar (Figure 1). Of the 1.3 million Musahars in Bihar, less than 1 percent are literate¹⁸¹.

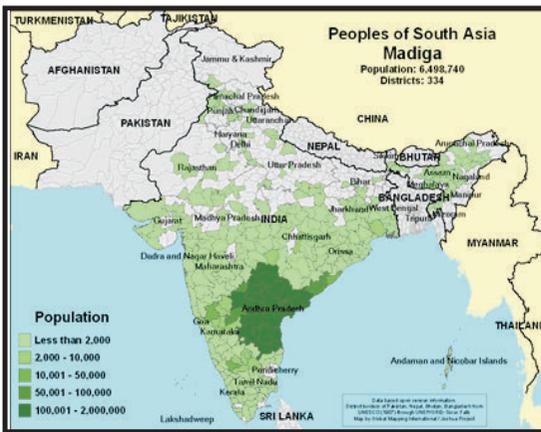
Ninety-eight percent are landless labourers, who live in a stretch of fertile agricultural land but go without work for eight months in a year. Their unemployment has been aggravated by the mechanisation of agriculture, especially combined harvesters. They live in tiny huts made of leaf or thatch, in hamlets which are only allowed to be located at a great distance from all other communities.

Besides that there is a sort of identity crisis which adds to the derailing of their existence. Musahars as a community perform unskilled agricultural labour and in the ‘brahmanical’ caste hierarchy are considered to be *shudras*. Historically, ‘untouchability’ was not practiced against the *shudras* but with the consolidation of Brahmanical emphasis on the purity and pollution, ‘untouchability’ became prevalent against the *shudras* as well. *Musahars* consider themselves above other *dalits* like *chamars*, but this does not win them the favour of the dominant class (not necessarily upper-caste) as far as their landlessness is concerned. For them other dalit communities are ‘*harijans*’, the term which they are sure does not denotes them, though the state lists them as Scheduled Castes (SCs). Other dalit communities however see the *Musahars* as below their rung. Both, the plight of landlessness and the non-identification with other



Source: <http://www.joshuaproject.net>

dalit communities, alienate them equally from the dominant class as well as the oppressed class of the village.¹⁸²



Source: <http://www.joshuaproject.net>

Madigas

Madiga¹⁸³ is a caste which is largely confined to the drought-prone Telangana and Rayalaseema and constitutes one of the largest *dalit* populations in Andhra Pradesh. The majority of Madigas are landless agricultural labourers but some continue their traditional occupations as leather tanners, cobblers and scavengers. Their hamlets with “mud-walled, one-roomed, mud-floored, thatched-roof huts”¹⁸⁴ are increasingly being pushed to the fringes of village settlements.

¹⁸⁰ They are spread over Kushinagar, Gorakhpur, Deoria and Mahrajganj over an area of 11718 sq. kms

¹⁸¹ Tewary, Amarnath. (2006) ‘India’s feisty untouchable woman’, http://news.bbc.co.uk/1/hi/world/south_asia/4723680.stm (last checked by author May 2008)

¹⁸² Based on the personal observations made during the visit to Musahar dominated districts of Eastern Uttar Pradesh, in February 2008

¹⁸³ The Madiga community is known as the Mang in Maharastra, the Chakkaliya in Tamil nadu and possibly the Matang in North India.

¹⁸⁴ ‘Madiga’, <http://en.wikipedia.org/wiki/Madiga> (last checked by author May 2008).

The extent of social discrimination meted out to the Madigas over centuries is appalling. They continue to be denied use of the village well, and are not allowed to walk on the roads, since even their shadow is considered to be polluting. The smoke from their funeral pyres is feared to contaminate and so they are forced to bury their dead. It is bizarre that even the sound waves of their voices are considered foul; and they have to cover their mouths with a pot when speaking to caste Hindus!

In the race for the benefits of reservation too, powerful *dalit* communities like the Malas have left them behind, and Madigas have only recently begun to assert their rights. The recent State wide agitation by the Madigas demanding separate safeguards for them in public employment, political office and educational institutions in proportion to their population in the overall category of Scheduled Castes, is a manifestation of the extent to which the community of the Madigas has been and feels neglected and ignored.

Manual scavengers

Dalit manual scavengers or *safai karmacharais* have different caste names across the country¹⁸⁵, but they uniformly belong to the very bottom of the *dalit* sub-castes. Manual scavenging is largely a hereditary occupation reserved for *dalits*. *Dalit* manual scavengers are compelled to undertake their task, often being prevented from taking any other job. They are the worst victims of untouchability as they are considered unclean, impure and placed at the lowest level of the caste hierarchy. Even other *dalits* often consider them as untouchables. Manual scavengers, or *safai karmacharis*, are considered to be the most oppressed and disadvantaged of any community in India.

Their employers include both private individuals and government departments including the military, engineering services, the army and the railways¹⁸⁶. After decades of denial and despite being a gross under-estimate,¹⁸⁷ in 2002-03 the Ministry for Social Justice and Empowerment finally admitted the existence of 6,76,000 manual scavengers in India and the presence of 92,00,000 dry latrines across 21 States and Union Territories. The irony is that although it is outlawed, dry community latrines continue to be maintained by large numbers of local city governments throughout the country, who employ manual scavengers for handling human shit.

Social discrimination against scavengers is rampant. Most live in segregated rural or urban colonies and are unable to make use of common resources. In many communities, in exchange for leftover food, scavengers are also expected to remove dead animal carcasses and deliver messages of death to the relatives of upper-caste neighbours. Their refusal to do so can result in physical abuse and ostracism from the community.

¹⁸⁵ They go by many names in various parts of the country: han, hadi (in Bengal); balmiki, dhanuk (Uttar Pradesh); methar, bhangī (Assam); methar (Hyderabad); paki (coastal Andhra Pradesh); thotti (Tamilnadu); mira, labegi, chuhra, balashahi (Punjab); bhangī, balmiki, methar, chuhra (Delhi). Gita Ramaswamy, "India Stinking"

¹⁸⁶ (2007) 'Hidden Apartheid - Caste Discrimination against India's "Untouchables"', <http://www.hrw.org/reports/2007/india0207/> (last checked by author May 2008). Hidden Apartheid was produced as a "shadow report" to the UN Committee on the Elimination of Racial Discrimination (CERD), in advance of its February 2007 consideration of a report by the Government of India. The report was produced by Centre for Human Rights and Global Justice & Human Rights Watch.

¹⁸⁷ But the Government data is viewed as gross under-estimation as Safai Karmachari Andolan, claims through their survey that the total number of safai karmacharis would approximately be 13 lakhs.

Figure 1: Population below poverty line, 2004-5

	India	Scheduled Castes
	2004-5	2004-5
Rural Areas	21.8	36.8
Urban areas	21.7	39.9

Source: India: NSSO 2004-5. Information on Scheduled Castes reported by Minister of State for Social Justice and Empowerment, submitted in response to Lok Sabha question, April 28, 2008

Systematically denied

The economic trap that entangles the most discriminated amongst the *dalits* also curtails their socio-political mobility. It never allows them to move upwards in the caste hierarchy. Forced to stand in the end of the ‘democratic’ queue, starting with unequal income distribution to the denial of quality education and unavailability of healthcare; due to systematic denials and neglect, they are forced to stare at a bleak future.

More *dalits* are below the poverty line than the national average (Figure 1). Surprisingly, this difference is even more acute in urban areas with almost two of every five *dalits* finding themselves below the poverty line.

The most discriminated amongst them are so poor that they often live in near starvation conditions. With no grain to store, *Musahar* homes often have two empty vessels as their only valuables. They are not even allowed inside other hamlets, unless summoned. There may be *pucca* or semi-*pucca* roads leading to other hamlets but the *Musahar* hamlets are invariably not connected.

Declining dependence on leather across rural society has further limited the livelihoods of the *Madigas* who are also politically deprived of programmes meant for the upliftment of other scheduled castes. Similarly, *safai karmacharis* across India *find* themselves deprived of most government amenities.

Economic deprivations

Land ownership among *Musahars*, in particular, is negligible. Landlessness in *Musahars* case not only refers to the lack of agricultural land for cultivation but also land on which they have resided for generations. Even the implementation of the Land Ceiling Act proved futile as most the village land that was taken into state custody was redistributed amongst all other villagers, but not the *Musahars*.

Musahars have taken to working in the fields of dominant castes after. They are paid a pittance for their labour, but with the advent of modern agricultural techniques, even this option is no longer available. Many are therefore forced to work under appalling work conditions in brick kilns. Others migrate to towns and cities, leaving behind women, children and the aged.

In cities and towns too, *safai karmacharis* experience similar economic hardships due to **irregularity in the payment of wages**. Those working on contract are kept unpaid for several months. Those who joined the municipalities in the hope it would ultimately relieve them from indignity of manual scavenging later feel betrayed, for they not only lose their earlier work but now have no chance to go for any other work. In many places the municipal officials not only threaten the husbands of the

women involved in scavenging but also do not give them any other opportunity of survival with dignity. No action is normally taken against the municipalities who have failed to comply.¹⁸⁸

Distress migration is often the last resort for discriminated *Madigas*, who often move to nearby towns in search of employment. But with a very poor skill base, they often find only low end, low wage, unorganised, arduous and sometimes humiliating work. Most eke out their livelihood as rickshaw pullers, head load workers, cobblers and shoe shiners and construction workers. That has made these people into a vastly migrated community and now Madigas are present in all the parts of South India.

In the case of *Madigas*, the visible imbalance in accessing the benefits of reservations forms the basis for their economic insecurity. In Andhra Pradesh, there has now emerged conflict for Scheduled Caste entitlement between the two groups *Malas* and the *Madigas*.

Hunger and starvation

Voiceless *Musahars* die silently, *safai karmacharis* painfully bear the burden of a distressing profession to feed their stomachs and *Madigas* migrate to distant lands in search of livelihoods and a dignified existence.

“We beat our hungry children to sleep” that is what a *Musahar* woman told to the People’s tribunal on starvation in Eastern Uttar Pradesh. Other coping option to ensure food during off seasons is to avail loans from the local moneylender. Many *Musahars* are in debt for expenses incurred for marriages, deaths etc., and this further tie them in the vicious cycle of poverty. Starvation deaths of *Musahars* are now a popularly recognised concept among development journalists and mainstream media to routinely garner public sympathy.

Most, *safai karmacharis* want to change their livelihood option, but have few alternatives. Bezwada Wilson, the convener of SKA, says that if they are made food secure through other means, they would obviously leave this occupation. Few *safai kamdars* who are employed by government bodies like the Municipal Corporations or panchayats have little trade union support. Even in supposedly wealthier states like Haryana, Gujarat and Tamilnadu there are grievances about perennially late salaries. Most *safai kamdars* though, work in private homes for measly amounts of money such as Rs. 5 or 10 per month and waste food is provided as a bonus. They are subject to demeaning, humiliating practices such as begging for food every evening and accepting stale leftover food, sometimes not fit for dogs.¹⁸⁹ Majority of them, 76 percent are sinking in heavy debt.

30 percent of *Madigas* migrate each year in search of livelihood options¹⁹⁰. But often they need to depend on moneylenders from whom they have to pay a minimum of 10 percent interest per month. These loans ultimately put them into an endless cycle of debt bondage.

Hunger as a way of life is not very uncommon in this country. But *dalits* have a disproportionate share of this extreme suffering. History reveals the ugly roots of this persisting inequality and the

¹⁸⁸ Rawat, Vidya Bhushan. (2007) ‘Is It Emancipation or Elimination of the Scavengers in Laar Town (Deoria)’ <http://www.countercurrents.org/rawat251007.htm> (last checked by author May 2008)

¹⁸⁹ Thekaekara, Mari Marcel. (2007) ‘The “Night Soil” Carriers’, infochangeindia.org/index.php/200708296709/Agenda/Women-At-Work/-This-is-our-fate.html - 38k (last checked by author May 2008)

¹⁹⁰ Deshingkar, Priya. and Daniel Start (2003) ‘Seasonal Migration for Livelihoods in India: Coping, Accumulation and Exclusion’, Working Paper 220, London: Overseas Development Institute.

modern day offers little to change this course. Nutritional indicators such as body mass index, anaemia and child malnutrition, indicate that *dalits* are consistently worse off than caste Hindus.

Figure: Scheduled Castes suffer from high-levels of malnourishment				
	SC	ST	OBC	Other
Stunted Children under 3 years				
(percent)	44.1	44.3	39.2	31.1
Wasted children under 3 years				
(percent)	20.5	25.7	18.9	16.4
Underweight children under				
3 years (percent)	52.2	56.7	46.4	37.3
Women whose Body Mass Index				
is below normal (percent)	39.5	46.6	32.6	26
Men whose Body Mass Index				
is below normal (percent)	33.7	38	27.7	21.9
Children age 6-35 months who				
are anaemic (percent)	82.3	85.1	79.7	74.4
Ever-married women age 15-49				
years who are anaemic (percent)	58.8	69.2	55.2	52.1
Ever-married men age 15-49				
years who are anaemic (percent)	26.5	39.7	22	21.3
Source: National Family Health Survey III				

State and schemes

When the basic needs of a population are denied, the state is expected to intervene with remedial measures, mostly in the mode of welfare schemes. But, there can be three ways which (mis)lead eligible beneficiaries out of the purview of their rights to food. (i) Lack of awareness about the schemes themselves, (ii) an eligibility criteria with selection in the hands of local elites and (iii) tardy programme implementation, all exclude the needy.

Another reason why most of the schemes fail to reach these groups, *Musahars*, *Madigas* and *safai karmacharis* is due to the exclusions that they have to face from both the sides, from dominant as well as other oppressed sections of the society. Policy design and local government machinery both determine the success of the food schemes in reaching *dalits*. From school teachers to panchayats presidents to electoral system where everyone and everything is ruled by caste, the reach of welfare schemes is filtered.

In Dogra village in Eastern Uttar Pradesh, where the starvation death of the, Nagina Musahar was reported in October 2004, the government immediately intervened, provided his widow with National Family Benefit Scheme (NFBS) and included many villagers in different schemes. But *dalit* communities across the country can scarce afford to have such ‘martyrs’ to hunger simply to gain their rightful access to food schemes.

1. Public Distribution System

The targeted public distribution system (TPDS) which is designed with strict eligibility criteria subject to manipulation by local elites is often mired in problems of exclusion. *Dalits* invariably face the brunt of deprivation.

(Un)Fair Price Shops

Less Foodgrain: In two of every five villages *dalits* regularly receive lesser quantities of foodgrains. In the Kushinagar district BPL card holders have reported that they get only 17 Kgs of food grains in a month. In Gopalganj District of Bihar, the situation is even worse as *dalits* have not been receiving any foodgrains for the few months o

Higher Prices: In a quarter of villages, *dalit* are charged higher prices by the PDS dealer. *Musahars* in Eastern districts of Uttar Pradesh routinely need to pay Rs. 5 or 10 more than the actual rates fixed by the Government to get their monthly quota of graino

Dalit days: PDS dealers in many villages service dominant castes throughout the week, while they arbitrarily designate “*dalit* days” once or twice a week with reduced hours

Untouchable: PDS dealers practice ‘untouchability’ in a quarter of villages, i.e. the dominant castes drops foodgrains from above into the cupped *dalit* hands below, so as to avoid “polluting” contacto

Unseeable: In Bihar, dominant caste PDS dealers hang cloth screens in front of their shops before dealing with *Musahar dalits*.o

Denied: In Gorakhpur, 69 percent manual scavengers do not have a ration card.

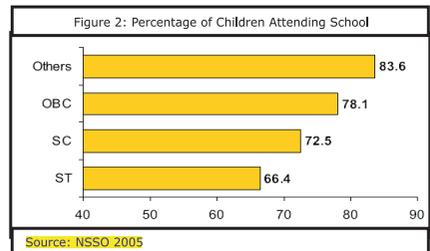
Sources: 1. Rawat, Vidya Bhushan., Ram Bhuvan and Kirti Singh (2007) ‘Status of Manual Scavengers in Gorakhpur, Uttar-Pradesh’, <http://www.countercurrents.org/dalit-rawat250207.htm> (last checked by author May 2008)

2. Personal observations made during the visit to Musahar dominated districts of Eastern Uttar Pradesh, in February 2008

A study of a village in Andhra Pradesh, where a considerable majority of Madiga families live indicates that the PDS scheme does not necessarily address the food security problem comprehensively. Rice available from PDS outlets meets only part of their total food consumption.¹⁹¹ Even if rice is available in the ration shop, unless Madiga households have money in hand to purchase it, it is as good as no rice. The PDS also plays marginal role in providing accessibility as the food grain made available through its outlets are not sufficient to meet the complete food requirements of the people. 15 to 20 Kgs of rice provided per family per month, largely proves insufficient. Only rice is available while the staple food here is *sorghum*.

2. Mid-day Meals

Segregation encourages high drop-out rates among *dalits* [one of every three *dalit* children do not attend school (Figure 2)] and by implication teaches children that “untouchability” is both an acceptable and ‘normal’ practice. It also increases the drop-out rate amongst *dalit* children. In Punjab, 66 percent of children of *safai karmacharis* have dropped out from school due to caste abuse¹⁹².



¹⁹¹ Reddy, M. Thimma. ‘Kollur Village Profile’, [www.cphp.uk.com/uploads/disseminations R7828%20013%20Kollur%20Village%20Profile.pdf](http://www.cphp.uk.com/uploads/disseminations/R7828%20013%20Kollur%20Village%20Profile.pdf) (last checked by author May 2008)

¹⁹² In a recent documentary film on Untouchability, “India Untouched”, directed by Stalin, three girls explain to the director how they need to clean the premises and toilets of the school. When the director asks them why they are ought to clean toilets and not other caste students, a smart girl in that group replies that other children are from upper castes. The director again insists his question, “But why you have to do this?”. The same girl replies with an unbearable smile, “You know the reason”. In another instance in the same film, a mother says by weeping, “We send our children to school so that they need not do this for their livelihood, but the teachers ask them to do the same in schools”. Her son was stopped from going to that school.

In its order dated 20 April 2004, the Supreme Court specified that for the mid-day meal programme “In appointment of cooks and helpers, preference shall be given to Dalits, Scheduled Castes and Scheduled Tribes”. This landmark order ensured that for a developing country like India, the 8,000 crore rupee programme embodied the twin objectives of not only feeding India’s children but also nourishing their minds and freeing these of prejudice.

When a dalit cook does get hired despite the opposition, dominant caste parents threaten to withdraw their children from school, send home-packed lunch boxes or insist their children come home for lunch. Their children are forbidden to eat food prepared by the dalit cook. The pressure to dismiss the cook or shut down the mid-day meal programme is insistent.

3. National Rural Employment Guarantee Act (NREGA)

On the verge of starvation, the most discriminated *dalits* like the *Musahars*, *Madigas* and scavengers, have the greatest need for guaranteed employment with dignity. But unfortunately so far the evidence shows that the National Rural Employment Guarantee Act (NREGA) has failed to reach many *dalit* families, due to local level discrimination.

Though the *Musahars* in most of the villages of eastern Uttar Pradesh districts, had heard of the 100 days work programme, they are largely unaware of their rights. Many of them have job cards even though they have submitted photographs. Even in those *Musahar tolas* where cards had been issued, were kept with the village Pradhan for safe keeping! NREGA works are largely concentrated in the main villages. *Musahar tolas* are excluded as sites not for creating common infrastructure due to local politics, which are typically dominated by upper caste influences. In dominant castes areas, *Musahars* are sometimes not even allowed to enter or work on NREGA sites.¹⁹³

4. Integrated Child Development Services (ICDS)

The Supreme Court of India, by order dated 13.12.2006, issued the following directions to the Union Government in relation to the Integrated Child Development Services (ICDS) Scheme:

- (i) *Government of India shall sanction and operationalise a minimum of 14 lakh AWCs in a phased and even manner starting forthwith and ending December 2008. In doing so, the Central Government shall identify SC and ST hamlets/habitations for AWCs on a priority basis.*
- (ii) *Government of India shall ensure that population norms for opening of AWCs must not be revised upward under any circumstances. While maintaining the upper limit of one AWC per 1000 population, the minimum limit for opening of a new AWC is a population of 300 may be kept in view. Further, rural communities and slum dwellers should be entitled to an “Anganwadi on demand” (not later than three months) from the date of demand in cases where a settlement has at least 40 children under six but no Anganwadi.*

However, studies¹⁹⁴ indicate the long prevailing trends of exclusion of the most discriminated dalits even in pre-school education. *Madiga* children for example are excluded from being registered in ICDS anganwadi centres.

¹⁹³ Based on the personal observations made during the visit to Musahar dominated districts of Eastern Uttar Pradesh, in February 2008

¹⁹⁴ Mander, Harsh and M. Kumaran (2006) ‘Social Exclusion in ICDS: A sociological whodunit?’, http://www.righttofoodindia.org/icds/icds_surveys.html (last checked by author May 2008)

Arundhati Dhuru, Uttar Pradesh State Adviser to the Commissioners of the Supreme Court (CWP 196/2001), during a visit to the Gopalganj district of Bihar in March 2008, found that in the *anganwadis* in the *Musahar bastis* where the Anganwadi Workers (AWWs) belonged to other castes or other villages, the centres were usually closed. As a community with weak bargaining power, they have never even tried to pressurise the anganwadi worker to open the centre everyday. There are indeed many other *Musahar* hamlets, with no Anganwadis. Most of their children are therefore not registered as the nearest centres were in fact not in their accessible limits.

Recommendations

There are provisions for positive discrimination in favour of dalit groups under many anti-poverty and livelihoods. There are however large gaps in implementation, and needy dalit potential users of the programmes often fall through the cracks, or are blocked by continuing barriers of caste discrimination in ways that we have seen above. These barriers are most severe for the most oppressed and deprived dalit groups, and occur resolutely also in food schemes, many of which are theoretically universal in their coverage like MDMs, ICDS and NREGA.

Each of these programmes need to accommodate a clearly articulated policy of affirmative action favouring proactive inclusion of *dalits* even in universal programmes like ICDS and MDM, and demand-led programmes like NREGA. The schemes, for instance, need to locate work-sites, and institutions like ICDS centres closer to *dalit* habitations; and to deploy a greater number of administrators – from state and district to local village and slum levels - from *dalit* communities, especially those who suffer greatest discrimination.

We have noted that even dalits are not a homogenous group. We have observed that there are most discriminated communities even within the dalits, like the Musahars, Madigas and safai karmacharis. The difficulty is that unlike so-called ‘primitive tribes’, most discriminated dalit communities have not been identified. It is important that these communities are identified on objective criteria, especially because of their enormous proneness to malnutrition, hunger and starvation.

The first criterion would be those communities in which the majority of members (more than 50 percent) still engage in ‘unclean occupations’ like manual scavenging, disposal of human and animal carcasses, and tanning and leather work.

The second criterion would be those dalit communities in which at least 2 of the following criteria are fulfilled:

- more than 75 percent households in rural areas do not own their homestead lands
- more than 75 percent in rural areas do not own agricultural land
- more than 75 percent children under 3 years are underweight
- more than 75 percent have BMIs below 18
- more than 75 percent children are out of school
- more than 10 percent are in debt bondage

This identification would of ‘most discriminated against’ dalit groups would be only for purposes of food, livelihood and social security schemes. It will be done by the respective state governments, in consultation with the Commissioners of the Supreme Court, as long as they are in position. After their offices lapse, the state governments would consult with National Commission for Scheduled Castes and Tribes, in finalising these assessment. For all dalit communities which are identified as ‘most discriminated’ against, by these criteria, every household should be entitled to AAY cards.

RIGHT TO FOOD

All settlements of these communities should be covered by ICDS centres in one year, and children should be given supplementary nutrition twice a day, instead of once.

NREGA works should be started in SC ST hamlets in particular, and in the rural hamlets occupied by these 'most discriminated' against dalit communities every year, in order to facilitate the participation of SC ST households in this programme, and incidentally also ensuring that benefits of the public works accrue to people of these communities.

The figures for job cards and employment should be disaggregated for SC ST, as well as for identified 'most discriminated against' dalit communities and PTGs, to enable review of adequate coverage of these groups, and the need for greater locational focus, and information and mobilisation campaigns among these communities.

A commission should be established by the Ministry of Rural Development, Government of India, on whether legislation is feasible and desirable to prevent large scale rural unemployment through in agricultural workers through regulation of mindless mechanisation of agriculture, especially through the use of combined harvesters. The Commission should include one Commissioner of the Supreme Court, and one Member of the Planning Commission.

There needs to be a renewed thrust to end manual scavenging, including deployment of municipal workers in open sewers, by strict enforcement of the law, and a special programme to train youth and women in these communities in computers and information technology, to enable their engagement in the modern economy

There should be a country wide campaign to make the school a zero discrimination zone. Separate seating and feeding of dalit children should be gravely penalised. Supreme Court orders for hiring of *dalit* cooks in mid day meals should be enforced strictly.

Bonded Labour

Introduction

A bonded worker is one who works against an advance which is to be repaid with interest through labour, is paid less than the statutory minimum wages, and lacks the freedom guaranteed by the Indian constitution to terminate or change one's employment or employer. Despite constitutional bans, unequivocal legal measures to outlaw bondage and forced labour, and the transformation of Indian society and economy since Independence, this repugnant system has endured across generations. The root causes of the stubborn survival of this oppressive mode of labour relations include the high instance of intense poverty, desperate chronic hunger, unemployment, debt, usury, failures of public sources of credit, landlessness, caste oppression, feudal agricultural relationships, denial by the state and continuance of the historical hierarchy of castes.

Legal loopholes

Article 23 of the Constitution of India (1949) also bans all forms of trafficking in human beings and forced labour. However, the legislation Bonded Labour Act specifically abolishing bonded labour was passed by Parliament only in 1976.

The Bonded Labour Act 1976 Act defines 'bonded labour' as a service rendered under the 'bonded labour system'. This is a system of forced, or partly forced, labour under which the debtor enters into an agreement, oral or written, with the creditor. The 'advance' taken by the debtor or by any of his lineal ascendants and/or in consideration of any customary obligation (for belonging to particular caste or community), the debtor has to work him (her)self, or through a member of his/her family. This arrangement is either without wages or for nominal wages, where much of it is deducted against debt and interest. There is no freedom to engage in any other occupation or move about freely till the loan is repaid.

The Act cancelled all the liability to repay bonded debt and called for restoration of property of the bonded labourer. District Magistrates were entrusted with the responsibility to oversee the implementation under the act, and vigilance committees were constituted at local levels for identification and rehabilitation, along with specific provision for rehabilitation of rescued child bonded labourers.

The Supreme Court of India has, through its judgments taken a broad interpretation of the word 'force'.¹⁹⁵ It states that the word 'force' includes not just physical or legal force, but also force arising out of economic compulsions. This has caused some ambiguity particularly, in the case of certain sectors where market wages are normally below the legal minimum (as in agriculture).

The Report of the Central Committee in 1994¹⁹⁶ which was appointed to draw up a workable definition of Bonded Labour has concluded that all cases of payment of wages below minimum wage could not straightforwardly be brought under the Act. The issue of minimum wages is simply one measure (and by no means a necessary or sufficient measure) to judge whether the person is bonded or not.

¹⁹⁵ The Asiatic Workers' Case (1982) and the Bandhua Mukti Morcha Case (1984), Srivastav, Ravi S (2005), Bonded Labour in India: its incidence and pattern, 2005. Working paper commissioned as an input to the ILO Director-General's second global report on forced labour, entitled *A global alliance against forced labour*, prepared for the 93rd session of the International Labour Conference, UN

¹⁹⁶ Srivastav, Ravi S (2005), *ibid*

However, the National Human Rights Commission (NHRC) Expert Group in 2001¹⁹⁷ concludes that all kinds of forced labour, not just debt bondage should be considered while identifying bonded labour. A number of other labour laws also explicitly or implicitly forbid the use of bonded and bonded child labourers - including the Child Labour (Prohibition and Regulation) Act; 1986¹⁹⁸, the Factories Act; 1948¹⁹⁹; the Beedi and Cigar Workers (Conditions of Employment) Act; 1966²⁰⁰, the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act; 1979²⁰¹, Juvenile Justice (Care and Protection) Act; 2000.²⁰² While the legal framework is extensive, there exist several legal loopholes and weak enforcement mechanism, which are conveniently exploited by the employers.²⁰³

Disputed claims

After a brief phase of relative official candour, and in some notable cases even official activism, during the 1970s and 80s, most governments have gone back into the most improbable denial. The Government of India has often taken refuge by only monitoring the traditional character of bonded labour and to avoid addressing the shameful facts of contemporary forms of debt bondage, which are described below. Despite stanch denials from the state, several independent studies, and civil society organisations, had shown empirical evidence of existence of bonded labour in India.

The International Labour Organisation (ILO)²⁰⁴ in 2005 estimated that at least 12.3 million people worldwide were trapped in forced labour, out of which, 9.5 million live in Asia Pacific region especially in conditions of bondage in India, Nepal and Pakistan.

In the more recent past, however, the Minister of State for Labour and Employment, Oscar Fernandes in March 2008, has admitted that despite being banned by law nearly 32 years ago, bonded labour is still in practice in India.²⁰⁵ He has, nevertheless, sought to imply that South India (with the exception of Karnataka) is bonded labour free.²⁰⁶

¹⁹⁷ Srivastav, Ravi S (2005), *ibid*

¹⁹⁸ The Child Labour (Prohibition and Regulation) Act; 1986 defines a child as “a person who has not completed their fourteenth year of age”. It does not prohibit child labour per se, nor does it set a minimum age, hours and conditions of work for child labourers, while prohibiting the employment of children in twenty-five hazardous industries. The Act also envisages punishment for violation including for parents who induce their children to work in hazardous industries. However, implementation of the regulatory provisions of the act requires each state to formulate an act-specific set of rules and regulations; the majority of states have not done so. Further, it gives tacit government approval to the use of child labour, when the child is a relative of the family, including in hazardous occupations or industries. The act is also inapplicable to government-sponsored schools or training programs.

¹⁹⁹ The Factories Act 1948 strictly forbids the employment of children less than fourteen years old in factories, but applies only to factories employing ten or more people with the use of electric or other forms of generated power, or twenty or more people without the use of power.

²⁰⁰ It explicitly prohibits the sue of child labourers in beedi and cigar manufacture

²⁰¹ It requires establishments to register inter-state migrant workers employed. Contractors must be licensed and keep records of all migrant workers recruited. Migrant workers should be paid at the same rate as non-migrant workers, and regular inspections be carried to ensure compliance

²⁰² All cases related to children under the age of 14 are governed by the Juvenile Justice (Care and Protection of Children) Act, 2000, which is based on the principles of the United Nations Convention on the Rights of the Child (CRC), 1989. Section 26 of the Act pertains to procuring a child for hazardous employment, keeping him/her in bondage and withholding/using those earnings is punishable

²⁰³ The South Asian (2005), Indian Laws Against Bonded Labour, 15 March 2005

http://www.thesouthasian.org/archives/2005/indian_laws_against_bonded_lab.html (Last checked by the author May 2008)

²⁰⁴ International Labour Organisation (2005), ‘A Global Alliance Against Forced Labour’, United Nation

²⁰⁵ Government of India, 2008, Bonded Labour Released and Rehabilitated, Press Information Bureau, Rajya Sabha, 5th March. Minister of State for Labour and Employment Shri Oscar Fernandes (Independent Charge) in a written reply in the Rajya Sabha

http://pib.nic.in/release/rel_print_page1.asp?relid=36020 (last checked by author May 2008)

²⁰⁶ 2008, 1,855 bonded labourers released: Minister, 6 March,

<http://www.nerve.in/news:253500133540> (last checked by author May 2008)

The government has released 1,855 such labourers from various states, and according to official data during April – December 2007, 395 bonded labourers were reported, from the states of West Bengal, Uttar Pradesh and Bihar.

Circular migration

Many traditional forms of agrarian relations have declined with diversification of economy and proliferation of occupations. Agricultural relations have metamorphosed in parts of the country from semi-feudal to semi-capitalist. However, bondage continues, not as a vestige of the past, but as a thriving contemporary form of labour exploitation and control, spreading to modern industries, the informal sector and the capitalist mode of agriculture including in states like Punjab.²⁰⁷ Circular migration and short term contracts characterise bonded labour in agriculture and industries.²⁰⁸

The contractual or migrant bonded labourers are the most vulnerable to exploitation. Employers prefer to hire migrant labour, as they are cheaper, more susceptible to exploitation and bondage than local labour.²⁰⁹ Many economically buoyant states like Andhra Pradesh host large numbers of hapless workers in semi-bondage from impoverished states like Orissa, Chhattisgarh and Jharkhand, but significantly Andhra also exports migrant workers in similar conditions of semi-bondage to other states.

Migrant workers in all destinations are then subjected to oppressive and insecure work conditions, with nominal wages, and can be laid off at will. Many a times, a migrant worker is not paid the complete amount, often because usurious rates of interest have been applied to the initial amount if advance received by the worker. This forces him to come again in the next season. This ensures stable labour over four hundred thousand children work in cotton seed fields across India.

Ascribed bondage

Bonded labourers are among the most marginalised, both socially and economically. Officially, 86.6 percent of bonded labourers are identified as belonging to Scheduled Castes and Scheduled Tribes.²¹⁰ Allocation of labour on the basis of caste is one of the fundamental precepts. *Dalits* as untouchables were provided with the most menial and *polluting* jobs. Most bonded labourers are low-caste, illiterate, and extremely poor. Even in the non-agricultural sector and in relation to tribals, forms of bondage draw on traditional hierarchical social and power relations. In the tribal areas, land alienation has resulted in increasing vulnerability to debt bondage. Further, displacement of tribals and increasing deforestation together create the need for credit and for seeking employment and livelihoods under bondage, often through migration.²¹¹

²⁰⁷ Brass, Tom (1995), *Unfree labour and agrarian change, A Different view*, Economic and Political Weekly, Jodhka, Suriendar S. (1994), *Agrarian changes and attached labour*, Economic and Political Weekly, Singh, Manjit (1995), *Capitalist Agriculture and Freedom of labour*, Economic and Political Weekly

²⁰⁸ Bremen, Jan (1996), *Foot loose labour: Working in India's Informal Economy*, Cambridge University Press, Oslen, Wendy K and Murthy, R.V. Ramana (2000), *Contract Labour and Bondage in Andhra Pradesh* (India), Journal of Social and Political Thought, Volume 1, Number 2

²⁰⁹ Srivastava, Ravi S and Sashikumar (2003), *An Overview of migration, its impacts and key issues*, Paper No. 2, Migration and Development and Pro-poor Policy Choices in Asia, DFID, London

²¹⁰ Ministry of Labour (200-01), Annual report, Government of India, *Annual Report 2000-2001*, p. 181. This figures appear to be based on both a 1991 Report of the National Commission on Rural Labour and reports from thirteen states through March 31, 2000, of bonded labourers identified, freed, and rehabilitated

²¹¹ For a review of labour migration in India and its impacts, see Srivastava (1998) *ibid* and Srivastava and Sasikumar (2003), *ibid*.

Child bonded labour

In 1996, Human Rights Watch had estimated that out of 3 lakhs child labourers in carpet industry, most are bonded.²¹² There is a huge proportion of *dalits* and Muslims among children in bondage. In Orissa, they are usually known as ‘*buturu*’ and work as agricultural labour, domestic help or at *dhabas* (roadside eateries) or hotels in nearby towns. These children work for long hours, are often beaten up by their employers and miss out on schooling. They become impoverished, unhealthy and illiterate.

(Wo)man in bondage

Gender distribution varies depending on the sector of activity. In Tamil Nadu it is estimated that 70 percent of women are involved in floriculture, 40 percent in beedi making, while men constitute an overwhelming majority of bonded labourers in almost all other sectors.²¹³ Women, however, are estimated to form an increasing numbers of migrants in bondage, as migration increasingly happens in family groups. Industries like quarry mining, brick making etc increasing use women as labour.²¹⁴

Even while husbands are bonded, women of the household are severely affected by it. It means more economic hardship for them. As there were no daily wages coming in to sustain the household, the responsibility of running the household put greater burden on women. Often, unable to meet the needs, they end up taking additional loans from the same employer for exigencies. Thus, such labour relationships put the family into a cycle of exploitative debt.

Women complain of verbal abuse, aggressive behaviour and sometimes even sexual exploitation by masters, employers or contractors. At a brick kiln in Andhra Pradesh it was reported that male workers were made to work as bonded labourers while young girls were sexually exploited on a daily basis, threatened at gunpoint.²¹⁵ Women face greater burden of caste discrimination too. They were called by their caste names, and not their individual name, which makes them feel humiliated.

Although older women are often spared of this ignominy, their age increases their vulnerability. As they can offer no hard labour, and help family in repayment, they are taken as a burden. To escape this, it was not uncommon to find that they too indulge in bonded labour to supplement the family income²¹⁶.

Released from hell?

The Bonded Labour Act (1976) established institutional mechanisms in the form of Vigilance Committees at the district and sub-divisional levels. Vigilance Committees, under the chairmanship of District and Sub-Divisional Magistrates are to receive complains regarding bonded labourers. Executive Magistrates conduct summary trial of offences, to release the bonded labourers and to issue release certificates.

²¹² Human Rights Watch Children’s Rights Project (1996), *The small hands of slavery, Bonded Child Labour In India*, Human Rights Watch/Asia,

²¹³ Sugirtharaj and Sait (1995), Tamil Nadu Commissioners’ Report, as cited in Srivastava Ravi (2005), ILO, *ibid*

²¹⁴ The Commission report says that women constitute 20 percent in the brickyards and 10 percent in the quarries.

²¹⁵ 2004, Orissa’s migrant labourers: victims of sexual abuse, exploitation, 13 January, The Pioneer <http://infochangeindia.org/200403303291/Human-Rights/News/Orissa-s-migrant-labourers- victims-of-sexual-abuse-exploitation.html> (last checked by author May 2008)

²¹⁶ Chakraborty, Bhaswati (2004), Gender issues in Bonded labour, A study of RangaReddy district, Andhra Pradesh, ILO, New Delhi

However, at most places Vigilance Committees are either non-functional or dominated by government officials and/or political appointees. In Bargarh, Orissa, a study found that though the vigilance committee met regularly, it echoed government's argument about non existence of bonded labour. When one of the members repeatedly demanded a fresh identification and release of bonded labourers, an NGO, known to take side with government was given the responsibility of conducting the survey. As a result, none of 1,200 bonded labourers who had filed a petition for release were identified as bonded labour. Similarly in Malkangiri, the vigilance committee, under political pressure has started to deny the existence of bonded labour²¹⁷.

A centrally sponsored scheme for rehabilitation of released bonded labourers was launched in 1978 where the assistance provided was shared on a 50:50 basis between centre and state. Centre released Rs. 10,000 per labourer. Expenditure incurred in 8th Five Year Plan amounted to Rs. 40.51 crore, while it Rs. 24.50 crores during the 9th Five Year Plan. During the 10th Five Year Plan (2002-07) Central Grants amounting to Rs 97.28 crores was provided to various State Governments under the said scheme. The latest budget for 2008 -9 has a provision of only Rs 1.8 crores for the rehabilitation of bonded labourers indicating the low priority attributed.²¹⁸

Even after release, issuing of certificates takes a long time and rehabilitation happens only in few cases. Prosecution of 'masters' have been almost completely ignored. Many a times bonded labourers suffer more at the hands of bureaucracy, than they did under their masters. It has been reported that out of 40 bonded labourers (including minors) from Madurai who were rescued from the states of Andhra Pradesh, Orissa and Uttar Pradesh, only 8 have been paid rehabilitation money of Rs 20,000. The remaining thirty two labourers have received only an 'interim relief' of Rs 1,000 each. The reasons for denial in release money were because they had not been issued release certificates from the district collector of the place where they were bonded. A man was denied assistance as his name was spelt wrongly in the release certificate. In a yet another case, the released labourer had to bribe a village administrative officer for releasing a cheque for Rs 10,000.²¹⁹

The greater problem in the implementation of the 1976 Act is that from the start, official activism in 'freeing' bonded labour extends at best to identifying a few, and releasing them, often with a lot of publicity, and 'rehabilitating' them with the release of a grant. But ever since the Act came into force, it is remarkable that almost never, in any part of the country, have employers of bonded labour been prosecuted or punished. It is therefore a 'painless' process, and on occasion, employers of bonded labour have been happy to participate, as bonded workers get 'dues' from the government rather than the employer, none answer the law, and 'freed' bonded workers can return to their employers after all the dust settles!

Hunger trap

Their food security status is so fragile that a single failed crop, drought, or health emergency can disturb the delicate balance of surviving. Credit is not taken only for emergency situation but also for everyday life necessities. Most often, bondage is adopted as a coping mechanism from absolute hunger. Even the children surrendered to bondage indicate the extent of household food insecurity.

²¹⁷ Analysing the effectiveness of the programmes for the eradication of bonded labour system, Abhay Xaxa, 2006, *ibid*

²¹⁸ GOI (2008), Notes on Demands for Grants, 2008-2009, Ministry of Labour and Employment <http://indiabudget.nic.in/ub2008-09/eb/sbe60.pdf> (last checked by author May 2008)

²¹⁹ Indian Express (2002), *Bonded to Beureaucracy*, Indian Express, April 19

Their cash loans are sometimes extremely small. A few tens of rupees or a few kilograms of paddy, is sufficient to create a life of servitude. This bondage occurs because the poorest of the poor are largely uncovered by government food and livelihood schemes. In bondage, they often receive no wages. Much of their earnings are deducted against the advance.

Thus, bonded labour is the result of acute hunger, even though ironically through bondage, families try to ensure some buffer against hunger, albeit for short term benefit. In the long run, bondage furthers food insecurity. Added to this is the exacting work and loss of freedom. More favourable options of livelihood and income generation are closed and wages are so low that they do not support savings or movement out of bondage. Food given to the person in bondage is ungenerous and usually at the minimum survival level. Most often, this food, meant for a person's meal is taken home to be shared by the family. Not only food is served in an undignified manner (instances of food thrown away at the bonded labour, or separate utensils, untouchability etc), it is also monotonous, low quality (left over, stale, watery) and in insufficient quantities.

Chicken feed

Those engaged in agriculture, most of them are given a meal or two; however, it usually consists of inferior cereals. For example, in Andhra, bonded labourers are mostly given *taidal* and *korabua* (coarse cereals), and not paddy. As no or very little cash wage is paid, there is often not much food at home, and so the family shares much of what is given to the bonded labour member of the family. There were instances where food was stale, left over or even worms were found in the food.

Newer forms of bonded labour, for example migrant bonded labour face chronic food insecurity. Here, as the period of work is specified and an employer has no long term interest in keeping the bonded labour alive and active, their exploitation is greater. In far away cities, confronted, with unfamiliar people, language and with worksites on outskirts of human habitation, the problem is further aggravated. Migrant workers live in sub human conditions, often sleeping in open air or living in makeshift houses. They are continuously overworked and eat much less than what is required for such heavy manual labour. Their diet is not only insufficient and monotonous, but also unhealthy and lacking in nutrition.

For migrants to brick kilns of Andhra Pradesh, weekly markets come up for migrant labour, selling the poorest quality of food, like broken rice or chicken feed, dried or rotting vegetables and discarded portions of meat. Not only are they poorest in quality, the price charged is also exorbitant. Broken rice or chicken feed costs them Rs 7-8 per kg, as against market price of Rs 3-4. Their drinking water is same as that used for mixing clay for brick making. Also, the sanitation and toilet facilities are virtually non existent leading to poor absorption of food.

Labourers are forced to work even when sick or injured, as employers do not want slackening production. However, if employers need to slow down for their own reasons, payments are stopped. Most of these labourers live under open sky or in makeshift arrangements, in absence of even the minimal amount of facility. There are numerous health hazards, from contaminated water, respiratory diseases and infections, occupational injuries and accidents and malnourishment due to lack of proper food. There is no availability of medical facilities, no insurance and no sick leaves with pay.

Recommendations

It is hunger that drives most people to bondage. The only way open to the country's most impoverished and disenfranchised people to feed their families and themselves is to sell away most

cheaply not just their labour but also with it their dignity and their freedom. The country's Constitution and laws, the state, its food and development programmes, all fail them so profoundly that they are able to survive only through forms of slavery.

Yet it would be a grave mistake to believe that bondage at least ensures the food security of the bonded family. It is true that a bonded worker must be fed to be able to toil the many hours that his employer demands from him. But the food is without freedom, and therefore without dignity. It is often the cheapest and most monotonous food available. It also does not guarantee the survival of the family of the bonded worker. It rarely opens even future paths of freedom from want and indignity. It rarely leads to hope.

Acknowledge bondage

1. No problem can be solved unless it is acknowledged. The central and state governments must resolutely end their stubborn denial, of the persistence of classical forms of adult and child bonded labour, and the emergence of dangerous and oppressive new forms, adapted to the globalised economy.
2. There must be a new national resolve to end this practice as utterly incompatible with India's claims of global economic leadership.
3. District Collectors should reconstitute vigilance committees under the Act at various levels, and collaborate with these to freshly survey truthfully the scale and forms of bonded labour.
4. Implement **Bonded Labour Act, 1976** with new vigour. A close cooperation between vigilance committees and civil society organisations is required.
5. In this round, stress should be on not just identification and release, but also enduring rehabilitation and above all criminal prosecution of the employers of bonded labour.

Distribute grain

1. Once released, give **Antyodaya Anna Yojana (AAY) cards** to all bonded labourers.
2. Also, they could be given a special **pension for first six months** (equivalent to the NOAPS pension prevalent at that point of time) to help them start afresh, equivalent to the old age pension amounts.

Prevent fresh bondage

1. All released bonded workers should be given **job cards under priority**, and 2 members of the family entitled to get employment under NREGA.
2. All released bonded workers should also be permitted to draw their full entitlement of **grain on credit** from PDS shops every month. This should be adjusted against one-third of their daily wages once NREGA works are commenced.
3. If they do not own their homesteads, they should be given first priority for free housing under the Indira Awaas Yojana.
4. All children (who may be themselves bonded or the children of released bonded workers) should get admission, if their parents choose, in SC ST hostels. If they choose otherwise, they should be admitted to local schools, if necessary after organising residential bridge courses under SSA, and are also provided MDMS.

Recommendations for bonded migrant workers:

1. Registration norms for contractors under the Inter-State Migrant Workers Act must be rigorously followed

RIGHT TO FOOD

2. Residential schools must be opened for children and elderly, in the 'sending areas' so that they can be taken care of and continue with schooling even when their parents migrate
3. Registration of 'receiving' factories like brick kilns, stone quarries etc under Factories Act
4. Ensure payment of minimum wages
5. Temporary aanganwadi centres at the sites where migrants work, such as construction or brick kiln sites, must be opened to take care of children under six.
6. Transfer of entitlements, also across states (this will require proper registration and knowledge of people who are migrating, and would be taken care of by registration of factories and contractors). Also, it will need interstate cooperation. But if it is to work for people who are most powerless, it should involve the least paper work.

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**A Proposal on starvation to
the Supreme Court**

by
**Dr NC Saxena
Harsh Mander**



Proposal on Starvation.

The objective of this proposal is to establish processes of investigating starvation that are transparent, reliable and respectful of the dignity of the survivors; and mandatory protocols for intervention for relief, prevention and accountability.

Definition of Starvation

It is remarkable that Famine Codes of the past, and contemporary Codes, do not contain an agreed definition of starvation. It is important to begin by defining starvation carefully and rigorously, and yet in ways that are accessible to the lay public.

Hunger may be understood as the denial of adequate food to ensure active and healthy life. If hunger is prolonged to an extent that it threatens survival, or renders the person amenable to succumb because of prolonged food denials to curable ailments, then the person is living with starvation. If these conditions actually lead to death, then this is a starvation death, even though the proximate cause in every case would be a medical failure. But the cause of death is not the medical failure, but the prolonged denial of nutrition that led to a person succumbing to medical conditions which a well fed healthy person would easily be able to combat and survive.

This definitions of starvation and modes of verification in this chapter and its annexures, are derived very substantially from an excellent document ‘Guidelines for Investigating Suspected Starvation Deaths’, prepared by the *Jan Swasthya Abhiyan*) Hunger Watch Group, based on a consultation organised in Mumbai in 2003¹.

The document points out firstly that ‘starvation is ultimately not primarily a technical issue, but is rather related to deep-rooted socio-economic inequities, which require radical and systemic solutions’. It adds that ‘while approaching the issue of hunger related deaths, we should start with the basic fact that starvation and malnutrition related deaths are *public health problems requiring community diagnosis*. In this sense they differ from classical “disease related mortality”. The diagnosis of a death due to tuberculosis may be approached as an individual diagnosis. But *the diagnosis of a “malnutrition death” cannot be just an individual diagnosis; we have to document the circumstances prevailing in the family and community along with the individual to reach such a conclusion*’.

It adds that the dilemma is deepened because ‘generally prevalent “baseline” malnutrition, gradually worsening severe malnutrition and definite starvation merge with each other along a seamless continuum. In a community which is used to barely subsistence intake, three years of drought reduces this further and then some families start eating once a day, a few poorest families eat on alternate days ... where exactly is the dividing line between malnutrition and starvation? When exactly does the situation change from “a chronic problem” to “an alarming situation”?’

¹ This conference was attended by and attended by Veena Shatrughna (Deputy Director, National Institute of Nutrition, Hyderabad), Vandana Prasad (Paediatrician), Narendra Gupta (Prayas), Sunita Abraham (Christian Medical Association of India), Sarojini (SAMA and Convenor of MFC), C. S. Kapse (Professor, Department of Forensic Medicine, D. Y. Patil Medical College), Neeraj Hatekar (Professor, Department of Economics, University of Mumbai), Sanjay Rode (Ph. D. student, Department of Economics, University of Mumbai), Abhay Shukla (Co-ordinator, SATHI Cell, CEHAT), Neelangi Nanal, Amita Pitre and Qudsiya (all researchers at CEHAT).

Public officials, the lay public and sometimes even professionals believe that starvation requires no intake of food. This underlies some of the denials when post mortems of the corpses of the deceased show some grains of food, or investigators are able to find some foodgrains in the homes of the person who recently died, and the cause of whose death is being contested. The Hunger Watch group defines starvation as levels of food intake that are unsustainable for the continuance of life itself. In assessing this, one challenge, as already observed, is that ‘malnutrition, starvation and starvation deaths seem to lie along a continuum. How is it possible to demarcate one from the other?’

An adult who eats 850 kilocalories of food daily or less may be presumed to be starving. This cut-off is based on research that shows that a person who weighs 50 kilograms, if she or he engage in no physical activity altogether, they require at least 850 kilocalories merely to stay alive, even though they perform no work at all. Thus if it is established that the adult had access to less than 850 kilocalories, then this is not compatible with life itself, and the person is undoubtedly starving².

Another reliable physiological indication of starvation is a BMI (Body Mass Index) of 16 and less. Body Mass Index or the BMI is the ratio of the weight of the adult in kilograms to the square of her height in metres. This is a very good indicator of adult nutritional status as it is age independent. Values of BMI that fall between 20 and 25 are deemed to be normal. On the other hand, significant research finding is that in adults, if BMI is below 19, mortality rates start rising. Mortality rates among adults with BMI below 16 are nearly triple compared to rates for normal adults³. Thus in adults a BMI of 16 and less should be used as a cut off point to demarcate starvation from under-nutrition.

The nutritional status of children is easy to derive from the child’s weight and age, and most ICS workers are trained in assessing this. NCHS standards for ideal body weights for children, both male and female are available. Classification systems based on these standards enable us to decide from the age of the child and its weight if the child has a normal nutritional status or is either undernourished or overweight. The weight of the child should be compared to the ideal weight for that age mentioned in the NCHS standards. A percentage of up to 80 percent is deemed normal, 60 to 80 percent is deemed mild to moderately malnourished, and below 60 percent the situation is severe, below 50 percent alarming.

Verifying Starvation

The duty to investigate and verify complaints of starvation must be shared by public officials, elected representatives, affected people and local communities, and professionals. Each must have clear and well defined roles.

In practice, if large numbers of people die of starvation, it occasionally captures media attention, and there is transient public outrage. Government officials in every part of the country, hotly deny

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³ In the word of the hunger watch group (mimeo, 2003), ‘Based on a requirement of 0.7 Kcal / kg / hour, a 50 Kg person needs about 850 Kcal per day to maintain oneself at Basal Metabolic Rate, without any physical activity’. Thus any food intake that is sustainedly lower than 850 Kcal per day would be incompatible with life in due course and is an indication of starvation’.

allegations of starvation deaths. Most claim that the deaths result from illness, some even quibble that people were just chronically malnourished, but not starving. Issues of food security and hunger surface briefly in public consciousness, whenever there are media reports on starvation deaths. The brief public outrage that follows such reports lead almost invariably to unseemly wrangles about whether this was indeed a starvation death, with angry denials by officials, post mortems and other evidence being mustered to establish that there was indeed some grain in the stomach of the diseased or available to the family and therefore this does not constitute a starvation death.

Apart from this, even the media and political establishment tend to react only when reports emerge of actual starvation deaths surface; reports of destitution that led to this final collapse fail to stir interest or action. There is in this sense, in both State and non-State circles a certain 'normalisation' of destitution, of conditions in which people are forced to live with starvation. They can expect the State to act or public opinion to be outraged only when people begin to die.

Few people die directly and exclusively of starvation. They live with severe food deficits for long periods, and tend to succumb to diseases that they would have survived if they were well nourished. Official agencies do not recognise these as conditions of starvation, and instead maintain that the deaths were caused by the proximate precipitating factor of infection. We have also seen that starvation does not require absolutely zero food intake, but rather prolonged periods of such low food intake as to be incompatible with survival.

In the aftermath of media complaints of starvation deaths, while analysing deaths due to starvation, the official investigator usually conducts a conventional enquiry in which he or she fires a series of humiliating questions soon after the death has taken place to the victim's. This would only leave scars on the family of the deceased. The usual line of questioning is about whether the individual or family had access to any food at all in the period immediately preceding the death, or whether the death was due to illness or natural causes. There are sometimes post mortems to show even a few grains or wild leaves and tubers on the stomach, to demonstrate spuriously that the death was not due to starvation.

Investigating the Living by Public Officials

The National Human Right Commission in its investigation into alleged starvation deaths in Orissa⁴ some important and human principals have been established. First of these is that death is not necessary as evidence of starvation. In the words of Mr. Chaman Lal, former Special Rapporteur of The National Human Rights Commission (NHRC)⁵, 'A person does not have to die to prove that he is starving. This insistence on death as a proof of starvation should be given up. Continuance of a distress situation is enough proof that a person is starving'. We agree that medical post mortem inquiries do not serve much in the process of preventing starvation deaths and in assuring the right to food. Indeed, it hurts and humiliates those families and communities who have lost people painfully to starvation. Citizens, especially the ones who are starving, have a right to dignity. Starvation is also rarely an isolated instance, but reflects instead prolonged denials of adequate nutrition to households, communities, or social categories. Such people are usually very impoverished and dispossessed or destitute.

⁴ 'Guidelines for Investigating Suspected Starvation Deaths', by the Jan Swasthya Abhiyan) Hunger Watch Group (mimeo, 2003)

⁵ 'Feedback from Dr. Amrita Rangaswamy on Starvation deaths', Tanushree Sood, CES, Mimeo, 2005.

The discourse around starvation, especially among public officials and the media, should shift in such times from not just those who died, but those who survived but are deeply threatened. They need to recognise starvation to be a condition not just of the dead but also of the living. It is crucial to understand and accept that death or mortality is not a pre-condition for proving the condition of starvation. Long-term unaddressed malnutrition and endemic prolonged phases of hunger must be recognised as situations of starvation, and the duty of the state to prevent deaths of persons who are living with starvation.

There are many ways that allegations, complaints and fears of starvation arise. In any such situation, the focus of the investigations by public officials must focus not on the dead, but on the living survivors, and people of the family, class or community who may be similarly threatened. This would ensure that the survivors of the deceased are not traumatised further, and measures for relief and prevention are put in place without delay.

But it is important also to establish the veracity of complaints of starvation deaths. This should be done by processes of community investigations and verbal autopsies by public health officials in collaboration with local people. Both these processes may proceed side by side.

In the event of complaints, through application or verbal, made in the media, by affected people or activists or any other source, local panchayat representatives and revenue official must inform the District Panchayat head and the district collector immediately, who in turn will inform each other, the local officials, and panchayat functionaries at various levels. They would be debarred from issuing denials, in the absence of investigation by public health functionaries, and instead the effort should be to identify the sources of distress, and respond to mitigating and ending these.

It would be the duty of the district panchayat head, with the district collector, the chief medical Officer, heads of departments of civil supplies, women and child welfare, social welfare and forests, to personally visit the location expeditiously, and in nay case not later than 48 hours after receiving the complaint or information is received. They should investigate the overall field situation in the family and community: not whether there was a starvation death, but whether the specific family, as well as in that location the local community (such as Musahars) and the social (such as single women) and class (such as landless workers) categories to which she or he belongs, subsist in conditions of prolonged deprivation of adequate food with dignity, or in continuous uncertainty about the availability of food, or dependence on charity or debt bondage for food. On receiving reports of people living or dying of starvation, may be analysed, by a process described sometimes as verbal autopsy. They should meet the family of the victim, and learn from them about their general food and livelihood situation, and with the neighbourhood, and the local community, tribe, caste, class, gender or age group to which the affected people belong, and the village (or urban settlement) at large.

This public investigation should be conducted in consultation with and seeking the support of the affected people. It may occur in two phases. In phase one, discussions are held with the family of the victim and some neighbourhood families. During these discussions, the victims' families may be asked questions about the food and livelihood conditions and deprivations of the individual and the household, access to food and work, periods of hunger, and so on. The idea is not only to probe

⁶ Personal communication

death and its causes but only to understand the poverty and destitution faced by the families and by similarly affected people. Attempt should also be made to understand the root cause of poverty such as livelihood crisis, heavy debt, crop failures etc.

In the second phase of investigation, discussions should be carried forward with the other members of the tribe, caste, class, gender or age group to which the affected people belong. During these discussions, questions may be posed about the food and livelihood conditions and deprivations of the class and communities of deprived people, their access to food and work, and periods of hunger. Broader questions regarding functioning of the food and livelihood schemes may be asked, such as (i) is there an operational aanganwadi centre running in the village, (ii) is the nearby government school providing mid-day meals to the children, (iii) does the ration shop provide foodgrains in the right quantity, price and on time, (iv) how many elderly persons in the village obtain social security benefits or pensions from the state and so on. At the same time, the people should be provided enough space to reveal situations on their own. They should not be crowded out by questions from the investigator. It may also be worth asking if any change has occurred in their way of living over the years. In other words, have the government policies brought about a change in the way of living of the people? There is a need to document the circumstances prevailing in the family and community at large special focus needs to be laid on tribal and backward rural areas. Also there may be cases of starvation of individuals who for one reason or another are without families, or abandoned by their families and excluded from their communities. The investigations should be sensitive to these as well.

These findings should be recorded by the district panchayat head and district collector in writing, and their report shared and explained in the local language to affected people and communities, local elected leaders and local officials. The report should contain a clear time bound action plan for intervention.

State Interventions in Situations of Suspected Starvation

Even without awaiting the outcomes of the community investigations to establish starvation deaths, public authorities of the Panchayat and district administration must implement a range immediate measures, as soon as they are convinced that conditions of grave and threatened food and scarcity prevail in a local area of community, which result in people being forced to live in conditions of prolonged under-nutrition and even starvation.

Once it is established that there exist conditions of people of a dispossessed community, class or social category who live with starvation or grave threats to their food and livelihoods security, it is the duty of the State (jointly of the district panchayat and district administration led by the district collector) first to provide relief in case of conditions of starvation or long term unaddressed under-nutrition and failure of food schemes to prevent or remedy this. In its current form, 'gratuitous relief' is in the nature of charity. Such an ideology cannot bring about long term and permanent change in the condition of people who are vulnerable to starvation or the system of administration. Thus, such kind of an ideology needs to be converted into a system of entitlements. In other words, relief needs to be in the form of entitlements and not charity.

If a certain region has been diagnosed as suffering from intense hunger, the state should be alarmed immediately, and be asked to place systems of relief, immediate, short term and the long term.

1. Relief for Family of Deceased: The first immediate relief must be for the affected family itself that has suffered the loss of persons for reasons associated with prolonged deprivation of adequate and assured food with dignity. Some of the measures that may be relevant include:

- a) ensuring immediate food availability to the family, free of cost for at least for a period of six months and then continuously on a more permanent basis at highly subsidised rates. This would be by the distribution to them of special AAY cards with the specific provision that they would get their food entitlement without any cost for the initial six months;
- b) ensuring early sanction and release of insurance under NFBS, and release of an ad hoc amount of the same amount for all dead as compensation regardless of whether or not they were adult bread earners;
- c) identifying in consultation with the survivors in the family, the reasons for livelihoods denial, collapse or insecurities and assisting them to build a secure livelihood through measures like land allotment and restoration in case of alienation;
- d) ensuring their coverage of all food and livelihood schemes for which they are eligible such as ICDS, MDM, NREGA and old age, widows and disability pensions;
- e) for children, ensuring their admission to SC ST hostels if they choose, so that their education, food and protection is secured;
- f) organising psycho-social support through professional and trained lay counsellors to the survivors of the deceased; and
- g) for infants, small children, expectant and nursing mothers, doubling their quota of food entitlements, hospitalisation where necessary, arrangements for nutrition rehabilitation, and health-care including immunisation.

2. Relief for others identified to be similarly threatened: The next stage of intervention would be for the community, class or social category to which the family of the affected person belongs. This must begin with publicising and opening NREGA works for all those who seek it, within a week of the receipt of the information. The ceiling on 100 days for one member of each family must be relaxed for the affected people for a period of two years from the time a situation of starvation is identified. Simultaneously the mid day meal in the school will be extended to all days in the year, and open to all children, even if out of school, and old and disabled people and single women who seek it. The ICDS centre will also provide children of 3 to 6 years hot cooked meals twice a day instead of once, and this will be open also to pregnant and lactating mothers, and single women.

This must be followed with a careful official as well as well publicised affected people's social audit of why they could not access their food rights from the food and livelihood schemes relevant for them. For instance, were their small enrolled and regularly availing of the services of ICDS, and was their decline of nutritional status identified and addressed on time; if not, why not? Were the older children in school, and did they access regular and nutritious mid-day meals? Did they have ration cards, AAY or at least BPL, and did they regular receive the prescribed quota of 35 kilograms of subsidised food grains from the ration shop; if no, again why not? Did all old people receive pensions, and were these distributed at their doorstep on time every month? The same questions would apply to widows and disabled people in states with schemes for pensions for these groups. Did they seek job cards and work, and was this given to them in accordance with their legal entitlements under the NREGA?

From such an enquiry, the reasons for failures of food and livelihood schemes, and the exclusion of these most food vulnerable people from their reach, should be clearly diagnosed. The district panchayat and collector should clearly fix responsibility at all levels, punish those found guilty, remedy gaps of funds, resources and personnel, and address issues of discrimination and social exclusion. There should then be a time-bound coverage of all affected and threatened people by AAY ration cards, job cards under NREGA, old age, widow and disability pensions, and ICDS services, including nutritional rehabilitation and hospitalisation where found necessary, within a period of one month from the date of initial information. Failures to do so, if they result in further loss of life or deterioration in people's nutritional condition, will be the personal responsibility of the district leaders of the Panchayat and administration.

In the long run, local structural sources of pauperisation will be identified and local solutions developed in consultation with the gram sabha and village panchayat. These may include failures to implement land reforms, tribal land alienation, caste discrimination, micro minor irrigation and watershed development, availability of formal credit for agriculture and artisans, access to forests and choices of agricultural technology and cropping patterns.



CVC REPORT ON PDS

by

Justice DP Wadhwa

Commission



EXECUTIVE SUMMARY

CONSTITUTION OF CENTRAL VIGILANCE COMMITTEE ON PUBLIC DISTRIBUTION SYSTEM AND ITS CHARTER

The Hon'ble Supreme Court of India, in a Writ Petition No. (C). 196 of 2001, passed an order constituting a committee to be headed by Hon'ble Mr Justice DP Wadhwa, Former Judge, Supreme Court of India, to look into the maladies affecting the proper functioning of the public distribution system ("PDS") and to suggest remedial measures. In particular, the Committee was directed to focus on:

- (a) The mode of appointment of dealers;
- (b) The ideal commission or the rates payable to the dealers;
- (c) Modalities as to how the Committees already in place, can function better; and
- (d) Modes as to how there can be transparency in allotment of the food stock to be sold at the shops.

The Hon'ble Court further directed that while dealing with the question of the mode of appointment, the committee shall also suggest a transparent mode of selection of the dealers. The committee was also directed to indicate as to how more effective action can be taken on the report of the vigilance committees already appointed.

The Hon'ble Court's direction was initially given for the Government of Delhi to be followed on an all India basis.

The constitution of the committee was notified on 01/12/2006. The Committee, pursuant to the Hon'ble Court's order commenced its work in right earnest. It held a series of meetings with all the stake holders, invited representations/petitions from members of the public, visited fair price shops godowns of the Food Corporation of India ("FCI") to examine their functioning, held consultations with the officers of the Department of Food, Civil Supplies and Consumer Affairs ("Department"), Food Corporation of India, Delhi State Civil Supplies Corporation ("DSCSC"), National Informatics Centre (NIC), Delhi State Election Commission, individuals connected with NGOs, and representatives of FPS dealers associations. The Committee also examined official records connected with the items falling within the mandate given to it. By a further order dated 17/04/2007, the Hon'ble Court was pleased to extend the time for submission of the report till 31/08/2007.

Based on the work done by the Committee and in compliance with the Hon'ble Court's order, a detailed report covering all issues tasked to the Committee is being submitted. The Report is divided into three parts. Part I is an executive summary of the Report. Part II contains the main body of the Report and examines each of the issues, duly chapterised at length, identifying the weaknesses in the existing PDS and makes detailed recommendations for toning up and streamlining its functioning in Delhi. Part III contains relevant documents annexed to the Report.

The full forms of certain abbreviations, which have been used repeatedly throughout the Report are given below for the sake of convenience:

1. APL : Above Poverty Line
2. BPL : Below Poverty Line
3. AAY : Antyodaya Anna Yojana

RIGHT TO FOOD

4. TPDS : Targeted Public Distribution System
5. FPS : Fair Price Shop
6. SFA's : Specified Food Articles (issued under the PDS)

The important recommendations under each of the chapters contained in Part II of the Report are summarised herein under:

1. LEGAL REGIME

1.1. In the chapter dealing with the Legal Regime the existing provisions governing the PDS, that is to say, the Essential Commodities Act, 1955, the Delhi Specified Articles (Regulation of Distribution) Order 1981, the PDS (Control) Order 2001 (as amended in 2004), and the relevant notifications and circulars which govern the implementation of the said Act and the PDS (Control) Order, 2001 in Delhi are detailed. This chapter is intended to be a ready reckoner which would help in appreciating the other chapters wherein relevant clauses of the PDS (Control) Order 2001, notifications and circulars are dealt with in detail.

2. APPOINTMENT OF DEALERS OF FAIR PRICE SHOPS (FPS)

2.1. This chapter discusses at length the existing guidelines for allotment of FPS licenses and the modifications introduced in these guidelines from time to time, *inter-alia*, highlighting eligibility conditions in respect of applicants, shop premises, time frame prescribed for completion of the selection process and the procedure for renewal of FPS. This chapter also incorporates the Committee's findings on how the existing instructions and provisions of the PDS (Control) Order, 2001 are being violated with impunity by FPS licencees due to laxity or complicity on the part of the officials who are required to monitor the functioning of the FPSs. This chapter also deals with the Committee's findings that were arrived at pursuant to the perusal of some of the files pertaining to allotment of licencees of FPS. The chapter provides instances of blatant violation of norms in allotment of FPS and reveals extraneous considerations come into play in such cases, resulting in some FPS having ration cards in excess of the norm of 1000 ration cards per FPS and some FPS having ration cards much less than the said norm, which in turn, affects their viability.

2.2. The broad recommendations of the Committee include:

- (a) consolidation of the existing guidelines and giving them due publicity through press and on the web site of the Department for information of general public;
- (b) compression of the time involved in completion of the selection process from the existing 56 days to 42 days;
- (c) requirement of being a resident of the concerned circle where the FPS vacancy has arisen should be substituted with the requirement of being resident of the locality for which vacancy is notified;
- (d) adherence to the Department's guidelines dated 29.8.1997 stipulating creation of a vacancy only when there are 1000 cards available to be attached to an FPS;
- (e) allotting of new vacancies for a FPS to cooperative societies or women self help groups.

3. VIABILITY OF FAIR PRICE SHOPS

3.1. The Committee examined in depth the question of viability of FPS's, which is closely linked with the issue of the rate of commission to be paid to FPS dealers. The Committee discussed this issue threadbare with the licencees of FPS, their associations, representatives of NGOs, government officials and also invited suggestions from various sections of society. The findings and recommendations of the Committee are contained in this Chapter 3 are summarised as under:

3.2. The following table graphically shows the commission rates earned by FPS licencees under the extant orders governing the sale of wheat and rice to the Above Poverty Line (APL), Below Poverty Line (BPL) and Antyodaya Anna Yojana (AAY) beneficiaries.

Category	Cost Price per Quintal	Selling Price per Quintal	Differenc B/w Cost Price and Selling Price	Cartage Paid to per DSCSC per Quintal	Commission Quintal paid to FPS
APL Wheat	Rs. 610/-	Rs. 680	Rs. 70/-	Rs. 35/-	Rs. 35/-
APL Rice	Rs. 830/-	RS. 900	Rs. 70/-	Rs. 35/-	Rs. 35/-
BPLRs. Wheat	415/-	Rs. 465	Rs. 50/-	Rs. 15/-	Rs 35/-
BPLRs. Rice	565/-	Rs. 615/-	Rs. 50/-	Rs 15/-	Rs. 35/-
AAY Wheat	Rs. 200/-	Rs. 200/-	Nil	Rs. 15/- paid to DSCSC by Delhi Government	Rs. 35/- paid to FPS by Delhi Government
AAY Rice	Rs. 300/-	Rs. 300/-	Nil	Rs. 15/- paid to DSCSC by Delhi Government	Rs. 35/- paid to FPS by Delhi Government

3.3. Keeping in view the existing guidelines of the Department requiring 1000 food cards to be attached to an FPS unit and assuming full off take of wheat and rice as per entitlement (25 kgs of wheat and 10 kgs of rice per month) of each category of card holder subject to the condition of the FPS unit getting its full allocation, a FPS owner would earn Rs. 15,750/- per month. This amount includes income derived from the sale of gunny bags at the rate of Rs. 5 per bag. However, this income projection changes to the FPS owner's disadvantage if there is a reduced allocation as is currently the position. While there is 100 percent allocation in BPL category, allocation under APL category works out to 35 percent of the entitlement. Assuming that the BPL and APL card holders are evenly distributed in an FPS and assuming the current rate of reduced allocation in respect of the APL category, the income of a FPS comes down to Rs. 7,369/- per month. The situation is worsened if the number of food cards attached to a FPS unit is much less than 1000 cards. The table provided in para 5.6 of the chapter dealing with viability shows at a glance, the unequal distribution of ration cards in Delhi.

3.4. The estimated average expenditure of a FPS on a conservative scale including expenditure on rent, commission payable to banks on demand drafts, stationery items, salary paid to helpers, labour and electricity charges etc. works out to approximately Rs. 6,000/- per month. The absence of a steady income over and above the monthly expenditure incurred in running the FPS erodes its viability. Hence, the representatives of FPS dealers associations raised the demand for increasing the rate of commission. It was also suggested that the commission of the FPS should be increased to Rs. 70/- per Quintal. Other views touched on entrusting PDS work to a person already in business, making the PDS attractive enough for more persons to avail of this facility and ensuring that a FPS

dealer earns at least Rs. 10,000/- over and above expenses incurred by him in running the shop. One NGO representative suggested that an option should be given to cardholders for purchasing SFAs from any FPS and the competition generated through this process will improve the viability of FPS.

3.5. The Committee has observed that there are other factors impacting on the viability of a FPS. Some of these are:

- i) Delay in supply of SFAs;
- ii) Losses suffered by FPS dealers due to blockage of working capital invested for the stock and transport, for long periods;
- iii) Losses suffered on account of short supply of goods;
- iv) Unequal distribution of ration cards;
- v) High transportation costs;
- vi) Commission being too low to generate moderate income.

3.6. Keeping in view the Committee's wide ranging interaction with stake holders, knowledgeable individuals, government officials and its own findings and also with a view to avoid any significant additional burden on the system, the Committee has explored other available options for improving the viability of the FPS instead of increasing the rate of commission. The main recommendations of the Committee are as follows:

- a) There will be substantial gain for FPS dealers if the cost involved in transportation of SFAs is based on actual cost in terms of tender floated by the Government. Elsewhere in the Report, it has been recommended that the responsibility for transport arrangement through open tendering process be taken over by the Department in place of the DSCSC.
- b) The Department should take urgent action to rationalise the ration card position of the FPS and ensure that the present anomaly of unequal distribution of cards is reduced to the minimum.
- c) End to end automated system in the PDS chain should be introduced to plug leakages and improve viability of the FPS. Further, recourse to E-banking is a favoured option for cutting down delays in depositing money with FCI/ DSCSC. This will be a substantial improvement on the existing practice.
- d) Incentive should be given to FPS dealers for selling other commodities in conjunction with SFAs. Other commodities should, however, not include SFAs i.e. wheat and rice available in open market. This will improve the viability of FPS.
- e) Accountability should be fixed for any delay in delivery of SFAs.
- f) The question of amalgamating Kerosene Oil Depots (though an equally discredited and corrupt system) and FPS on the Maharashtra model and providing both the facilities to consumers through the FPS window needs to be examined to further improve the viability of FPS.
- g) The Committee would also like to emphasise the need to provide a dedicated place on the lines of milk depots, post offices, multi-purpose kiosks for the FPS at a very nominal rent. The State Government of Delhi should take the initiative in this regard.
- h) As far as the BPL category is concerned the State Government must bear the responsibility to provide door delivery of SFAs to the FPS at its own cost. This obligation arises from the PDS (Control) Order, 2001 itself where Clause 6(3) read with Clause 4(6) of the Annexe to the PDS (Control) Order 2001, casts a duty on the authorities to ensure physical deliveries of SFA's to the FPS. Further, in the 9-point action plan formulated by the Government of India, doorstep delivery has been highlighted as one of the urgent measures to prevent diversion. Once the State Government undertakes this obligation the FPS owner is relieved of the burden of paying a sum of Rs. 15/- per Quintal towards transport of BPL stock which amount automatically increases his profit.

4. VIGILANCE COMMITTEES AND GRIEVANCE REDRESSAL MECHANISMS IN THE NATIONAL CAPITAL TERRITORY OF DELHI

4.1 The PDS (Control) Order, 2001 provides for monitoring and vigilance including constitution of vigilance committees. There are extensive provisions in the said Control Order regarding the role of these committees, followed by detailed instructions issued from time to time by the Department for operationalising the vigilance initiative. Some of these initiatives include setting up of Circle Advisory Committees to advise on streamlining the functioning of PDS, holding of public audit, public hearings for resolution of public complaints, constitution of Citizens' Watch Committees for monitoring distribution of SFAs and matters relating to availability of SFAs, their quality and quantity etc. and reconstitution of FPS vigilance committees to attend to complaints regarding non-availability or short supply of SFAs. Provisions/ instructions exist which describe their role, functions and responsibilities of the vigilance committees and have been discussed at length in the main body of Report dealing with the subject.

4.2. In addition, there is an Enforcement Branch of the Department to enforce various control orders and the circulars issued by the Department. There is also an Anti – Hoarding Cell that is a part of the Enforcement Branch, to check malpractices and initiate action against guilty persons. The Enforcement Branch and the Anti – Hoarding Cell, in the Committee's view have miserably failed in discharging their assigned responsibilities. Their role has been discussed in detail in the main Report. A Task Force for each revenue district under Deputy Commissioner (Revenue) has also been constituted to conduct surprise checks/ raids. There is also a model Citizens' Charter on TPDS defining particularly the role and functions of vigilance committees to which the Central Government has drawn attention of State Governments for necessary compliance.

4.3. In furtherance of the Model Citizens' Charter on TPDS, the Delhi Government has also constituted a State vigilance committee, with the objective of preventing black marketing and diversion of SFAs, attending to complaints regarding non- availability of wheat, rice, sugar etc. and other related deficiencies in the operation of the PDS in Delhi.

4.4. The Committee has observed that while there are numerous entities involved in smoothly steering the course of the PDS in Delhi, their impact is virtually non-existent on the ground and as a result, malpractices abound to the great discomfiture of the common man. It has been squarely admitted by Commissioner: Food Supplies and Consumer Affairs that vigilance committees in Delhi are defunct and ineffective. Meetings of FPS vigilance committee are not being held separately and instead whatever meetings are held go under the name of joint meetings of Circle Advisory Committees and FPS vigilance committees. The Committee has found that these meetings, apart not from being held on a regular basis, do not serve the intended purpose and have degenerated into a routine affair without focus.

4.5. The multiplicity of entities entrusted with more or less similar tasks with none of them performing their assigned functions has gravely undermined the credibility of these bodies and contributed in no less measure to existing deficiencies in PDS.

4.6. The Committee, therefore, has made detailed recommendations in the main chapter for revamping the vigilance machinery. Some of the important recommendations are as follows:

- a) The Circle Advisory Committees and Citizens' Watch Committees, in their present form, may be scrapped and in their place, district-wise vigilance committees may be constituted, vesting them with appropriate powers, functions and responsibilities.

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- b) No meeting of a vigilance committee should be postponed on account of non-availability of the area M.L.A. to chair the meeting. In the absence of an area M.L.A., the meeting may be chaired by the Assistant Commissioner of the concerned district.
- c) The State level vigilance committee should be reconstituted by retaining the existing composition with the only change that the Commissioner, Food Supplies and Consumer Affairs be made the member/convenor of such reconstituted committee. This Committee should meet once in a quarter to review the functioning of the district level vigilance committees.
- d) The process of selection and appointment of members of the vigilance committees be made more transparent with greater involvement of the public, stakeholders and household women. The majority of members of the committee should be women who are ration card holders of the concerned FPS. As far as possible, the member from SC/ST should also be a woman.
- e) There are other recommendations given in the main chapter on this subject which detail the modalities of the functioning of vigilance committees, such as, periodicity of holding of these meetings, what should constitute the agenda for such meetings and nature of follow – u p action to be taken in respect of such meetings.
- f) The Committee has recommended a toll free Help Line for attending to consumer complaints relating to the PDS.

4.7. The Committee has also focused on the need to set up an independent monitoring mechanism for addressing consumer complaints along with a host of other related issues. This mechanism may be in the form of an “Ombudsman/ Regulator” to be created under para 6(1) of the Annexe to Clause 8 of the PDS (Control) Order, 2001. The PDS (Control) Order, 2001 may be further amended to give greater clarity to the role and responsibilities of the Ombudsman/ Regulator. The structural framework of this institution along with powers, functions and responsibilities and other related issues have been discussed in detail in the chapter dealing with vigilance committees.

4.8. The complaints received by the Ombudsman/ Regulator may be referred by him for a report from the district vigilance committee or FPS vigilance committees, as the case may be. It is clarified that this power of the Ombudsman/ Regulator to make a reference shall be in addition to and not in derogation of the powers of the Ombudsman/ Regulator to conduct an independent enquiry into the complaints. While, the reports so received, will assist the Ombudsman/Regulator in providing solution, these reports will not be binding upon the Ombudsman/ Regulator.

4.9. The Anti – Hoarding Cell should be independent of the Enforcement Branch. The Anti Hoarding Cell should be headed by an officer holding the rank of not less than a Deputy Commissioner of Police who will also select the other personnel of the Cell. A “Special Flying Squad” would also be constituted into the Anti – Hoarding Cell for taking prompt and immediate action, as and when the need arises. This Squad shall be functional round the clock without exception. The Anti – Hoarding Cell should directly report to the Commissioner, Food Supplies & Consumer Affairs.

5. TRANSPORTATION OF SPECIFIED FOOD ARTICLES UNDER THE PUBLIC DISTRIBUTION SYSTEM

5.1. The Delhi State Civil Supplies Corporation (DSCSC), a public sector company under the administrative control of Food and Civil Supplies Department, Delhi Government, has been entrusted with the responsibility of transportation of SFAs from the six FCI godowns to 2772 functional FPS spread over in 70 circles located in 9 districts in Delhi. This responsibility is discharged by the DSCSC by engaging trucks through an open tendering process on an annual contractual basis.

5.2. The Delhi Government fixes the cartage rates pursuant to which DSCSC receives the charges @ Rs. 35/- per quintal for the APL category and Rs. 15/- per quintal for the BPL category from FPS dealers. Cartage charges in respect of the AAY and the APS is paid to the DSCSC by the Delhi Government. The Committee is of the view that the cartages charges recovered from the FPS dealers are excessive and disproportionate to the actual cost incurred by the DSCSC in engaging trucks for transportation of SFAs. This will be apparent from the fact that the DSCSC made a net gain of Rs. 1.59 crores during the financial year 2005-2006 out of PDS operations after meeting administrative expenses.

5.3. The Committee has further observed that the transportation rates fixed as a result of the tendering process vary in the range of Rs. 6.22 to Rs. 25.50 per Quintal. Such a large variation in the rates is a sad commentary on the tendering process and leads to the inescapable conclusion that losses suffered in quoting unrealistic rates for transportation by transporters are sought to be made good by indulging in diversion of SFAs on a large scale.

5.4. The Committee has noted that there is a plethora of instructions/guidelines issued by the DSCSC to streamline the transportation system, ensuring timely delivery of SFAs and for preventing diversion of SFAs. But the very fact that various malpractices connected with these activities are being committed in a blatant manner go to show that there is utter laxity in supervision, lack of accountability at all levels and that there is a deep-rooted and flourishing nexus between transporters, officials and FPS dealers to defeat the objective behind the PDS and derive pecuniary gains by subverting the PDS operations.

5.5. The main body of the Report makes references about sting operations carried out by different TV channels, which among other things, is a pointer towards the prevalence of a benami tender practice for contracting trucks for transportation of SFAs.

5.6. The Committee has further noted in its findings that the DSCSC is not adequately discharging its responsibility of supervising/monitoring the transportation of SFAs from FCI godowns to FPS. Lack of strict supervision over transporters and truck movements virtually derails the PDS in as much as this adversely impacts timely delivery of SFAs at the FPS and leads to the diversion of SFAs. No doubt, DSCSC has introduced PDS ON LINE to keep an eye on the status of transportation and lifting of food grains from FCI godowns as also availability of ration items at various FPSs and other relevant information but this software alone would not suffice to ascertain the actual movement of PDS trucks and the direction in which they are going. Hence, in so far as transportation of SFAs from FCI godowns to the FPS is concerned, it would not be an exaggeration to say that vigilance and supervision are nil.

5.7. The Committee has examined at length the Mumbai model of transportation of SFAs in the main body of the Report along with its merits and demerits. The Committee, however, is not convinced whether it can be adopted *mutatis mutandis* in Delhi.

5.8. Important recommendations of the Committee emerging from a close study of system being followed in Delhi for transportation of SFAs are as follows:

- a) The present system of entrusting the responsibility for transportation to the DSCSC is flawed and it would be appropriate for the Department/Delhi Government to take over this responsibility. The Department should work out detailed modalities for discharging this responsibility without apportioning administrative expenses in the transport charges to be paid by FPS dealers. The Committee has discussed the role that the Assistant Commissioners of Department have to play in this context.

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- b) The net gain on the transportation account currently being made by DSCSC could very well go to FPS dealers, which will improve the viability of FPS.
- c) E-banking should be introduced for payment of cartage charges and cost of SFAs by the FPS.
- d) The Committee also recommends availing of funds provided by the Planning Commission for strengthening the PDS operations by providing a mobile FPS for areas where the number of food cards/ration cards does not justify opening of a FPS as per norms.
- e) The Committee further recommends zero tolerance in cases of breach of contract by transporters and imposition of deterrent monetary penalty for infraction of contract.
- f) The GPS should be used on trucks carrying SFAs to track their movement and installation of the GPS should be made a part of tender conditions. Any tampering of GPS should be severely dealt with and for this purpose the PDS (Control) Order, 2001 if necessary may be amended. The Ombudsman should also be given a role in monitoring the functioning of the GPS.

6. COMPUTERISATION

6.1. The core objective of the TPDS, which was introduced by the Government in the year 1997, is to ensure that the underprivileged/needy segment of the population, which depends on the supplies of SFAs for its day to day sustenance, is provided its full-allotted quota on time. The Committee is of the view that there is rampant corruption at every level of the distribution chain and the most effective way to deal with this cancerous and all pervading corruption in the system is to introduce a completely automated system based on information technology with minimal or no human intervention.

6.2. Para 6(6) of the Annexure read with Clause 8 of the PDS (Control) Order, 2001^[11], the State Government is obliged to monitor the functioning of the FPS through the computer network installed in the district NIC centres. The clause further states that computer codes would be provided to each FPS. However, the Committee has found that the Delhi Government has not setup any system for monitoring the working of the FPS through the network of NIC or otherwise.

6.3. The Committee invited various organisations and also studied models currently being implemented by different state governments. Various presentations were made before the Committee and the Committee had wide range of discussions with experts in this respect. The various systems studied by the Committee are:

- i. Existing computerisation in the FCI.
- ii. Coupon System/ Food Stamps.
- iii. Card System
 - a) Machine Readable Cards
 - b) Biometric Cards
 - c) Visual Crypto Cards (Grid Cards)
- iv. Iris Technology.
- v. Automated System using Online Technology.
- vi. Automated System using Smart Cards.

6.4. The Committee studied many types of technologies that were demonstrated and suggested by different agencies. Some of them have been implemented by some State Governments. On the basis of the above-suggested technologies the Committee recommends the following:

- a) An automated computerisation model has been suggested for the TPDS. It is submitted that the proposed model has been prepared after consulting various technical professionals in the field of information technology. It is recommended that this model may be introduced initially on a pilot basis in one circle in Delhi.

- b) The only solution to the ills plaguing the PDS is to introduce a completely automated system based on information technology, which would result in minimum human intervention.
- c) A database of genuine beneficiaries rectifying all inclusion and exclusion errors must be created by door-to-door verification entrusted to a credible independent agency. This will result in elimination of bogus cards.
- d) A complete automation of the PDS has to be achieved in a time bound manner.
- e) A pilot study in terms of the suggested model of automation may be implemented in a few circles.
- f) Further, till full automation is achieved, the system of coupons as suggested in para no. 3.4.1(c)(iii) of the chapter may be implemented. The system of coupons may also, in the first instance, be tested in a few circles.

7. MAKING TARGETED PUBLIC DISTRIBUTION SYSTEM MORE REALISTIC

7.1. The PDS has evolved as an intrinsic part of Government policy for management of scarcity of SFAs and for ensuring distribution of SFAs to the vulnerable sections of the society at subsidised prices. The responsibility for managing, operating and implementing the PDS rests jointly with the Central and State Governments.

7.2. Responding to the need of vulnerable sections of the society in regard to availability of SFAs at affordable prices, the PDS has graduated from being a general entitlement scheme till 1992 to the Revamped Public Distribution System (RPDS) and now to TPDS which was launched by the Government of India in June 1997, with a special focus on the poor.

7.3. The three schemes that are being operated currently under TPDS are:

- (i). **Antyodaya Anna Yojana (AAY):** This covers the poorest families from amongst the below poverty line families entitling them to 35 Kgs. SFAs per month i.e. rice @ Rs. 3/kg. and wheat @ Rs. 2/kg. As on 31/12/2006, there are in all 57,336 AAY card holders in Delhi.
- (ii). **Below Poverty Line category (BPL):** This covers those poor families whose income is below Rs. 24,200/- per annum. BPL card holders are entitled to 25 Kgs. of wheat @ Rs. 4.65/kg. and 10 Kgs. of rice @ Rs. 6.15/ kg. per month. As on 31.12.2006, there are 3,78,947 BPL ration card holders in Delhi.
- (iii). **Above Poverty Line category (APL):** This covers families whose annual income is in excess of Rs. 24,000/-. Each APL cardholder is entitled to 25 Kgs. of wheat @ Rs. 6.80/kg. and 10 Kgs. of rice @ Rs. 9.00 /kg. As on 31/12/2006, there are 22,85,513 APL cardholders in Delhi.

7.4. The functioning of the TPDS and in particular the above three schemes has been discussed in depth in this chapter of the Report. It will suffice here to say that gaps abound and the functioning of the TPDS leaves much to be desired. Some deficiencies identified by the Committee are as follows:

- a) There are serious gaps in coverage of people below poverty line and the existing number of beneficiaries under the AAY/ BPL categories does not seem to relate to the number who should have been covered.
- b) There is a large number of bogus ration cards in BPL category which distorts the BPL matrix and places avoidable burden on the system. There is a lackadaisical approach towards weeding out ineligible persons.
- c) APL is the most sought after category and the biggest leakage in the system is in this category as the beneficiaries under this category do not avail of PDS facility, by and large.
- d) Data furnished in respect of lifting of SFAs under different categories by the Delhi Government between April 2006 and March 2007 itself shows that large scale diversion takes place in respect

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of SFAs meant for APL category. The lifting of SFAs during this period under APL constitutes almost 72 percent of total quantities of SFAs lifted.

- e) Targeting is not serving its real purpose as the beneficiaries do not get SFAs in accordance with their entitlements.
- f) The system lacks proper accountability at each stage of operation, otherwise how does one explain continued commission of malpractices with impunity and flourishing nexus between officials, transporters and FPS owners to milk the system to their advantage.
- g) The existence of the APL category in an open ended manner has diluted the euphemism “Targeted” and made the system virtually universal, detracting from its main focus of catering to the poor and destitute.

7.5. The Committee has made several recommendations in the main body of its Report, the important ones being:

- a) launching a time-bound door-to-door drive to identify genuine beneficiaries under AAY/BPL categories and provide due coverage to them.
- b) There would be an amnesty period of four weeks where persons holding bogus cards could surrender them without liability. However on the expiry of this period the above mentioned intensive door-to-door verification would be conducted and during that verification if any bogus card is detected both the holder as well as the concerned officers who had recommended the card would be prosecuted under Section 7 and other Sections of the Essential Commodities Act, 1955 without exception.
- c) Revisit the income criterion for the BPL category keeping in view improvement in the poverty scale.
- d) Do away with the APL category and restrict TPDS to the poor namely persons below the poverty line i.e. BPL and poorest of the poor i.e. AAY. It is needless to say that it is this category of persons who need food security. While doing away with the APL category the Committee also recommends increase in the income threshold of the BPL from the present Rs. 24,200/- to Rs. 49,284/-. This based on the minimum wage payable to an unskilled workman in Delhi as per the order No. F.12 (142)/02/MW/LAB/1016 dated 13.3.07. The break up of the said amount is as follows:

Minimum wage per month	=	Rs. 3470/-
Add: 13.6% EPF	=	Rs. 472.26
Add: 4.75% ESI	=	Rs. 164.82
Total:	=	Rs. 4107/-

- e) The Committee is aware of the fact that there is going to be a great deal of opposition from the FPS dealers and other vested groups against the abolition of the APL category. If the Court is of the view that it may not be possible or desirable to abolish the APL category altogether, it may consider limiting the APL category to households whose annual income is Rs. 1,00,000/-. This is based on the fact that a class IV employee of the Central Government in Delhi gets a consolidated salary of about Rs. 8,000/- per month making it Rs 96,000/- per annum. This category may be called “Marginally Above Poverty Line (MAPL)”.
- f) Clear delineation of responsibilities and functions of each position connected with PDS; provide benchmarks for performance levels, and introduce the concept of personal liability in case of lapses.

- g) Introduce an end-to-end automated system in the PDS chain as discussed in the Computerisation Chapter to minimise human intervention in the PDS operations and reduce the scope for manipulation.

8. INTRODUCTION OF FORTIFIED ATTA (WHEAT FLOUR) IN THE PUBLIC DISTRIBUTION SYSTEM

8.1. The Committee is of the considered view that fortified Atta along with wheat should be made available through PDS outlets which would immensely benefit the vulnerable sections of society and increase off take by consumers of PDS foodgrains. Even today, persons without BPL ration cards, despite being eligible for the same, and other persons with BPL ration cards are purchasing wheat flour from the open market as a matter of convenience and to save on the time and cost involved in grinding of wheat into flour. The system of distribution of wheat flour is in vogue in the district of Darjeeling where enriched wheat flour is given @ Rs. 6.80 per kg. In the open market, packaged wheat flour weighing 10 kg costs anything up to Rs. 150/- and therefore, it should be possible to price a packet of fortified 5 kg or 10 kg wheat flour at a much lower price which may be any price between Rs. 7/- and Rs. 8/- per kg. This will definitely be much less than what may be available through the open market. The advantages would far outweigh a somewhat increased price that may have to be paid. At least, providing this option to the vulnerable sections of the society through the PDS network will be a step in the right direction.

8.2. The Committee has also suggested modalities for operationalising this innovative step in the main chapter dealing with this subject.

8.3. Fortified Atta would also improve the general health of the vulnerable sections and reduce instances of Vitamin A deficiency and iron deficiency Anaemia. It has also been suggested that general instructions may be given to sell only fortified Atta both under the PDS as well as the open market as this will make implementation easier and prevent diversion.

9. IMPEDIMENTS IN EFFECTIVE ENFORCEMENT OF PROVISIONS OF ESSENTIAL COMMODITIES ACT, 1955, PDS (CONTROL) ORDER, 2001 AND DELHI SPECIFIED ARTICLES (REGULATION OF DISTRIBUTION) ORDER, 1981—ANALYSIS AND RECOMMENDATIONS.

9.1 Impediments in the enforcement of provisions of the above Act/ Orders have been identified as follows:

- i. Insistence of police authorities to act only on complaints made by the Department;
- ii. Disinclination of police authorities to conduct investigation against violators of the above Act/ Orders;
- iii. Failure of the Department to launch timely prosecutions against the violators including the errant FPS dealers;
- iv. Failure to hold delinquent officials accountable for their acts of omission and commission; and
- v. Delay in Court proceedings.

9.2. All the above factors have been discussed in detail citing instances in the chapter on the subject in the main body of Report. The Department vide Letter No. F. 10(393)/Misc/F&S/Vig./681 dated 20/04/2007, has furnished a list of 42 pending disciplinary proceedings as on 19/04/2007. Most of these cases are pending since the last six to seven years with oldest pendency back to the year 1987. The list, which is annexed, is an eye-opener. None of these cases relate to complicity in diversion of SFAs, fudging of FPS records regarding stocking and sale of SFAs etc., which have today become an intrinsic facet of PDS operations.

9.3. The Department has also furnished a list of 37 disciplinary proceedings that have been disposed off during the years 2005 – 2007. Most of the disposed off cases relate to unauthorised absence, malpractices in sale and receipt of BPL ration card application forms, preparing non – genuine ration cards, unauthorised absence from duty etc. It is seen from the list that even in a case of a serious offence like preparation of non – genuine ration cards, a meagre penalty of censure or reduction by one stage in time scale has been imposed.

9.4. It has been observed by the Committee from an analysis of court files that there are inordinate delays in trials under the Essential Commodities Act, 1955, defeating the very object and purpose of Section 12A(2) of the Essential Commodities Act, 1955 which provides for a summary trial.

9.5. After in-depth analysis made in the chapter on this subject, the Committee has made the following recommendations:

- a) The police department should be directed to act on complaints in consonance with Section 11 of Essential Commodities Act, 1955.
- b) The police department should be directed to exercise their powers of search and seizure without exception.
- c) Prosecutions should be instituted against persons involved in contravention of statutory provisions.
- d) Action should be taken without loss of time to seal the FPS if found contravening statutory provisions and the license of such FPS should be revoked if enquiry in the matter confirms commission of offence unless a superior court stays the proceedings.
- e) A fast track Court should be constituted in respect of cases pertaining to violations of Essential Commodities Act, 1955. There should be a special prosecutor for handling such cases.



**REPORT OF THE SPECIAL
RAPPORTEUR, JEAN ZIEGLER,
ON THE RIGHT TO FOOD
ON HIS MISSION TO INDIA**

(20 August - 2 September 2005)



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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

**The right to food Report of the Special Rapporteur on the Right to
Food, Jean Ziegler Addendum**

MISSION TO INDIA* **

(20 August - 2 September 2005)

* The summary is being circulated in all languages. The report itself, which is annexed to the summary, is being circulated in the language of submission only.

** The reason for the late submission of this report is to reflect the latest information.

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Summary

The Special Rapporteur has the honour to submit his report on the realisation of the right to food in India following his visit there from 20 August to 2 September 2005. This visit was motivated by the fact that India has the largest number of undernourished people in the world, and one of the highest levels of child malnutrition. There are also recent signs that hunger and food insecurity are increasing despite strong economic growth.

This report reviews the situation of hunger, malnutrition and food insecurity in India and the current public debate on “hunger amidst plenty” in India. It then examines the legal framework governing the right to food in India and examines whether policies and programmes are in place to meet India’s obligations to respect, protect and fulfil the right to food. The report then examines the main findings and concerns regarding the realisation of the right to food.

During his visit, the Special Rapporteur enjoyed frank and open discussions with the Government of India at both Union and state levels and was impressed by the Government’s commitment to a wide array of policies and programmes designed to fight hunger and malnutrition. He was impressed by the progress that has been made to eradicate famine and food shortages as a result of public investment in agriculture and rural infrastructure combined with programmes such as the Public Food Distribution Scheme (PDS) and the Integrated Child Development Services (ICDS) Programme. Recent recognition of the justiciability of the right to food under a landmark case before the Supreme Court also provides an example that the world should follow.

However, the key finding of the report is that, although famine has been overcome, millions of Indians still suffer from chronic undernourishment and severe micronutrient malnutrition, especially women and children and people of lower-caste scheduled castes and tribes. Starvation deaths have not been fully eradicated, nor has discrimination against women and against lower castes, corruption, impunity and a wide range of violations including forced labour, debt bondage and forced displacement (destroying people’s access to productive resources) remain serious obstacles to the realisation of the right to food. In the current transition to a more liberalised, market-oriented economy, the poorest are disproportionately bearing the costs, with undernourishment rising as public spending on rural development and social programmes is being cut back. With falling agricultural wages, increasing landlessness and rising food prices, food insecurity is growing particularly in rural areas. Recent economic growth is generating employment mostly in high-tech sectors that will not be able to absorb the loss of livelihoods from the agriculture on which two thirds of Indians still depend. Public expenditure must therefore be directed towards smallholder agriculture to improve household food security, while also improving and maintaining effective safety net programmes, including the PDS, to prevent a further regression in the realisation of the right to food during the economic transition.

While the Special Rapporteur found that poor rural and urban Indians appear to have benefited little from recent economic growth, under the previous Government of the Bharatiya Janata Party-led National Democratic Alliance coalition much new hope was evident with the election of the Congress-led United Progressive Alliance government in 2004. The report concludes with a series of recommendations aimed to assist the Government to improve the realisation of the right to food of all Indians.

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Introduction

- 1 The Special Rapporteur visited India on an official mission from 20 August to 2 September 2005. The Special Rapporteur welcomed the invitation and the commitment of the Government of India to engage in open and frank discussions on the human right to food. For facilitating the mission he would like to thank Ambassador Hardeep Singh Puri and his adviser at the Permanent Mission of India to the United Nations in Geneva as well as Manjeev Singh Puri, Joint Secretary of the Ministry of External Affairs in India. He would also like to thank Dr. Maxine Olson, Resident Coordinator of the United Nations in India and Mr. GianPetro Bordignon, World Food Programme Representative in India, for their advice and support to his mission.
2. During his visit, the Special Rapporteur was honoured to be received in Delhi by Sharad Pawar, Minister of Agriculture; RN Das, Secretary of the Department of Food; and Anita Chaudhary, Joint Secretary of the Department of Food. He very much appreciated their organisation of a comprehensive programme that allowed him to speak to Union, state and district officials in Delhi, Madhya Pradesh and Orissa. He was particularly honoured to be received by Abhijit Sen and the Planning Commission, and by M.S. Swaminathan of the National Commission on Farmers and a number of other leading Indian academics. He also appreciated being able to benefit from the experience of the United Nations system in India and particularly appreciated advice from the United Nations Development Programme, WFP and the Food and Agriculture Organisation. He would also like to express his appreciation for the hospitality of the Chargé d'affaires of Switzerland, Olaf Kjelsen, and for the advice given by Denis von der Weid, director of the non-governmental organisation, Antenna.
3. The Special Rapporteur benefited from meeting with a wide range of representatives from civil society organisations working on right to food issues, including members of the Right to Food Campaign, Supreme Court lawyer, Colin Gonsalves and economist Jean Dreze. The Special Rapporteur was honoured to participate in the national "Judicial colloquium on the right to food", held on 27-28 August 2005 in Delhi, an initiative of the Right to Food Campaign to bring together 70 senior judges from across India to discuss the human right to food. He appreciated meeting civil society organisations in Delhi, Bhopal and Shivpuri in Madhya Pradesh and in Bhubaneswar, Orissa, and would particularly like to thank the NGO, FoodFirst Information and Action Network, for collaborating in the organisation of meetings. He was honoured to be received by communities in a large number of villages in the rural areas of Madhya Pradesh and Orissa as well as in urban areas and slums in these states and in Delhi.
4. India is an incredibly diverse and fascinating country, the birthplace of some of the world's most ancient cultures, with a population of more than 1 billion people, predominantly Hindu but also Muslim, Christian and Sikh, speaking 15 national languages and a myriad of local languages. It is a nation that has become a world power. Huge advances have been made since India's independence barely 60 years ago when non-violent resistance led by Mohandas Gandhi and Jawarlal Nehru brought the end of British rule. Today India has a solid democratic system, grounded in a complex federal State made up of 28 separate states and 7 union territories. The states are very different, socially but also ecologically, with the climate varying from tropical monsoon in the southern states to more temperate climates in the northern areas. The central parts of India are affected by drought (including Madhya Pradesh, Andhra Pradesh, Gujarat and Rajasthan) and the Bay of Bengal is often affected by cyclones and flooding. Other natural disasters are common, including earthquakes such as the terrible quake that devastated India-

administered Kashmir killing thousands of people in October 2005 and the tsunami of December 2004 that killed at least 11,000 people, injuring and displacing thousands more across the south-eastern coastal areas of the country.

5. The vast majority of Indian people (70 percent) still live in rural areas and depend on agriculture for their livelihoods (65 percent). The Indian economy is still largely based on agriculture, but industry (especially textiles, chemicals, mining and computer software) and services are becoming increasingly important. Although today the threat of famine has been conquered, hunger and poverty remain a chronic and pervasive problem, exacerbated by widespread discrimination under the caste system and against women. In recent years the issue of hunger has come back into the political spotlight, with debates about the paradox of mounting foodgrain stocks in the face of reported deaths from starvation and widespread undernourishment. This paradox of “hunger amidst plenty” and the fact that the poor may not have benefited from the recent economic growth of “India Shining”, may have contributed to the victory in 2004 of the new Congress-led coalition, the United Progressive Alliance. This new Government, with the release of its Common Minimum Programme, brings new hope for more concrete progress towards the realisation of the right to food.

I. HUNGER AND FOOD INSECURITY IN INDIA

A. Hunger and food insecurity

6. India has made impressive progress in overcoming the threat of famine that plagued its history and overshadowed the early years of independence. The 1943 West Bengal famine, which killed more than 3 million people, was India’s last and largest famine although India also faced serious food shortages in the first few decades of independence.¹ Since independence in 1947, however, concentrated investment in agricultural production and rural infrastructure has quadrupled the production of rice and wheat, and India has become self-sufficient in basic food production. With rapid transport of foodgrains to areas facing shortages under the Public Food Distribution System (PDS), India has conquered the threat of large-scale famines even though many regions are regularly affected by drought, flooding, cyclones and other natural disasters. Although the growth in foodgrain production has slowed in recent years it has remained above population growth rates, so at the national level India has enough food to feed its population of well over 1 billion people.²
7. Nonetheless, despite these impressive gains household-level food security has not been achieved, levels of malnutrition, undernourishment and poverty remain very high and there are signs that hunger and food insecurity have increased since the second half of the 1990s. Nearly two million Indian children die every year as a result of serious malnutrition and preventable diseases.³ Nearly half suffer from moderate or severe malnutrition, with 47 percent of children underweight and 46 percent stunted in their growth. This is one of the highest levels of child malnutrition in the world, higher than most countries in Sub-Saharan Africa.⁴ Malnutrition is most severe amongst

1 WFP, 2001, *Enabling Development: Food assistance in South Asia*, p. 61.

2 Farrington, J., and Saxena, N.C., *Food Insecurity in India*, at: http://www.odi.org.uk/publications/working_papers/wp231/wp231_annex1_India.pdf.

3 Sharma, A., 2000, “Realisation of Rights of the Indian Child: Measures for Implementation of the CRC”, *PRAYAS Journal*, Vol. II, No. 1.

4 UNDP, *Human Development Report 2005*.

children in rural areas but is also high in urban areas.⁵ Nearly a third of children (30 percent) are born underweight, which means that their mothers are themselves underweight and undernourished. Malnutrition also increases during early childhood, particularly for girl children, reflecting persistent social discrimination against girl children who appear to be fed less than boy children. Micronutrient deficiencies are endemic and have a disastrous effect on physical and mental development. More than 80 percent of women, infants and adolescent girls suffer from anaemia and iron intake is estimated to be below 50 percent of the recommended daily allowance. Vitamin A deficiencies, particularly blindness, as well as iodine disorders have been recorded among children in hundreds of districts. Although the Tenth Five Year Plan 2002-2007 includes the prevention, detection and management of micronutrient programme, the Special Rapporteur was informed that the Indian Council of Medical Research's studies have shown that National Nutrition Goals have not been met.

8. The majority of the Indian population are still poor, with 25 percent living below the national poverty line and 80 percent living on less than US\$ 2 per day,⁶ which means that many people simply cannot afford adequate food to sustain a healthy and productive life. According to FAO, India is home to the largest share of the world's undernourished population, and more than 200 million Indian children, women and men eat less than the daily minimum calorie requirement.⁷ Official Indian statistics suggest that this situation may be even worse, with more than half (53 percent) of the population estimated to be undernourished in the Government's own report on progress towards achieving the MDGs.⁸ It is estimated that the poorest 30 percent of households eat less than 1,700 kilocalories per day per person (well below the international minimum standard of 2,100 kilocalories per day)⁹ even if they spend 70 percent of their income on food.¹⁰ Average calorie consumption has been falling over recent decades - but while this is explained as a shift away from basic staple food amongst higher income families, it is also a sign of increasing food insecurity amongst the poorest. Over the last decade, in rural areas consumption of basic staple foods fell by 2.14 percent but total calorie consumption fell by 1.53 percent, which suggests that many people are eating less food rather than a more diversified diet,¹¹ especially with the price of basic foods increasing faster than real agricultural wages over the 1990s.
9. Although government statistics suggest that poverty fell across India from 36 to 26 percent between 1993 and 2000, there is considerable debate about whether poverty has actually fallen or whether the drop in poverty is the result of changes in the data collected.¹² One explanation may be that the assumed cost of a minimum food basket no longer reflects the real cost of food in India.¹³ Poverty remains concentrated in the states of Bihar, Uttar Pradesh, Orissa, Madhya Pradesh, Maharastra and Karnataka, especially in rural areas of eastern India (East Uttar Pradesh,

5 FAO, State of World Food Insecurity 2004, p. 22.

6 World Bank, 2005, World Development Indicators.

7 FAO, 2004.

8 Government of India, Planning Commission 2005, "Progress towards achieving the MDGs in India", p. 146.

9 FAO, 2004.

10 Jha, S., Deininger, D.U., Public Expenditure on Food and Nutrition Security Programs in India: Are They Meeting the Challenge?, 2003, p. 2.

11 FAO, 2004, p. 12. Planning Commission, 2005, p. 194.

12 Deaton, A. and Drèze J., "Poverty and Inequality in India: A re-examination", *Economic and Political Weekly*, 7 September 2002, p. 3745.

13 Poverty in India is officially measured in terms of monthly per capita expenditure of Rs 49 in rural areas and Rs 57 in urban areas at 1973 all-India prices, which could then buy an energy consumption of 2,400 calories/day in rural areas and 2,100 calories/day in urban areas.

North Bihar, North Bengal, coastal Orissa, Assam and Tripura) and central tribal India (Bundelkhand, Jharkhand, Vidarbha, Madhya Pradesh, Chattisgarh, Rajasthan, Western Orissa and Telangana).¹⁴ There are concerns about evidence of rising inequality since the beginning of the 1990s as it seems that under recent economic growth, the better off western and southern states have been doing better than the poorer northern and eastern states.

10. The hungry and malnourished are primarily children, women and men living in rural areas and are dependent on agriculture, working as casual workers but also as sharecroppers and tenant or marginal farmers with less than one hectare of land. Agricultural wages are very low and increasingly precarious, minimum wages not always enforced and many people lack work during the agricultural lean season. In some states, feudalistic patterns of land ownership persist, despite legal abolition and the official Land Ceilings Act that aimed to limit land concentration. In Madhya Pradesh, for example, the Special Rapporteur found large landholdings still belong to the family of the former *Zamindari* king. Over the 1990s, the evidence suggests that concentration in land ownership is increasing, with many more households becoming landless and dependent on casual agricultural labour (45 percent of households).¹⁵ The Special Rapporteur was also concerned to receive reports of the increasing “casualisation” and insecurity of labour contracts, including serious concerns regarding workers on tea plantations across India.¹⁶ Since the late 1990s, it has been reported that at least 60,000 workers have lost their jobs as the international price of tea has fallen, and millions of others face wage cuts, more insecure contracts and rising malnutrition that include cases of starvation. ActionAid reports that more than 240 workers died from starvation and suicide between March 2002 and February 2003 in just four tea gardens in West Bengal.

11. Scheduled castes and tribes suffer most from hunger and malnutrition, making up 25 percent of the rural population but 42 percent of the poor.¹⁷ As a result of discrimination, many low-caste Dalits are expected to work as agricultural labourers without being paid, many held in debt bondage by their higher-caste employers. Although debt bondage is illegal, NGOs estimate that there are between 20 to 60 million bonded labourers in India, 85 percent of them belonging to scheduled castes and scheduled tribes.¹⁸ Widespread discrimination prevents Dalits from owning land, as they are seen as the “worker class”, and even if they receive land (as a result of redistribution and agrarian reform programmes in some states), such land is frequently taken by force by higher-caste people in the area. Lower castes are also often restricted from using village wells, as observed by the Special Rapporteur in Shivpuri District. Tribal peoples, particularly those living in forest and hill areas, are extremely marginalised, many having lost access to traditional forest livelihoods and food resources through the creation of Forest Reserves, and many remain without food ration cards or access to government services. Tribal peoples also suffer disproportionately from displacement because of development projects such as dams, power plants, coal mines and mineral industries.¹⁹ There are no official statistics on the number of people displaced, but NGOs and academics estimate that dam projects alone have displaced up to 33 million people who have lost their lands and livelihoods.²⁰ Around 40-50 percent of the

14 Farrington and Saxena, op. cit.

15 National Sample Survey data cited in Gosh, J., *Trade Liberalisation in Agriculture: An Examination of Impact and Policy Strategies with Special Reference to India*, 2005, p. 14.

16 ActionAid, *Teabreak* <http://www.actionaid.org.uk/wps/content/documents/teabreakreport.pdf>.

17 Farrington and Saxena.

18 Human Rights Watch, 1996.

19 Planning Commission, 2005, *Mid-Term Appraisal of 10th Five-year Plan*.

20 Mander, Harsh/Hemadri, Ravi and Nagaraj, Vijay, 1999, *Dams, Displacement, Policy and Law in India*.

displaced are tribal people even though they make up only 8 percent of the population, reflecting the serious discrimination against tribal peoples.

12. Women and children, particularly girl children also, tend to suffer disproportionately from hunger and malnutrition as a result of discrimination. Women are particularly vulnerable as a result of social customs that women should eat last and eat least. Women are paid less than men for the same work, with the average agricultural wage rate per day for women about 16.4 rupees, while it is 23.4 rupees for men.²¹ Traditionally, women cannot inherit formal title to land (except in regions that practice matrilineal inheritance), which is increasingly problematic in the context of the feminisation of agriculture. Child labour persists and the Special Rapporteur was particularly concerned to receive reports of child labour on farms contracted to transnational corporations, such as cottonseed production in Andhra Pradesh, where young girls have been employed instead of men to reduce the cost of labour.²²
13. In urban areas the hungry and malnourished are predominantly people surviving in the informal sector as well as vulnerable groups that are excluded from access to public services and food ration cards such as migrants, refugees, the homeless, the displaced, informal slum dwellers and street children.²³ The sick and elderly, who have no family members to support them, are also extremely vulnerable. Increasing urbanisation is closely linked to poverty and food insecurity in rural areas and shrinking rural wages is contributing to distress-induced migration to urban areas, seen in the rapid development of slum and squatter settlements in India's towns and cities.²⁴ More than 21 percent of India's urban population now lives in slums with inadequate sanitation, housing and access to safe drinking water, severely affecting food consumption and absorption.

B. Recent developments

14. Today it is widely recognised within India that, although the 1990s saw a period of sustained economic growth as India moved towards a more market-oriented economy, this growth did not benefit all Indians equally.²⁵ Middle and upper classes in urban areas have benefited under India Shining but the poorest have suffered a decline in living standards and rising food insecurity. With the liberalisation of the agricultural sector and ongoing withdrawal of the State from agriculture there have been deep cuts in public investment in agriculture that have not been made up by private investment. The shift towards a more export-oriented economy has seen a shift from subsistence to cash crops, reducing the cultivation of grains, pulses and millet for household food consumption.²⁶ With cash crops requiring increasingly expensive inputs such as seeds and fertiliser, many farmers have been pushed heavily into debt, which seems to explain the crisis of farmer suicides (reported to have reached 10,000 cases by the end of 2004). It has also brought greater pressure to consolidate landholdings for more capital-intensive commercial farming, with landless households increasing dramatically over the 1990s to around 45 percent of rural households. Along with falling agricultural wages and rising food prices, these trends seem to have contributed to growing food insecurity amongst the poorest, especially in rural areas.

21 MSSRF and WFP, 2004, *Atlas of the Sustainability of Food Security*, p. 130.

22 ActionAid, 2005, "Unilever And Child Labour In Hybrid Cottonseed Production In Andhra Pradesh".

23 Farrington and Saxena.

24 Chakravarty, S. and Dand, S., 2005, *Food insecurity in India*, p. 3.

25 Swaminathan et al, *National Food Security Summit*, 2004, p. 15.

26 Ibid.

15. Unlike many other countries that have been subjected to the shock therapy of structural adjustment programmes, India has taken a measured approach to withdrawing the State from the economy and has long maintained the world's largest food-based safety net, the Public Food Distribution System. The 1990s, however, saw a shift in the PDS away from a universal system to a targeted system in 1997, with the central aim of reducing the overall size and cost of the food distribution system. However, this did not work well, given that reduced sales of subsidised food under the Targeted PDS,²⁷ combined with increased procurement by the Government,²⁸ swelled national foodstocks, and led to huge increases in the costs of stocking food.²⁹ This "created the appalling paradox of huge excess stocks of foodgrain held with the FCI, adding to costs and therefore to the losses, and therefore leading to a substantially higher food subsidy, even as problems of hunger and malnutrition among the poor became more acute".³⁰
16. In the year 2000 the press reported on people dying from starvation, especially in the drought-stricken regions of Rajasthan, while food rotted in the government storage facilities. Reports suggested that food was being thrown into the sea or exported internationally at highly subsidised prices to reduce storage costs rather than being distributed to the hungry and starving. With growing public outrage at the paradox of starvation amidst overflowing foodstocks, this led to a ground-breaking public interest litigation being launched by People's Union for Civil Liberties (PUCL) against the Government before India's Supreme Court. PUCL petition argued that the right to food was part of the right to life of all Indian citizens and demanded that the country's food stocks be used without delay to prevent hunger and starvation. Interim orders of the Supreme Court ordered assistance be extended to those at risk of starvation. It ordered the full implementation of all the food-based schemes across India (see details below). This landmark case has brought the issue of the right to food as a human right back into public debate.

II. LEGAL FRAMEWORK FOR THE RIGHT TO FOOD IN INDIA

A. International obligations

17. India is party to the International Covenant on Economic, Social and Cultural Rights, the main international instrument protecting the right to food, although it has still to submit a report to the Committee on Economic, Social and Cultural Rights (overdue by 15 years). India has ratified all international treaties relevant to the right to food, including the International Covenant on Civil and Political Rights (art. 6), the Convention on the Rights of the Child (arts. 24 and 27) and the Convention on the Elimination of All Forms of Discrimination against Women (arts. 12 and 14). This means that, under its international commitments, the Government of India is obliged to ensure the right to food of all Indians.
18. The right to food is the right to be able to feed oneself through physical and economic access to food.³¹ Participation, accountability, access to information and access to effective remedies must be ensured at all levels of the implementation of the right to food. The Government of India has the obligation to respect, protect and fulfil the right to food without any discrimination.³²

27 Declining from over 19 million tonnes 1996/97 to 12 million tonnes in 2000/01.

28 Increasing from 21 million tonnes to 58 million tonnes by the end of 2001.

29 Sharma, 2004, p. 276.

30 Gosh, 2005, p. 10.

31 Committee on Economic, Social and Cultural Rights, general comment No. 12.

32 General comment No. 12.

The obligation to respect means that the Government should not take actions that arbitrarily deprive people of their right to food. The obligation to protect means that the Government should enforce appropriate laws to prevent third parties, including powerful people and corporations, from violating the right to food of others. Finally, the obligation to fulfill (facilitate and provide) means that the Government should take positive steps to identify vulnerable groups and implement appropriate policies/programmes to ensure their access to adequate food and water by facilitating their ability to feed themselves. As a last resort, the Government is required to provide adequate food and water to those who cannot feed themselves for reasons beyond their own control. To fulfill the right to food, the Government must use the maximum of its available resources and in every circumstance it must ensure the minimum essential level required to be free from hunger.

B. Domestic constitutional and legislative framework

19. In 1950, three years after independence, India adopted a progressive Constitution aimed at securing all its citizens social, economic and political justice, equality and dignity. The Constitution prohibits discrimination and recognises all human rights. Civil and political rights are recognised as directly justiciable fundamental rights, and economic, social and cultural rights are defined as directive principles of State policy. Article 47 of the Constitution states that: “The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.”
20. Although the right to food is not directly justiciable, its inclusion in the directive principles of State policy serves to guide interpretation of fundamental rights, including the right to life protected by article 21.³³ For the Supreme Court, “(the) right to life guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter”³⁴ and the right to life protected by article 21 includes the right to water³⁵ and “the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head (...)”.³⁶ The State has a constitutional obligation to take steps to ensure a dignified life to all individuals.
21. The Constitution provides special protection for women and children (art. 39 (f)) as well as for scheduled castes and scheduled tribes (art. 46), prohibits discrimination, including in the use of public sources of water (art. 15.2 (b)), and abolishes untouchability (art. 17). Many laws protect access to resources, including the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, which prohibits wrongful occupation, cultivation or transfer of any land owned by or allotted to a member of a Scheduled Caste or a Scheduled Tribe (3.1.iv) and any wrongful dispossession of land or interference with the enjoyment of rights over any land, premises or water (3.1.v). The new amendments to the Hindu Succession Act, 1956, increase the protection of women’s right to ownership and inheritance. Various State laws have also been adopted to abolish the feudal system and provide land for the most vulnerable (notably Land Ceiling Acts). However, de facto discrimination remains widespread in India.
22. In 2005, two important new laws regarding the right to food were adopted by the Indian Parliament. The Right to Information Bill guarantees the right to information to all citizens and recognises

33 “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

34 Supreme Court (SC), Chameli Singh & Others v. State of Uttar Pradesh, 1996.

35 SC, Narmada Bachao Andolan v. Union of India, 2000.

36 SC, Francis Coralie Mullin v. Union Territory of Delhi and Others, 1981.

many correlative obligations at all levels of government, which should improve transparency and accountability. The passing of the National Rural Employment Guarantee Act recognises employment as a matter of right for the first time. It entitles anyone to be employed on public works within 15 days as unskilled manual labour at the statutory minimum wage, although this is restricted to rural areas and to a maximum of 100 days of work per household per year.

23. Under India's complex federal system, both the Union and state governments have responsibilities regarding the right to food. In general the Union Government is responsible for elaborating, monitoring and financing programmes to ensure access to food and water, while state governments are responsible for implementation. State governments also legislate on irrigation, agricultural land tenure, ceiling, transfer and on the minimum wage. In some areas, independent tribal authorities have important powers. In Scheduled Areas, tribal advisory councils must be consulted on any issue related to the Scheduled Tribes, and in Tribal Areas, tribal district councils have important autonomy in the allotment, occupation or use of the land, the management of forests (other than reserved forests) and the inheritance of property. At the local level, municipalities and *panchayats* (self-governments) are responsible for the supply of drinking water. *Panchayats*, in which seats are reserved for the Scheduled Castes, Scheduled Tribes and for women, have increasing power over land acquisition since the Panchayats (Scheduled Areas) Act, 1996, and in the management of the food-based schemes since recent directions were delivered by the Supreme Court.³⁷

C. Access to justice and human rights institutions

24. All victims of violations of the right to food should have access to effective remedies, including access to justice to claim their right. India provides one of the best examples in the world in terms of the justiciability of economic, social and cultural rights, with the right to life interpreted extensively by the Supreme Court to include the right to food. Under the Constitution, public-interest litigation is permitted to protect the basic human rights of the most vulnerable, which explains why so many social movements have sought appropriate remedies before the Supreme Court. In 2001, the PUCL approached the Supreme Court on behalf of starving people. Their original petition addressed the situation in six states, but the Supreme Court broadened its scope to cover the entire country. For the Supreme Court, the Government has a direct responsibility to prevent starvation:

The anxiety of the Court is to see that the poor and the destitute and the weaker sections of the society do not suffer from hunger and starvation. The prevention of the same is one of the prime responsibilities of the Government - whether Central or the State. Mere schemes without any implementation are of no use. What is important is that the food must reach the hungry.³⁸

25. To ensure the fulfilment of the right to food, the Supreme Court directed that all destitute people be identified and included in existing food-based schemes and directed state governments to implement fully all these schemes, including the Targeted Public Distribution Scheme (TPDS), the Antyodaya Anna Yojana (AAY), the Integrated Child Development Scheme (ICDS), the Mid-Day Meals Scheme (MDMS). The Supreme Court also directed the most vulnerable, including the primitive tribes, to be placed in the AAY lists to ensure their access to food at a highly subsidised price. To increase access to information, it directed that all its orders and the lists of

³⁷ SC, *People's Union for Civil Liberties v. Union of India & Ors*, 2001.

³⁸ SC, *People's*, *op. cit.*

beneficiaries be made publicly available. The Supreme Court also directed that Chief Secretaries/ Administrations of the states/Union territories should be held responsible in case of starvation or malnutrition deaths or persistent default in compliance with the orders. These directions have significantly improved the implementation of many food security schemes in many states, particularly since the Court has also appointed two Commissioners to monitor the implementation of its orders.

26. The PUCL case represents a great advance in the justiciability of the right to food as a human right, as the orders of the Supreme Court in this case have transformed the policy choices of the Government into enforceable, justiciable rights of the people. Although this relates primarily to the obligation to fulfil the right to food, the Court has also made judgements that are related to the obligations to respect and to protect the right to food. It has, for example, protected the right to water of Dalits against discrimination by the upper castes,³⁹ the right to livelihood of traditional fisherpeople against the shrimp industry (*Aquaculture case*),⁴⁰ and the right to livelihood of scheduled tribes against the acquisition of land by a private company (*Samatha case*).⁴¹ For the Supreme Court, “any person who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by article 21”.⁴² It is now essential that small farmers who are arbitrarily evicted from their land, or women or members of the Scheduled Castes or Scheduled Tribes who are deprived of their access to productive resources, should have the same access to justice before the Supreme Court.
27. Despite these advances in the justiciability of the right to food, there remain difficulties in enforcing existing legislation, in ensuring the implementation of court decisions and in ensuring access to justice for the poor. The decisions of the Supreme Court in the *Aquaculture case* and *Samatha case* have, for example, never been fully implemented. Article 39A of the Constitution requires the State to provide free legal aid to ensure that the most vulnerable will have access to justice. Lack of implementation, high costs, long delays in court proceedings and the lack of full independence of the judiciary at the local level have made the judicial system virtually inaccessible. One way of improving this situation would be for all states to set up the human rights courts and a special court as required under the Protection of Human Rights Act, 1993, and the Scheduled Castes and Scheduled Tribes Act, 1989.
28. The need to establish independent monitoring mechanisms is essential. In India, the National Human Rights Commission (NHRC) has been established under the Protection of Human Rights Act, 1993, in accordance with the Paris Principles⁴³ and 15 States have their own human rights commission. Their mandate includes the promotion and protection of all human rights, including the right to food. The National Commission for Minorities, the National Commission for Women and the Scheduled Castes and Scheduled Tribes Commission also address the specific needs of the most vulnerable. The Special Rapporteur welcomes the work of the NHRC on the right to food, particularly in one specific case, in Orissa in 1996, when a Commission’s inquiry concluded that 17 deaths were attributable to malnutrition and hunger. The Commission continues to monitor the situation today. The Special Rapporteur strongly encourages the NHRC and the 15

39 SC, *State of Karnataka v. Appa Balu Ingale*, 1993.

40 SC, *S. Jagannath v. Union of India*, 1996.

41 SC, *Samatha v. State of Andhra Pradesh*, 1997.

42 SC, *Olga Tellis*, op. cit.

43 General Assembly resolution 48/134.

state commissions to initiate other inquiries on complaints of alleged starvation or malnutrition deaths. The Special Rapporteur also recommends that a National Commission for Children be established to protect their specific needs.

III. POLICY FRAMEWORK FOR THE RIGHT TO FOOD

A. Government policies and institutions

29. A wide range of policies and programmes are in place to address food insecurity and malnutrition, mostly elaborated and financed by the central Government and implemented by state governments, although these programmes have not been explicitly articulated around India's obligations towards the right to food.
30. Since independence, India's policies and programmes have focused on increasing both the national *availability* of food as well as the physical and economic *access* to food, although the *adequacy* of food has been a less central focus. The drive for national food self-sufficiency in rice and wheat production aimed to increase national food availability, eliminate the risks of famine and chronic food shortages and reduce dependency on food imports and food aid (particularly after India suffered when food aid was slow in coming in the 1970s as punishment for India's critical stance on the war in Viet Nam).⁴⁴ Food self-sufficiency was achieved with public investment in agriculture and rural infrastructure and the introduction of Green Revolution technologies, quadrupling wheat and rice production from 50 million metric tonnes to well over 200 million tonnes in less than 50 years. Today, as India begins to liberalise the agricultural sector, there remains a strong preference for maintaining a certain level of food self-sufficiency, driven partly by the Government of India's awareness that national demand is so large that it could not be met by international markets along with the recognition that two thirds of the population still rely on agriculture for employment.⁴⁵ However, it is recognised that the drive for national food self-sufficiency has produced uneven progress, with production concentrated in irrigated, better quality lands of large farmers in the Punjab, Haryana and western Uttar Pradesh but bypassing small farmers in the rain-fed agricultural areas of central and eastern India.⁴⁶ Therefore, although food availability increased at the national level, this has not translated into household food security. There is therefore a need for greater investment in smallholder production in less developed areas to promote simultaneously food availability and access to food.⁴⁷
31. Efforts to improve *access* to food at the household level have focused on generating economic growth and employment as well as on the provision of a food-based social safety net, including PDS, the largest food distribution programme in the world. In many respects, PDS is a colossal achievement: it has been successful in eliminating famine and in quadrupling foodgrain production. It involves the Food Corporation of India buying foodgrains in the surplus states (offering minimum support prices for rice and wheat), transporting it to 15,000 government *godowns* (storage facilities) in deficit states, and distributing the foodgrains through over half a million "fair-price shops", where families are entitled to buy a fixed amount of rice and wheat at subsidised prices. Conceived as a universal scheme, the Government of India shifted to a

44 Sharma P., "Agricultural policy reform for poverty alleviation: some current issues" in *WFP 2004*, p. 274.

45 WFP, 2001, p. 65.

46 WFP, 2001, p. 63.

47 Gustafson, D., "Building a hunger-free India from the ground up: The importance of smallholder agriculture for poverty reduction and food security" in Swaminathan et al., 2004.

Targeted Public Food Distribution System in 1997. Under the targeted system, the poorest families (below-poverty-line households) are entitled to buy a fixed amount of foodgrain at highly subsidised prices, whereas less poor (above-poverty-line households) can buy a specified amount at prices closer to the market price. State governments are responsible, with the participation of the local authorities, *Panchayati Raj*, for identifying the households that fall below the poverty line (rather than this being defined at the central level by the central Government). The Special Rapporteur found problems in practice with below-poverty-line lists still not finalised and not always listing the poorest in the villages. The very poorest households are also entitled to the Antyodaya Anna Yojana Scheme (AAY), under which they have access to 35 kg of foodgrain per month (since 2002) at highly subsidised prices.

32. Although PDS has been successful in averting famine, it is beset by pervasive corruption. Union Government officials estimated for the Special Rapporteur that approximately 36 percent of the foodgrains distributed were diverted onto the black market. PDS works best in the states of Kerala and Tamil Nadu, where it is accepted that the transparency and accountability of local government officials were much higher. Nonetheless, there are many problems across India and the Special Rapporteur found problems of overcharging, irregular opening hours of fair price shops, many of the poorest people not having ration cards, as well as people being so poor that they could not even afford the subsidised prices.⁴⁸ More broadly, however, even though the PDS has been successful in averting famine it has not managed to address chronic undernourishment, largely because it simply does not distribute enough food. PDS entitlements meet only 10-30 percent of individual food needs and in 1997, with the shift to a targeted system, the entitlement changed to a *family* entitlement of 10 kg of rice or wheat per household per month, equivalent to only 18 percent of recommended daily intake (assuming a five-member family). This entitlement was increased to 35 kg in 2002. It is also widely recognised that PDS has not always reached the poorest people in the poorest states and has tended to be biased towards the better-off living in urban areas. However, the shift away from a universal scheme towards a targeted scheme appears to have made PDS less effective. Its impact in addressing chronic hunger, undernourishment and malnutrition has not been helped by the continued focus on production rather than consumption, including monitoring “off-take”, rather than human in-take. Speaking to local officials, the Special Rapporteur found a tendency to deny that any starvation deaths occurred, with reported deaths generally blamed on unrelated diseases such as measles.
33. Large-scale food-for-work programmes managed by central and state governments such as the Sampoorna Grameen Rozgar Yojana (SGRY) programme, focus on ensuring guaranteed employment for a specified number of days during the lean agricultural season when work for agricultural labourers is scarce. The dual aim is to provide food security through employment (paid partly in foodgrains, partly in cash), and to build common assets such as roads. Although well designed, the Special Rapporteur found that there remain problems. The implementation of these programmes varies across states, as work is not always guaranteed for 100 days (studies show that most workers are only granted work for 7-21 days) and there have been reports of corruption and concerns that the schemes are not always well targeted towards people from scheduled castes and scheduled tribes.

48 Saxena, N.C., “Reorganizing policies and delivery for alleviating hunger and malnutrition” in Swaminathan et al., 2004, p. 413-4.

34. The Integrated Child Development Services Programmes (ICDS) is one of the largest programmes in the world aiming to provide integrated nutrition, health and early child development services for children from 0-6 years, under the responsibility of the Department of Women and Child Development. The Special Rapporteur observed the operation of *Anganwadi* Centres in rural villages, where he saw how check-ups on children's nutritional status were carried out to monitor severe and acute malnourishment, with food and nutritional supplements given to mothers of children identified as malnourished. According to the State government officials with whom the Special Rapporteur spoke, the ICDS has contributed to enormous progress in improving child nutrition and reducing child mortality. However, he noted that there seemed to be a tendency to overstate progress in monitoring levels of malnutrition, as progress appeared to be extremely rapid but did not seem to accord with the national statistical surveys. Some other problems were drawn to his attention, including the lack of storage facilities for food, occasional diversion of supplies by staff and lack of availability of the right quantities of food at the centres at the appropriate time as well as the financial constraints of state governments that have limited the nutritional supplements available for the ICDS.⁴⁹ Predominantly distributing rice and wheat, even the ICDS does not sufficiently promote nutrition as well as food security.
35. The Mid-Day Meals Scheme aims to provide meals to schoolchildren under the responsibility of the Department of Education as well as the Ministry of Rural Development and the Ministry of Urban Affairs and Employment, and is implemented by the state governments. The dual aim is to ensure nourishment of children and encourage school attendance. Central government provides the foodgrains and state governments are expected to meet the costs of non-food expenses including cooking, transport and delivery of foodgrain to schools as well as arranging for cooking, serving and supplying micronutrients. Under a new order from the Supreme Court, schools were required to serve cooked rice and *dal* (lentils) or vegetables to primary school children from January 2002, although this order has not been equally implemented across the different states. The Special Rapporteur is also concerned by reports that, in the Mid-Day Meals Scheme, parents of upper-caste children have protested against women of scheduled castes or tribes being employed to cook or serve meals.
36. In terms of more broadly addressing the discrimination against tribal peoples and scheduled castes, a number of special programmes have been established by the Ministry of Social Justice and the Ministry of Empowerment and Tribal Affairs. These have included the Village Grain Bank Scheme, initiated in 1997, which aims to prevent starvation deaths of tribal people living in remote areas, especially those who are not reached by PDS. Affirmative action programmes have also aimed to increase access to education and employment for scheduled castes and scheduled tribes, although social discrimination persists. Although land reform schemes have been carried out in a number of states to distribute government lands to scheduled castes and tribal peoples, lack of political will has brought many of these initiatives to a halt, and in some states, such as Madhya Pradesh, the feudalistic *zamindari* system persists. Many people that have been granted lands have been forcibly evicted by higher castes with impunity. Loss of access to productive resources, such as forest tribal peoples being excluded from forests or shrimp-farmers displacing smallholder farmers, means that there is a lack of judicial and administrative protection for access to productive resources for the poorest.

49 Government of India, Planning Commission, 2004.

37. In relation to addressing food security problems arising from the loss of livelihoods from development-induced displacement, a National Policy on Relief and Rehabilitation of Project Affected Families was instituted in 2004, with the Tenth Plan making a commitment to ensure resettlement and rehabilitation, including gender-sensitive programmes that ensure that women have legal rights to land and that women's livelihood and food security activities are recognised in the context of rehabilitation. However, this does not seem to have been fully implemented in practice.

B. Non-governmental organisations and associations

38. India has a vibrant and strong civil society and the role of civil society action in addressing hunger and poverty has been well recognised. Numerous projects initiated by civil society have had important impacts on the fight against hunger and malnutrition and the fight for the rights of the most vulnerable in different regions across India. Over the last decade, the NGO FoodFirst Information and Action Network (FIAN) has been very involved in promoting the right to food and denouncing violations in different regions of India. Additionally, a wide range of national organisations are working on many issues related to food security and human rights. The NGO Antenna has worked to improve micronutrient deficiencies through low-cost investment in spirulina, which is used as a nutritional supplement. More recently the Right to Food Campaign, a coalition of different organisations, has started to work together after the success of the public-interest litigation brought by the PUCL, using legal strategies as well as broader social mobilisation strategies to call for public action to fight starvation and chronic hunger. The Right to Food Campaign has held public hearings in Orissa, Madhya Pradesh, Jharkand, Maharashtra, Rajasthan as well as Delhi, bringing government officials to hear personal testimonies of people living in communities suffering from hunger, and has also served a monitoring role in trying to ensure the implementation of Supreme Court orders under the PUCL case. The Campaign also uses the 2005 Right to Information Act to challenge corruption, demanding that information on entitlements and ration cards be made publicly available. The Campaign also demands that employment and working conditions are seen as part of the right to food, and have had success with the passing of the national Employment Guarantee Act.

IV. MAIN FINDINGS AND CONCERNS

A. Progressive realisation of the right to food

39. Despite the progress made in the progressive realisation of the right to food in India since independence, the Special Rapporteur is concerned that there are signs of regression, particularly amongst the poorest. In monitoring progress towards the Millennium Development Goals (MDGs), the Planning Commission has noted that India was not currently on track to achieve the goals set in relation to malnutrition and undernourishment. According to government statistics, levels of undernourishment fell from 62.2 to 53 percent between 1990 and 2000, and the proportion of stunting in children fell from 54.8 cent to 47 percent, but this was not fast enough to reach the Goals. The Food and Agriculture Organisation has also recorded that much of the progress made in the early 1990s was lost in the late 1990s, with the number of victims of hunger increasing by 18 million people in the second half of the decade.⁵⁰ The Special Rapporteur is also concerned by the fall of foodgrain availability to 152 kg per capita, 23 kg less than in the early 1990s,⁵¹ and by the decline in calorie consumption.⁵² As pointed out by Utsa Patnaik, burgeoning foodstocks do not

50 FAO, 2004, p. 6.

51 MSSRF and WFP, 2004, p. 170.

52 Planning Commission, 2005, p. 194.

necessarily reflect “overproduction”, but rather “underconsumption”. With real agricultural wages declining, food prices and unemployment rising, there are signs of increasing food insecurity.

40. The Government is required to spend the maximum of available resources on ensuring the right to food but spending is falling, given pressures to reduce simultaneously public investment in agriculture and public spending on safety-nets. Investment in rural development has already fallen from 14.5 percent of GDP before 1990 to less than 6 percent of GDP, but investment in rural development and smallholder is essential to fight poverty and improve the right to food.⁵³ Spending on the Public Food Distribution System averaged 0.5 percent of GDP before 1997,⁵⁴ increasing to 1.1 percent of GDP,⁵⁵ but this was a result of storage costs after the shift to the targeted system, which suggests that the universal system was more cost-efficient.

B. Violations of the right to food

41. The Special Rapporteur was concerned that he received a large number of reports of alleged violations of the right to food.

Starvation deaths

42. Reports of more than 250 starvation or malnutrition deaths in the last two years in the States of Rajasthan, Jharkhand, Bihar, Madhya Pradesh and West Bengal were presented to the Special Rapporteur at the Judicial Colloquium on the Right to Food.⁵⁶ In its fifth report to the Supreme Court, Commissioner Dr. Saxena reported on hundreds of alleged hunger-related deaths in the same states and in Chattisgarh, Uttar Pradesh, Orissa, Karnataka, Andhra Pradesh, Assam, Kerala and Maharashtra. The Special Rapporteur received many other reports on alleged starvation or malnutrition deaths, including by FIAN,⁵⁷ the Asian Human Rights Commission and Manabdhikar Suraksha Mancha.⁵⁸ In Orissa, when he visited villages, he received testimonies by women who had lost their children to hunger and malnutrition. As Chief Justice of the Uttar Pradesh High Court, A.W. Ray, said in his conclusion of the Judicial Colloquium on the Right to Food, “in a country where there is plenty of food, every child, woman and man dying from hunger is assassinated”.

Discrimination against the Scheduled Castes and the Scheduled Tribes

43. Most of the victims of starvation are women and children, members of the Scheduled Tribes and Scheduled Castes, with their deaths mainly due to discrimination in access to food or productive resources, evictions or the lack of implementation of the food-based schemes. Despite an extensive legal framework prohibiting discrimination and untouchability, discrimination persists, particularly in rural areas.⁵⁹ In Madhya Pradesh and Orissa, the Special Rapporteur observed that access to village water wells is still not allowed for Dalits and that even if members of the Scheduled Castes or Scheduled Tribes were granted lands, higher castes often take the land away. Reports were also received that in Uttar Pradesh and Uttaranchal, Dalit families were

53 U. Patnaik, “The Republic of Hunger”, in Human Rights Law Network, *Right to Food*, p. 483.

54 Planning Commission, 2005.

55 Jha and Deininger, 2003.

56 Human Rights Law Network, Judicial Colloquium on the Right to Food.

57 FIAN - Andhra Pradesh, *List of Hunger and Starvation Deaths for “Public Hearing on Hunger”*.

58 Asian Human Rights Commission, Manabdhikar Suraksha Mancha, *People’s tribunal on starvation in Jalangi, West Bengal*.

59 Agrawal, C., Gonsalves, C., *Dalits and the law*, 2005.

60 FIAN, Report on cases of violations of the right to food in Uttar Pradesh, 2005.

forcibly evicted from their land by upper castes, and sometimes forced to work for them.⁶⁰ In Harinagar, Kashipur, it is reported that 154 Dalit families have been forcibly evicted from their land and remain landless to this day despite a decision by the Supreme Court in their favour in 1996.⁶¹ As former Chief Justice R. Mishra said in a meeting with the Special Rapporteur, “low-caste people receive the land, but the upper caste enjoys it”. These are crimes punishable by imprisonment and fine under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, but the law is not enforced.⁶²

Obligation to respect: displacements or evictions by the State, without adequate resettlement and rehabilitation

44. The Special Rapporteur received numerous complaints about forced displacements of communities as a consequence of State development projects without adequate resettlement and rehabilitation. The case of the Narmada Dam is of particular concern, as despite clear directions by the Supreme Court in 2000,⁶³ thousands of affected people are still not adequately resettled and rehabilitated. It is alleged that today 11,000 families in Madhya Pradesh, 1,500 families in Maharashtra and 200 families in Gujarat are still to be rehabilitated, although their villages have already been submerged.⁶⁴ In Hazaribagh, Jharkhand, a state coal-mining project allegedly led to involuntary resettlements of thousands of people and the destruction of their sources of livelihood without adequate rehabilitation and compensation.⁶⁵ As provided by law, national and State policies and Supreme Court orders, every affected family should be adequately resettled and rehabilitated and the “land for land” principle respected. The Special Rapporteur received many complaints from tribal communities who lost their means of livelihood when evicted from the forest as a consequence of the implementation of the Forest Act, 1980.

Obligation to protect: lack of protection against the activities of private companies

45. In Orissa, the Special Rapporteur received complaints about the alleged impact of mining activities on the right to food of tribal communities in Kashipur⁶⁶ and Lanjigarh.⁶⁷ It is reported that tribal communities have been forcibly evicted from their land to allow private mining activities, in violation of the Constitution and despite clear directions by the Supreme Court from 1997 that the lands in scheduled areas cannot be leased out to non-tribals or to companies.⁶⁸ In Bhopal, the Special Rapporteur met with the Government of Madhya Pradesh and representatives of the people affected by the Union Carbide gas disaster of 1984, in which 7,000 people died in the first days and 15,000 people died in the following years.⁶⁹ Today, 20 years after the tragedy, water wells in the area are contaminated and, despite clear directions by the Supreme Court in May

61 Ibid.

62 NHRC, Report on Prevention of Atrocities Against Scheduled Castes, 2004.

63 SC, *Narmada*, op. cit.

64 Report of the Indian People’s Tribunal on Environment and Human Rights, 2005. http://www.narmada.org/IPT_Report.pdf.

65 FIAN, Update on the Enjoyment of the Right to Food and Water in India, December 2004.

66 Agramee, Right to Food, Right to Life: The Implications of the UAIL Project for Local Tribal Communities in Kashipur Block of Rayagada District in Orissa.

67 Niyamgiri, Indigenous People’s Struggle for Food and Livelihood, Lanjigarh, Orissa.

68 Supreme Court, *Samatha*.

69 Amnesty International, Clouds of Injustice. Bhopal Disaster 20 years On, 2004.

70 Amnesty International, op. cit.

71 FIAN, *Update*.

2004, the water requirements are still not met.⁷⁰ The Special Rapporteur has also received complaints alleging that the uncontrolled water extraction by Coca Cola in the states of Kerala and Tamil Nadu was causing a severe shortage of water for the local population.⁷¹ Impact assessment studies and prior consultation of the affected communities must always be conducted before any licence is granted to a private company, and in case of violations of the right to food, land or water, all victims must be adequately resettled, rehabilitated and compensated.

Obligation to fulfill : Lack of implementation of the food-based schemes

46. In each of his reports, Commissioner Dr. Saxena points to the lack of implementation of the food-based schemes in most of the states. In May 2003 the Supreme Court concluded that the states of Bihar, Jharkhand and Uttar Pradesh had not even begun to implement its directions for supply of cooked Mid-Day Meals.⁷² Still today in Arunachal Pradesh, Assam, Manipur, severely malnourished children were not covered by the programme. In this district, many of the most vulnerable persons have not been granted ration cards. The Supreme Court recognised these schemes as legal entitlements to all beneficiaries, including those living in tribal villages or illegal slums, which means that their non-implementation amounts to a violation of the right to food.

V. CONCLUSIONS AND RECOMMENDATIONS

47. The Special Rapporteur is encouraged by the commitment of the Government of India and by the vision of the Indian State in ensuring food security. He welcomes the work of the Supreme Court, which is an example to the world in advancing understanding of the justiciability of the human right to food. He also welcomes the adoption by the Government of the Rural Employment Guarantee Act and the entitlements enshrined in food-based programmes. However, he is concerned that India still has the largest number of permanently and chronically undernourished people and one of the highest rates of child malnutrition in the world, and that hunger and malnutrition have been increasing since the second half of the 1990s.

48. The Special Rapporteur makes the following specific recommendations:

- a) The right to food is a human right and an essential part of the right to life. Even as substantial progress is being achieved in ensuring food security, monitoring of the severity of chronic undernourishment and malnutrition and accountability for starvation or malnutrition deaths must be instituted, including by the national and state human rights commissions and the local *panchayat* bodies. As suggested by the Supreme Court, independent Public Service Commissions could contribute to this monitoring. All public administration officers should be trained with respect to human rights and the right to food;⁷³
- b) A framework law with a national strategy for the implementation of the right to food should be instituted, in accordance with Committee on Economic, Social and Cultural Rights general comment No. 12 on the right to food. This should establish benchmarks and indicators for the investment of the right to food;

⁷² SC, *People's*, op. cit.

⁷³ Ibid.

- c) All Union and state governments must follow and implement all orders and judgements of the Supreme Court. Non-implementation of the food-based schemes enshrined as entitlements amounts to a violation of the right to food. In the case of Bhopal, the state authorities should ensure a regular supply of adequate safe water for all affected communities. Access to justice, including to the Supreme Court for victims of violations of the obligations to respect, protect and fulfil the right to food must be ensured;
- d) The human rights courts and the special courts required under the Protection of Human Rights Act, 1993, and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, should be established in all states with a mandate that protects their independence and includes the right to food;
- e) All Indians should be treated equally before the law. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, should be fully implemented, and atrocities committed should be prosecuted and brought to justice;
- f) Land and agrarian reform should be implemented to strengthen smallholder agricultural livelihoods. Existing agrarian reform legislation should not be undermined to serve the interests of large landholdings of landlords and agribusiness;
- g) The Land Acquisition Act should be amended, or new legislation adopted, to recognise a justiciable right to resettlement and rehabilitation for all displaced or evicted persons, including those without formal land titles and including women;⁷⁴
- h) Minimum wage legislation and the Employment Guarantee Act should be fully enforced. Decisive action must be taken against widespread evasion, particularly for agricultural labour and the informal sector. The minimum wage should be indexed to the cost of a basic food basket, which must be sufficient to purchase the minimum daily calorie requirement;
- i) The Right to Information Act should be respected in relation to all programmes, including making publicly available all information on entitlements. This should include eligibility criteria under the Public Food Distribution System at the level of the fair price shops. Corruption must be challenged at all levels of the system and all public officials and shop licensees held accountable for any diversion of resources;
- j) Dams, mining and infrastructure projects must not be implemented if this entails displacement and irreversible destruction of people's livelihoods. Such projects should only be carried out with the consent of communities and on the condition that due legal process, proper resettlement, rehabilitation (under the "land for land" principle) and compensation to all victims is guaranteed;
- k) A national early-warning system should be established that records starvation deaths to generate emergency response and improve accountability. Proper methods of documenting starvation and malnutrition-related deaths should be developed with the participation of the civil society;
- l) PDS must be strengthened to ensure that it reaches all those in need and that the prices do not make it impossible for the poor to buy the subsidised rations. Cash transfers could also be

74 NHRC, Annual Report 2002-2003.

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introduced to improve access to food. In the context of a more market-oriented economy, programmes and social transfers must remain in place to prevent starvation deaths and continue investment in the right to food. Such programmes must be implemented as a matter of right and not as benevolence and must be subject to review by the courts;

- m) Implementation of all food-based schemes must be improved by incorporating the human rights principles of non-discrimination, participation, transparency and accountability. Monitoring of all food-based programmes, including PDS, must include monitoring of impacts on malnutrition and undernourishment;
- n) Food security programmes should include elements to ensure nutritional security and to address micronutrient deficiencies. National initiatives for fortification of salt and flour should be complemented by low-cost local initiatives, including promoting small-scale horticulture production and supplementary food being distributed to children and women under ICDS and the Mid-Day Meals Scheme;
- o) Food security programmes must also place more emphasis on protecting and promoting sustainable livelihoods. Public investment in smallholder agriculture is essential, given that two thirds of the population still depends on agriculture, and employment is currently only being generated in the high-tech sector that will not be able to absorb all those left unemployed, if public investment in agriculture is abandoned;
- p) Finally, the Special Rapporteur believes that greater liberalisation of trade in basic staple foods should not be pursued as long as subsidies in the developed countries keep international prices at artificially low levels, otherwise India will suffer from competition from dumped agricultural products that will undermine its own production, especially of rice and wheat.



**MISSION TO THE WORLD
TRADE ORGANISATION**

by

Olivier De Schutter



Report of the Special Rapporteur on the right to food, Olivier De Schutter MISSION TO THE WORLD TRADE ORGANISATION

Presented to the Human Rights Council, March 9, 2009

Summary

“Doha round will not prevent another food crisis”

As negotiations are stalled in Geneva, UN Special Rapporteur on the right to food presents the conclusions of his report on the WTO

In this first-ever report prepared by a UN independent expert on this highly contentious subject, the UN Special Rapporteur on the right to food, Prof. Olivier De Schutter, examines whether the current path of trade liberalisation in agriculture complies with the WTO Members’ obligations towards the human right to adequate food, as recognised under international law.

The report is the outcome of a mission to the WTO and broad consultations with a range of actors, including a number of Ambassadors to the WTO. It is the first time that the WTO has accepted a request of the UN Special Rapporteur on the right to food to conduct such a mission.

The report argues that, if trade is to work for development and to contribute to the realisation of the right to adequate food, it needs to recognise the specificity of agricultural products, rather than to treat them as any other commodities; and to allow more flexibilities to developing countries, in order to shield their agricultural producers from the competition from industrialised countries’ farmers. The reason for this is at the heart of what justifies special and differential treatment for developing countries: even after the removal of existing trade-distorting measures, which currently are disproportionately benefiting industrialised countries, the average productivity per active labourer in agriculture will remain much lower in developing countries. In 2006, agricultural labour productivity in least-developed countries (LDCs) was just 46 percent of the level in other developing countries and below 1 percent of the level in developed countries. In this context, the idea of establishing a ‘level playing field’ is meaningless. The deepening of the trade liberalisation path will not result in farmers in developing countries being able to compete on equal terms with producers in industrialised countries, unless wages and agricultural prices in the South are repressed at very low levels to compensate for a much lower productivity per active labourer. This will inevitably result in more violations of the right to food.

1. What can the right to food framework bring to the trade debate?

The report examines trade liberalisation in agriculture from the perspective of the human right to adequate food, as recognised in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights. This has four implications. First, it leads to emphasise the need for States to prepare national strategies for the realisation of the right to food, in which the role of trade should be determined in reference to human rights and development objectives. Second, it leads to highlight the importance of a collaborative multilateral trading system, and one which should not impose on States commitments that are contrary to their human rights obligations, thereby emphasising the importance of ensuring that States

The official report can be downloaded on

http://www.srfood.org/index.php?option=com_content&view=article&id=69&Itemid=55&lang=en

have a sufficient policy space. Third, the perspective from the right to adequate food requires a shift from abstract aggregates (such as GDP measurements) to focusing on the needs of the vulnerable and food insecure. 963 million people are hungry in the world today. The majority, representing at least 50 % of the hungry, are smallholders living off 2 hectares of cropland or less. 20 % are landless labourers, and 10 % are pastoralists, fisherfolk, and forest users ; the remaining 20 % are the urban poor. Any trade regime which does not benefit these categories, far from solving it, is likely to lead to further violations of the right to food. Fourth, because it focuses on the perspective of the right to adequate food, the report recalls the unique value of safe, nutritious, healthy, culturally appropriate and sustainable food as a fundamental right for all. Impacts on health, nutrition and the environment should therefore be fully integrated in trade discussions.

2. Why does the current multilateral trade regime work against the right to food ?

Isolating the impacts of WTO agreements from other factors discouraging States from seriously implementing their human rights obligations is an impossible exercise, since the disciplines imposed under the Agreement on Agriculture – on which the report focuses – have an impact only in combination with the trade, fiscal and social policies pursued at domestic level. Nevertheless, in order to assist States in implementing the reform programme of the Agreement in compliance with the right to food, the report seeks to identify the impacts of trade liberalisation in agriculture on the ability of States to protect this right. It notes the following risks, which States should take into account in developing their national strategies and in defining their position in the negotiations within the WTO:

- 1) **Increased reliance on international trade in order to ensure food security results in a dependency on international trade**, which is a source of various vulnerabilities: loss of export revenues when the prices of export commodities go down, threats to local producers when low-priced imports arrive on the domestic markets, balance of payments problems for the net food-importing countries when the prices of food commodities go up – as we witnessed during the recent food crisis.
- 2) **Increased reliance on international trade in order to ensure food security also reinforces the power of highly concentrated transnational corporate actors**: increased cross-border trade implies an increased role for transnationals rather than domestic agro-food systems. Global sourcing increase the number of suppliers and thus, the competition between them, leading to dominant actors to force outrageously low prices on agricultural producers. The current trade regime also **encourages the segmentation of the farming sector**, increasingly divided between one segment which has access to high-value markets and, as result, to the best technologies, inputs (including land, water, and state support), credit, and political influence, and another segment which is left to serve only the low-value, domestic markets, and is comparatively neglected and marginalised.
- 3) **Finally, increased reliance on international trade in order to ensure food security promotes long supply chains** which imply long distances in transport **and unsustainable modes of production**, with serious implications for climate change and human health and nutrition.

3. A new vision is needed: make trade work for the right to food

The Special Rapporteur goes beyond the technicalities of the Doha round and draws important lessons from both the food crisis and the emerging threat of climate change. These two issues, he argues, are vastly underestimated in the current WTO negotiations. He also proposes, in his report, ways to reconcile trade with the right to food, addressing the failure of global governance mechanisms to tackle the fragmentation of international law. Consistency between obligations

imposed under trade agreements and human rights obligations cannot be rescued through domestic policies, if such consistency is not ensured in the preparation of the trade agreement themselves. Indeed, because trade agreements are backed by the threat of economic sanctions, States, when faced with situations of conflict, generally opt for compliance with their trade obligations at the expense of human rights. This results in a ‘chilling effect’: when the Members do not know whether or not any particular measure they take, in order to comply with their human rights obligations, will be considered acceptable by the other Members or instead expose them to retaliation, they will prefer not to adopt such measure, out of fear that they will be facing economic sanctions.

The report presents four substantive recommendations on how to make the international agricultural trade system “human rights-compatible”.

- (1) **The Special Rapporteur calls on States not to accept undertakings under the WTO framework which would be incompatible with their right to food obligations.** In order to do this, States should define their positions in trade negotiations in accordance with national strategies for the realisation of the right to food and always conduct human rights impact assessments of trade agreements. Far from picturing impact assessments like yet another bureaucratic exercise, the Special Rapporteur highlights the important democratising effect of open and participatory consultations, emphasising the role of national parliamentary hearings for example. Peasants’ organisations would play a key role in drafting national right to food strategies, and such strategies would serve far beyond the WTO context, supporting the position of governments in their discussions with international financial institutions, with donors, or in bilateral trade negotiations. It is indeed a particular source of concern that, in a large number of cases, States have been unable to use flexibilities allowed under the WTO agreements – or to apply certain tariffs remaining under their bound tariffs, because of prescriptions from such institutions or because of bilateral free trade agreements.
- (2) **Safeguard measures are crucial. States, particularly developing States in accordance with the principle of special and differential treatment, must retain the freedom to take measures which insulate domestic markets from the volatility of prices on international markets.** Although a relatively small proportion of the food produced, estimated at 15 %, is traded internationally, prices fixed on international markets have a disproportionately negative impact on the ability of small-scale farmers in the world to make a decent living. Indeed, there is a tendency for domestic and world prices to converge as a result of trade liberalisation. Unless and until appropriate mechanisms are put in place at the international level to deal with the issue of volatility, it is crucial States have full flexibility to protect their market against import surges. Supply management schemes and other orderly-marketing mechanisms have an important role to play in this regard.
- (3) **States should avoid excessive reliance on international trade in the pursuit of food security. In building their capacity to produce the food needed to meet consumption needs, States should support in particular small-scale farmers.** Throughout the developing world, agriculture accounts for around 9 % of GDP and over 50 % of total employment. In the countries where more than 34 % of the population are undernourished, agriculture represents 30 % of GDP and 70 % of employment. Therefore, for the realisation of the right to food, there is no alternative but to strengthen the agricultural sector, with an emphasis on small-scale farmers.
- (4) **States should control market power in the global supply chains and counteract the risk of increased dualisation of the farming system.** One major imbalance in the current multilateral trade regime is that, while disciplines are imposed on States, transnational corporations,

whose freedom to act has been significantly increased as a result, are not subject to any obligations as regards the exercise of their power on the market. This is an important gap in global governance. In the medium to long-term, a multilateral framework may have to be established to ensure a more adequate control of these actors. In the short term, States should protect human rights by adequately regulating actors on which they may exercise an influence, including in situations where these actors operate outside the national territory of the States concerned.

Note to the editors

The official report of the Special Rapporteur will be presented at the March 2009 session of the Human Rights Council in Geneva. The report is based on both an official mission to the WTO and consultations with several national governments since June 2008.

Professor De Schutter was appointed by the Human Rights Council of the United Nations as Special Rapporteur on the right to food in March 2008, and he inaugurated his mandate on May 1st, 2008. His three-year mandate is to monitor and report on the right to food to the UN General Assembly and Human Rights Council. A specialist in human rights, Olivier De Schutter teaches at the University of Louvain (Belgium) and the College of Europe (Natolin Campus, Poland). He is a Visiting Professor at Columbia University and a Member of the Global Law School Faculty of New York University. He was also previously Secretary General of the International Federation for Human Rights (FIDH).

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Voluntary Guidelines



VOLUNTARY GUIDELINES

To support the progressive realisation of
the right to adequate food
in the context of national food security

Adopted by the 127th Session of the FAO Council
November 2004

FOOD AND AGRICULTURE ORGANISATION
OF THE UNITED NATIONS
Rome, 2005

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FOREWORD

In 1996, at the World Food Summit, Heads of State and Government reaffirmed “the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger.” The declaration of the World Food Summit: five years later, in June 2002, reaffirmed the importance of strengthening the respect of all human rights and fundamental freedoms and invited “the FAO Council to establish an Intergovernmental Working Group to develop a set of Voluntary Guidelines to support Member States’ efforts to achieve the progressive realisation of the right to adequate food in the context of national food security”.

An Intergovernmental Working Group was established in November 2002 and working relationships, in particular with the Office of the High Commissioner for Human Rights and the Special Rapporteur on the Right to Food, were strengthened. After two years of intense and constructive negotiations and discussions among members of the Intergovernmental Working Group and its Bureau as well as representatives of stakeholders and civil society, the Voluntary Guidelines were adopted by the FAO Council in November 2004.

The Voluntary Guidelines represent the first attempt by governments to interpret an economic, social and cultural right and to recommend actions to be undertaken for its realisation. The objective of the Voluntary Guidelines is to provide practical guidance to States in their implementation of the progressive realisation of the right to adequate food in the context of national food security, in order to achieve the goals of the World Food Summit Plan of Action. Relevant stakeholders could also benefit from such guidance. The Voluntary Guidelines cover the full range of actions to be considered by governments at the national level in order to build an enabling environment for people to feed themselves in dignity and to establish appropriate safety nets for those who are unable to do so. They can be used to strengthen and improve current development frameworks, particularly with regard to social and human dimensions, putting the entitlements of people more firmly at the centre of development.

The Voluntary Guidelines represent a step towards integrating human rights into the work of agencies dealing with food and agriculture, such as FAO, as called for by the United Nations Secretary-General within his UN reforms. They provide an additional instrument to combat hunger and poverty and to accelerate attainment of the Millennium Development Goals.

FAO is committed to strengthening its capacity, with the help of Member States, to assist willing governments to implement the Voluntary Guidelines. The Organisation looks forward to cooperating with governments and other key actors that wish to pursue rights-based approaches to poverty reduction and are interested in realising the right to adequate food in the context of national food security by implementing the Voluntary Guidelines. Striving to ensure that every child, woman and man enjoy adequate food on a regular basis is not only a moral imperative and an investment with enormous economic returns; it also signifies the realisation of a basic human right.

Jacques Diouf

Director-General

Food and Agriculture Organisation of the United Nations

Part - I PREFACE AND INTRODUCTION

Preface

1. The eradication of hunger is clearly reflected in the target set at the World Food Summit to reduce the number of undernourished people to half their present level no later than 2015 and as agreed by the Millennium Summit to “halve the proportion of people who suffer from hunger” by the same year.
2. In the Rome Declaration on World Food Security, Heads of State and Government “reaffirm[ed] the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger.” Objective 7.4 of the World Food Summit Plan of Action established the task: “to clarify the content of the right to adequate food and the fundamental right of everyone to be free from hunger, as stated in the International Covenant on Economic, Social and Cultural Rights and other relevant international and regional instruments, and to give particular attention to implementation and full and progressive realisation of this right as a means of achieving food security for all.”
3. The Plan of Action “invite[d] the UN High Commissioner for Human Rights, in consultation with relevant treaty bodies, and in collaboration with relevant specialised agencies and programmes of the UN system and appropriate intergovernmental mechanisms, to better define the rights related to food in Article 11 of the Covenant and to propose ways to implement and realise these rights as a means of achieving the commitments and objectives of the World Food Summit, taking into account the possibility of formulating voluntary guidelines for food security for all.”
4. In response to the invitation by the World Food Summit, and following several international consultations, the Committee on Economic, Social and Cultural Rights adopted General Comment 12, which provided its experts’ views on the progressive realisation of the right to adequate food.
5. In Paragraph 10 of the Declaration adopted at the 2002 World Food Summit: *five years later*, Heads of State and Government invited the Council of the Food and Agriculture Organisation of the United Nations to establish at its 123rd session an Intergovernmental Working Group (IGWG), in the context of the World Food Summit follow-up, with the following mandate: “to elaborate, with the participation of stakeholders, in a period of two years, a set of voluntary guidelines to support Member Nations’ efforts to achieve the progressive realisation of the right to adequate food in the context of national food security”.
6. The objective of these Voluntary Guidelines is to provide practical guidance to States in their implementation of the progressive realisation of the right to adequate food in the context of national food security, in order to achieve the goals of the Plan of Action of the World Food Summit. Relevant stakeholders could also benefit from such guidance.
7. The Voluntary Guidelines take into account a wide range of important considerations and principles, including equality and non-discrimination, participation and inclusion, accountability and rule of law, and the principle that all human rights are universal, indivisible,

interrelated and interdependent. Food should not be used as a tool for political and economic pressure.

8. In developing these Voluntary Guidelines, the IGWG has benefited from the active participation of international organisations, non-governmental organisations (NGOs) and representatives of civil society. The implementation of these Guidelines, which is primarily the responsibility of States, should benefit from the contribution of all members of civil society at large, including NGOs and the private sector.
9. These Voluntary Guidelines are a human rights-based practical tool addressed to all States. They do not establish legally binding obligations for States or international organisations, nor is any provision in them to be interpreted as amending, modifying or otherwise impairing rights and obligations under national and international law. States are encouraged to apply these Voluntary Guidelines in developing their strategies, policies, programmes and activities, and should do so without discrimination of any kind, such as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Introduction

Basic instruments

10. These Voluntary Guidelines have taken into account relevant international instruments,¹ in particular those instruments in which the progressive realisation of the right of everyone to an adequate standard of living, including adequate food, is enshrined.

Universal Declaration of Human Rights, Article 25:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

International Covenant on Economic, Social and Cultural Rights

Article 11:

1. The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international cooperation based on free consent.
2. The States Parties to the present Covenant, recognising the fundamental right of everyone to be free from hunger, shall take, individually and through international cooperation, the measures, including specific programmes, which are needed:

References in the Voluntary Guidelines to the International Covenant on Economic, Social and Cultural Rights and other international treaties do not prejudice the position of any State with respect to signature, ratification or accession to those instruments.

- ⁴(a) to improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition

and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilisation of natural resources;

- (b) taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

International Covenant on Economic, Social and Cultural Rights

Article 2:

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
 2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
11. Among others, Articles 55 and 56 of the Charter of the United Nations are relevant to these Voluntary Guidelines.

UN Charter, Article 55

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;
- b. solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

UN Charter, Article 56

All Members pledge themselves to take joint and separate action in co-operation with the Organisation for the achievement of the purposes set forth in Article 55.

12. Other international instruments, including the Convention of the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination Against Women, the four Geneva Conventions and their two Additional Protocols also contain provisions relevant to these Voluntary Guidelines.

13. These Voluntary Guidelines have taken into account the commitments contained in the Millennium Declaration, including the development goals, as well as the outcomes and commitments of the major UN conferences and summits in the economic, social and related fields.

14. The IGWG has also taken into account several Resolutions from the United Nations General Assembly and Commission on Human Rights and the General Comments adopted by the Committee on Economic, Social and Cultural Rights.

The Right to Adequate Food and the Achievement of Food Security

15. Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life. The four pillars of food security are availability, stability of supply, access and utilisation.

16. The progressive realisation of the right to adequate food requires States to fulfil their relevant human rights obligations under international law. These Voluntary Guidelines aim to guarantee the availability of food in quantity and quality sufficient to satisfy the dietary needs of individuals; physical and economic accessibility for everyone, including vulnerable groups, to adequate food, free from unsafe substances and acceptable within a given culture; or the means of its procurement.

17. States have obligations under relevant international instruments relevant to the progressive realisation of the right to adequate food. Notably, States Parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR) have the obligation to respect, promote and protect and to take appropriate steps to achieve progressively the full realisation of the right to adequate food. States Parties should respect existing access to adequate food by not taking any measures that result in preventing such access, and should protect the right of everyone to adequate food by taking steps so that enterprises and individuals do not deprive individuals of their access to adequate food. States Parties should promote policies intended to contribute to the progressive realisation of people's right to adequate food by proactively engaging in activities intended to strengthen people's access to and utilisation of resources and means to ensure their livelihood, including food security. States Parties should, to the extent that resources permit, establish and maintain safety nets or other assistance to protect those who are unable to provide for themselves.

18. States that are not Parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR) are invited to consider ratifying the ICESCR.

19. At the national level, a human rights-based approach to food security emphasises universal, interdependent, indivisible and interrelated human rights, the obligations of States and the roles of relevant stakeholders. It emphasises the achievement of food security as an outcome of the realisation of existing rights and includes certain key principles: the need to enable individuals to realise the right to take part in the conduct of public affairs, the right to freedom of expression and the right to seek, receive and impart information, including in relation to decision-making about policies on realising the right to adequate food.

Such an approach should take into account the need for emphasis on poor and vulnerable people who are often excluded from the processes that determine policies to promote food security and the need for inclusive societies free from discrimination by the State in meeting their obligations to promote and respect human rights. In this approach, people hold their governments accountable and

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are participants in the process of human development, rather than being passive recipients. A human rights-based approach requires not only addressing the final outcome of abolishing hunger, but also proposing ways and tools by which that goal is achieved. Application of human rights principles is integral to the process.

Part – II
ENABLING ENVIRONMENT, ASSISTANCE AND ACCOUNTABILITY

GUIDELINE 1**Democracy, good governance, human rights and the rule of law**

- 1.1 States should promote and safeguard a free, democratic and just society in order to provide a peaceful, stable and enabling economic, social, political and cultural environment in which individuals can feed themselves and their families in freedom and dignity.
- 1.2 States should promote democracy, the rule of law, sustainable development and good governance, and promote and protect human rights and fundamental freedoms in order to empower individuals and civil society to make demands on their governments, devise policies that address their specific needs and ensure the accountability and transparency of governments and state decision-making processes in implementing such policies. States should, in particular, promote freedom of opinion and expression, freedom of information, freedom of the press and freedom of assembly and association, which enhances the progressive realisation of the right to adequate food in the context of national food security. Food should not be used as a tool for political and economic pressure.
- 1.3 States should also promote good governance as an essential factor for sustained economic growth, sustainable development, poverty and hunger eradication and for the realisation of all human rights including the progressive realisation of the right to adequate food.
- 1.4 States should ensure, in accordance with their international human rights obligations, that all individuals, including human rights defenders of the progressive realisation of the right to adequate food, are accorded equal protection under the law and that due process is guaranteed in all legal proceedings.
- 1.5 Where appropriate and consistent with domestic law, States may assist individuals and groups of individuals to have access to legal assistance to better assert the progressive realisation of the right to adequate food.

GUIDELINE 2**Economic development policies**

- 2.1 In order to achieve the progressive realisation of the right to adequate food in the context of national food security, States should promote broad-based economic development that is supportive of their food security policies. States should establish policy goals and benchmarks based on the food security needs of their population.
- 2.2 States should assess, in consultation with key stakeholders, the economic and social situation, including the degree of food insecurity and its causes, the nutrition situation and food safety.

- 2.3 States should promote adequate and stable supplies of safe food through a combination of domestic production, trade, storage and distribution.
- 2.4 States should consider adopting a holistic and comprehensive approach to hunger and poverty reduction. Such an approach entails, *inter alia*, direct and immediate measures to ensure access to adequate food as part of a social safety net; investment in productive activities and projects to improve the livelihoods of the poor and hungry in a sustainable manner; the development of appropriate institutions, functioning markets, a conducive legal and regulatory framework; and access to employment, productive resources and appropriate services.
- 2.5 States should pursue inclusive, non-discriminatory and sound economic, agriculture, fisheries, forestry, land-use, and, as appropriate, land-reform policies, all of which will permit farmers, fishers, foresters and other food producers, particularly women, to earn a fair return from their labour, capital and management, and encourage conservation and sustainable management of natural resources, including in marginal areas.
- 2.6 Where poverty and hunger are predominantly rural, States should focus on sustainable agricultural and rural development through measures to improve access to land, water, appropriate and affordable technologies, productive and financial resources, enhance the productivity of poor rural communities, promote the participation of the poor in economic policy decisions, share the benefits of productivity gains, conserve and protect natural resources, and invest in rural infrastructure, education and research. In particular, States should adopt policies that create conditions that encourage stable employment, especially in rural areas, including off-farm jobs.
- 2.7 In response to the growing problem of urban hunger and poverty, States should promote investments aimed at enhancing the livelihoods of the urban poor.

GUIDELINE 3

Strategies

- 3.1 States, as appropriate and in consultation with relevant stakeholders and pursuant to their national laws, should consider adopting a national human-rights based strategy for the progressive realisation of the right to adequate food in the context of national food security as part of an overarching national development strategy, including poverty reduction strategies, where they exist.
- 3.2 The elaboration of these strategies should begin with a careful assessment of existing national legislation, policy and administrative measures, current programmes, systematic identification of existing constraints and availability of existing resources. States should formulate the measures necessary to remedy any weakness, and propose an agenda for change and the means for its implementation and evaluation.
- 3.3 These strategies could include objectives, targets, benchmarks and time frames; and actions to formulate policies, identify and mobilise resources, define institutional mechanisms, allocate

responsibilities, coordinate the activities of different actors, and provide for monitoring mechanisms. As appropriate, such strategies could address all aspects of the food system, including the production, processing, distribution, marketing and consumption of safe food. They could also address access to resources and to markets as well as parallel measures in other fields. These strategies should, in particular, address the needs of vulnerable and disadvantaged groups, as well as special situations such as natural disasters and emergencies.

- 3.4 Where necessary, States should consider adopting and, as appropriate, reviewing a national poverty reduction strategy that specifically addresses access to adequate food.
- 3.5 States, individually or in cooperation with relevant international organisations, should consider integrating into their poverty reduction strategy a human rights perspective based on the principle of non-discrimination. In raising the standard of living of those below the poverty line, due regard should be given to the need to ensure equality in practice to those who are traditionally disadvantaged and between women and men.
- 3.6 In their poverty reduction strategies, States should also give priority to providing basic services for the poorest, and investing in human resources by ensuring access to primary education for all, basic health care, capacity building in good practices, clean drinking-water, adequate sanitation and justice and by supporting programmes in basic literacy, numeracy and good hygiene practices.
- 3.7 States are encouraged, *inter alia* and in a sustainable manner, to increase productivity and to revitalise the agriculture sector including livestock, forestry and fisheries through special policies and strategies targeted at small-scale and traditional fishers and farmers in rural areas, and the creation of enabling conditions for private sector participation, with emphasis on human capacity development and the removal of constraints to agricultural production, marketing and distribution.
- 3.8 In developing these strategies, States are encouraged to consult with civil society organisations and other key stakeholders at national and regional levels, including small-scale and traditional farmers, the private sector, women and youth associations, with the aim of promoting their active participation in all aspects of agricultural and food production strategies.
- 3.9 These strategies should be transparent, inclusive and comprehensive, cut across national policies, programmes and projects, take into account the special needs of girls and women, combine short-term and long-term objectives, and be prepared and implemented in a participatory and accountable manner.
- 3.10 States should support, including through regional cooperation, the implementation of national strategies for development, in particular for the reduction of poverty and hunger as well as for the progressive realisation of the right to adequate food.

GUIDELINE 4

Market systems

- 4.1 States should, in accordance with their national law and priorities, as well as their international commitments, improve the functioning of their markets, in particular their agricultural and food markets, in order to promote both economic growth and sustainable development, *inter alia*, by mobilising domestic savings, both public and private, by developing appropriate

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credit policies, by generating sustainable adequate levels of national productive investment through credits in concessional terms and by increasing human capacity.

- 4.2 States should put legislation, policies, procedures and regulatory and other institutions in place to ensure non-discriminatory access to markets and to prevent uncompetitive practices in markets.
- 4.3 States should encourage the development of corporate social responsibility and the commitment of all market players and civil society towards the progressive realisation of the right of individuals to adequate food in the context of national food security.
- 4.4 States should provide adequate protection to consumers against fraudulent market practices, misinformation and unsafe food. The measures toward this objective should not constitute unjustified barriers to international trade and should be in conformity with the WTO agreements.
- 4.5 States should, as appropriate, promote the development of small-scale local and regional markets and border trade to reduce poverty and increase food security, particularly in poor rural and urban areas.
- 4.6 States may wish to adopt measures to ensure that the widest number of individuals and communities, especially disadvantaged groups, can benefit from opportunities created by competitive agricultural trade.
- 4.7 States should strive to ensure that food, agricultural trade and overall trade policies are conducive to fostering food security for all through a non-discriminatory and market-oriented local, regional, national and world trade system.
- 4.8 States should endeavour to establish well functioning internal marketing, storage, transportation, communication and distribution systems, *inter alia*, to facilitate diversified trade and better links within and between domestic, regional and world markets, as well as to take advantage of new market opportunities.
- 4.9 States will take into account that markets do not automatically result in everybody achieving a sufficient income at all times to meet basic needs, and should therefore seek to provide adequate social safety nets and, where appropriate, the assistance of the international community for this purpose.
- 4.10 States should take into account the shortcomings of market mechanisms in protecting the environment and public goods.

GUIDELINE 5

Institutions

- 5.1 States, where appropriate, should assess the mandate and performance of relevant public institutions and, where necessary, establish, reform or improve their organisation and structure to contribute to the progressive realisation of the right to adequate food in the context of national food security.

- 5.2** To this end, States may wish to ensure the coordinated efforts of relevant government ministries, agencies and offices. They could establish national intersectoral coordination mechanisms to ensure the concerted implementation, monitoring and evaluation of policies, plans and programmes. States are encouraged to involve relevant communities in all aspects of planning and execution of activities in these areas.
- 5.3** States may also wish to entrust a specific institution with overall responsibility for overseeing and coordinating the application of these guidelines, bearing in mind the Declaration and Programme of Action of the 1993 Vienna World Conference on Human Rights and taking due account of existing agriculture conventions and protocols. In order to ensure transparency and accountability, the functions and tasks of this institution would need to be clearly defined, regularly reviewed and provision made for adequate monitoring mechanisms.
- 5.4** States should ensure that relevant institutions provide for full and transparent participation of the private sector and of civil society, in particular representatives of the groups most affected by food insecurity.
- 5.5** States should take measures, where and if necessary, to develop, strengthen, implement and maintain effective anticorruption legislation and policies, including in the food sector and in the management of emergency food aid.

GUIDELINE 6

Stakeholders

- 6.1** Recognising the primary responsibility of States for the progressive realisation of the right to adequate food, States are encouraged to apply a multistakeholder approach to national food security to identify the roles of and involve all relevant stakeholders, encompassing civil society and the private sector, drawing together their knowledge with a view to facilitating the efficient use of resources.

GUIDELINE 7

Legal framework

- 7.1** States are invited to consider, in accordance with their domestic legal and policy frameworks, whether to include provisions in their domestic law, possibly including constitutional or legislative review that facilitates the progressive realisation of the right to adequate food in the context of national food security.
- 7.2** States are invited to consider, in accordance with their domestic legal and policy frameworks, whether to include provisions in their domestic law, which may include their constitutions, bills of rights or legislation, to directly implement the progressive realisation of the right to adequate food. Administrative, quasi-judicial and judicial mechanisms to provide adequate, effective and prompt remedies accessible, in particular, to members of vulnerable groups may be envisaged.
- 7.3** States that have established a right to adequate food under their legal system should inform the general public of all available rights and remedies to which they are entitled.

- 7.4 States should consider strengthening their domestic law and policies to accord access by women heads of households to poverty reduction and nutrition security programmes and projects.

GUIDELINE 8

Access to resources and assets

- 8.1 States should facilitate sustainable, non-discriminatory and secure access and utilisation of resources consistent with their national law and with international law and protect the assets that are important for people's livelihoods. States should respect and protect the rights of individuals with respect to resources such as land, water, forests, fisheries and livestock without any discrimination. Where necessary and appropriate, States should carry out land reforms and other policy reforms consistent with their human rights obligations and in accordance with the rule of law in order to secure efficient and equitable access to land and to strengthen pro-poor growth. Special attention may be given to groups such as pastoralists and indigenous people and their relation to natural resources.
- 8.2 States should take steps so that members of vulnerable groups can have access to opportunities and economic resources in order to participate fully and equally in the economy.
- 8.3 States should pay particular attention to the specific access problems of women and of vulnerable, marginalised and traditionally disadvantaged groups, including all persons affected by HIV/AIDS. States should take measures to protect all people affected by HIV/AIDS from losing their access to resources and assets.
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- 8.4 States should promote agricultural research and development, in particular to promote basic food production with its positive effects on basic incomes and its benefits to small and women farmers, as well as poor consumers.
- 8.5 States should, within the framework of relevant international agreements, including those on intellectual property, promote access by medium- and small-scale farmers to research results enhancing food security.
- 8.6 States should promote women's full and equal participation in the economy and, for this purpose, introduce, where it does not exist, and implement gender sensitive legislation providing women with the right to inherit and possess land and other property. States should also provide women with secure and equal access to, control over, and benefits from productive resources, including credit, land, water and appropriate technologies.
- 8.7 States should design and implement programmes that include different mechanisms of access and appropriate use of agricultural land directed to the poorest populations.

GUIDELINE 8A

Labour

- 8.8 States should take measures to encourage sustainable development in order to provide opportunities for work that provide remuneration allowing for an adequate standard of living for rural and urban wage earners and their families, and to promote and protect self-employment. For States that have ratified the relevant instruments, working conditions should be consistent

with the obligations they have assumed under the International Covenant on Economic, Social and Cultural Rights, relevant ILO Conventions and other treaties including human rights conventions.

- 8.9** In order to improve access to the labour market, States should enhance human capital through education programmes, adult literacy and additional training programmes, as required, regardless of race, colour, gender, language, religion, political opinion, national or social origin, property, birth or other status.

GUIDELINE 8B

Land

- 8.10** States should take measures to promote and protect the security of land tenure, especially with respect to women, and poor and disadvantaged segments of society, through legislation that protects the full and equal right to own land and other property, including the right to inherit. As appropriate, States should consider establishing legal and other policy mechanisms, consistent with their international human rights obligations and in accordance with the rule of law, that advance land reform to enhance access for the poor and women. Such mechanisms should also promote conservation and sustainable use of land. Special consideration should be given to the situation of indigenous communities.

GUIDELINE 8C

Water

- 8.11** Bearing in mind that access to water in sufficient quantity and quality for all is fundamental for life and health, States should strive to improve access to, and promote sustainable use of, water resources and their allocation among users giving due regard to efficiency and the satisfaction of basic human needs in an equitable manner and that balances the requirement of preserving or restoring the functioning of ecosystems with domestic, industrial and agricultural needs, including safeguarding drinking-water quality.

GUIDELINE 8D

Genetic resources for food and agriculture

- 8.12** States, taking into account the importance of biodiversity, and consistent with their obligations under relevant international agreements, should consider specific national policies, legal instruments and supporting mechanisms to prevent the erosion of and ensure the conservation and sustainable use of genetic resources for food and agriculture, including, as appropriate, for the protection of relevant traditional knowledge and equitable participation in sharing benefits arising from the use of these resources, and by encouraging, as appropriate, the participation of local and indigenous communities and farmers in making national decisions on matters related to the conservation and sustainable use of genetic resources for food and agriculture.

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GUIDELINE 8E

Sustainability

- 8.13** States should consider specific national policies, legal instruments and supporting mechanisms to protect ecological sustainability and the carrying capacity of ecosystems to ensure the

possibility for increased, sustainable food production for present and future generations, prevent water pollution, protect the fertility of the soil, and promote the sustainable management of fisheries and forestry.

GUIDELINE 8F

Services

8.14 States should create an enabling environment and strategies to facilitate and support the development of private and public sector initiatives to promote appropriate tools, technologies and mechanisation in the provision of relevant services, including research, extension, marketing, rural finance and microcredit, to enable more efficient food production by all farmers, in particular poor farmers, and to address local constraints such as shortage of land, water and farm power.

GUIDELINE 9

Food safety and consumer protection

- 9.1** States should take measures to ensure that all food, whether locally produced or imported, freely available or sold on markets, is safe and consistent with national food safety standards.
- 9.2** States should establish comprehensive and rational food-control systems that reduce risk of food-borne disease using risk analysis and supervisory mechanisms to ensure food safety in the entire food chain including animal feed.
- 9.3** States are encouraged to take action to streamline institutional procedures for food control and food safety at national level and eliminate gaps and overlaps in inspection systems and in the legislative and regulatory framework for food. States are encouraged to adopt scientifically based food safety standards, including standards for additives, contaminants, residues of veterinary drugs and pesticides, and microbiological hazards, and to establish standards for the packaging, labelling and advertising of food. These standards should take into consideration internationally accepted food standards (Codex Alimentarius) in accordance with the WTO Sanitary and Phytosanitary Agreement (SPS). States should take action to prevent contamination from industrial and other pollutants in the production, processing, storage, transport, distribution, handling and sale of food.
- 9.4** States may wish to establish a national coordinating committee for food to bring together both governmental and non-governmental actors involved in the food system and to act as liaison with the FAO/WHO Codex Alimentarius Commission. States should consider collaborating with private stakeholders in the food system, both by assisting them in exercising controls on their own production and handling practices, and by auditing those controls.
- 9.5** Where necessary, States should assist farmers and other primary producers to follow good agricultural practices, food processors to follow good manufacturing practices, and food handlers to follow good hygiene practices. States are encouraged to consider establishing food safety systems and supervisory mechanisms to ensure the provision of safe food to consumers.
- 9.6** States should ensure that education on safe practices is available for food business operators so that their activities neither lead to harmful residues in food nor cause harm to the environment. States should also take measures to educate consumers about the safe storage,

handling and utilisation of food within the household. States should collect and disseminate information to the public regarding food-borne diseases and food safety matters, and should cooperate with regional and international organisations addressing food safety issues.

- 9.7** States should adopt measures to protect consumers from deception and misrepresentation in the packaging, labelling, advertising and sale of food and facilitate consumers' choice by ensuring appropriate information on marketed food, and provide recourse for any harm caused by unsafe or adulterated food, including food offered by street sellers. Such measures should not be used as unjustified barriers to trade; they should be in conformity with the WTO agreements (in particular SPS and TBT).
- 9.8** Developed countries are encouraged to provide technical assistance to developing countries through advice, credits, donations and grants for capacity building and training in food safety. When possible and appropriate, developing countries with more advanced capabilities in food safety-related areas are encouraged to lend assistance to less advanced developing countries.
- 9.9** States are encouraged to cooperate with all stakeholders, including regional and international consumer organisations, in addressing food safety issues, and consider their participation in national and international fora where policies with impact on food production, processing, distribution, storage and marketing are discussed.

GUIDELINE 10

Nutrition

- 10.1** If necessary, States should take measures to maintain, adapt or strengthen dietary diversity and healthy eating habits and food preparation, as well as feeding patterns, including breastfeeding, while ensuring that changes in availability and access to food supply do not negatively affect dietary composition and intake.
- 10.2** States are encouraged to take steps, in particular through education, information and labelling regulations, to prevent overconsumption and unbalanced diets that may lead to malnutrition, obesity and degenerative diseases.
- 10.3** States are encouraged to involve all relevant stakeholders, in particular communities and local government, in the design, implementation, management, monitoring and evaluation of programmes to increase the production and consumption of healthy and nutritious foods, especially those that are rich in micronutrients. States may wish to promote gardens both at home and at school as a key element in combating micronutrient deficiencies and promoting healthy eating. States may also consider adopting regulations for fortifying foods to prevent and cure micronutrient deficiencies, in particular of iodine, iron and Vitamin A.
- 10.4** States should address the specific food and nutritional needs of people living with HIV/AIDS or suffering from other epidemics.
- 10.5** States should take appropriate measures to promote and encourage breastfeeding, in line with their cultures, the International Code of Marketing of Breast-milk Substitutes and subsequent resolutions of the World Health Assembly, in accordance with the WHO/UNICEF recommendations.

- 10.6** States may wish to disseminate information on the feeding of infants and young children that is consistent and in line with current scientific knowledge and internationally accepted practices and to take steps to counteract misinformation on infant feeding. States should consider with utmost care issues regarding breastfeeding and human immunodeficiency virus (HIV) infection on the basis of the most up-to-date, authoritative scientific advice and referring to the latest WHO/UNICEF guidelines.
- 10.7** States are invited to take parallel action in the areas of health, education and sanitary infrastructure and promote intersectoral collaboration, so that necessary services and goods become available to people to enable them to make full use of the dietary value in the food they eat and thus achieve nutritional well-being.
- 10.8** States should adopt measures to eradicate any kind of discriminatory practices, especially with respect to gender, in order to achieve adequate levels of nutrition within the household.
- 10.9** States should recognise that food is a vital part of an individual's culture, and they are encouraged to take into account individuals' practices, customs and traditions on matters related to food.
- 10.10** States are reminded of the cultural values of dietary and eating habits in different cultures and should establish methods for promoting food safety, positive nutritional intake including fair distribution of food within communities and households with special emphasis on the needs and rights of both girls and boys, as well as pregnant women and lactating mothers, in all cultures.

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GUIDELINE 11

Education and awareness raising

- 11.1** States should support investment in human resource development such as health, education, literacy and other skills training, which are essential to sustainable development, including agriculture, fisheries, forestry and rural development.
- 11.2** States should strengthen and broaden primary education opportunities, especially for girls, women and other underserved populations.
- 11.3** States should encourage agricultural and environmental education at the primary and secondary levels in order to create a better awareness in new generations about the importance of conserving and making sustainable use of natural resources.
- 11.4** States should support higher education by strengthening developing country university and technical faculties of agriculture-related disciplines and business to carry out both education and research functions, and by engaging universities throughout the world in training developing country agriculturalists, scientists and business people at the graduate and post-graduate levels.
- 11.5** States should provide information to individuals to strengthen their ability to participate in food-related policy decisions that may affect them, and to challenge decisions that threaten their rights.

- 11.6 States should implement measures to make people improve their housing conditions and their means for food preparation, because they are related to food safety. Such measures should be made in the educative and infrastructure fields, especially in rural households.
- 11.7 States should promote, and/or integrate into school curricula, human rights education, including civil, political, economic, social and cultural rights, which includes the progressive realisation of the right to adequate food.²⁴
- 11.8 States are encouraged to promote awareness of the importance of human rights, including the progressive realisation of the right to adequate food.
- 11.9 States should provide proper training to officials responsible for the implementation of the progressive realisation of the right to adequate food.
- 11.10 States should raise public awareness of these guidelines and continuously provide and improve access to them and to relevant human rights laws and regulations, particularly in rural and remote areas.
- 11.11 States may wish to empower civil society to participate in the implementation of these guidelines, for instance through capacity building.

GUIDELINE 12

National financial resources

- 12.1 Regional and local authorities are encouraged to allocate resources for antihunger and food security purposes in their respective budgets.
- 12.2 States should ensure transparency and accountability in the use of public resources, particularly in the area of food security.
- 12.3 States are encouraged to promote basic social programmes and expenditures, in particular those affecting the poor and the vulnerable segments of society, and to protect them from budget reductions, while increasing the quality and effectiveness of social expenditures. States should strive to ensure that budget cuts do not negatively affect access to adequate food among the poorest sections of society.
- 12.4 States are encouraged to establish an enabling legal and economic environment to promote and mobilise domestic savings and attract external resources for productive investment, and seek innovative sources of funding, both public and private at national and international levels, for social programmes.
- 12.5 States are invited to take appropriate steps and suggest strategies to contribute to raise awareness of the families of migrants in order to promote efficient use of the remittances of migrants for investments that could improve their livelihoods, including the food security of their families.

GUIDELINE 13

Support for vulnerable groups

- 13.1** Consistent with the World Food Summit commitment, States should establish Food Insecurity and Vulnerability Information and Mapping Systems (FIVIMS), in order to identify groups and households particularly vulnerable to food insecurity along with the reasons for their food insecurity. States should develop and identify corrective measures to be implemented both immediately and progressively to provide access to adequate food.
- 13.2** States are invited to systematically undertake disaggregated analysis on the food insecurity, vulnerability and nutritional status of different groups in society, with particular attention to assessing any form of discrimination that may manifest itself in greater food insecurity and vulnerability to food insecurity, or in a higher prevalence of malnutrition among specific population groups, or both, with a view to removing and preventing such causes of food insecurity or malnutrition
- 13.3** States should establish transparent, non-discriminatory eligibility criteria in order to ensure effective targeting of assistance, so that no one who is in need is excluded, or that those not in need of assistance are included. Effective accountability and administrative systems are essential to prevent leakages and corruption. Factors to take into account include household and individual assets and income, nutrition and health status, as well as existing coping mechanisms.
- 13.4** States may wish to give priority to channelling food assistance via women as a means of enhancing their decision-making role and ensuring that the food is used to meet the household's food requirements.

GUIDELINE 14

Safety nets

- 14.1** States should consider, to the extent that resources permit, establishing and maintaining social safety and food safety nets to protect those who are unable to provide for themselves. As far as possible, and with due regard to effectiveness and coverage, States should consider building on existing capacities within communities at risk to provide the necessary resources for social safety and food safety nets to fulfil the progressive realisation of the right to adequate food. States may wish to consider the benefits of procuring locally.
- 14.2** States and international organisations should consider the benefits of local procurement for food assistance that could integrate the nutritional needs of those affected by food insecurity and the commercial interests of local producers.
- 14.3** Although the design of social and food safety nets will depend on the nature of food insecurity, objectives, budget, existing administrative capacity and local circumstances such as levels of food supply and local food markets, States should nonetheless ensure that they adequately target those in need and respect the principle of non-discrimination in the establishment of eligibility criteria.

- 14.4** States should take steps, to the extent that resources permit, so that any measure of an economic or financial nature likely to have a negative impact on existing levels of food consumption of vulnerable groups be accompanied by provision for effective food safety nets. Safety nets should be linked to other complementary interventions that promote food security in the longer term.
- 14.5** In situations where it has been determined that food plays an appropriate role in safety nets, food assistance should bridge the gap between the nutritional needs of the affected population and their ability to meet those needs themselves. Food assistance should be provided with the fullest possible participation of those affected, and such food should be nutritionally adequate and safe, bearing in mind local circumstances, dietary traditions and cultures.
- 14.6** States should consider accompanying food assistance in safety net schemes with complementary activities to maximise benefits towards ensuring people's access to and utilisation of adequate food. Essential complementary activities include access to clean water and sanitation, health care interventions and nutrition education activities.
- 14.7** States, in the design of safety nets, should consider the important role of international organisations such as FAO, IFAD and WFP, and other relevant international, regional and civil society organisations that can assist them in fighting rural poverty and promoting food security and agricultural development.

GUIDELINE 15

International food aid

- 15.1** Donor States should ensure that their food aid policies support national efforts by recipient States to achieve food security, and base their food aid provisions on sound needs assessment, targeting especially food insecure and vulnerable groups. In this context, donor States should provide assistance in a manner that takes into account food safety, the importance of not disrupting local food production and the nutritional and dietary needs and cultures of recipient populations. Food aid should be provided with a clear exit strategy and avoid the creation of dependency. Donors should promote increased use of local and regional commercial markets to meet food needs in famine-prone countries and reduce dependence on food aid.
- 15.2** International food-aid transactions, including bilateral food aid that is monetised, should be carried out in a manner consistent with the FAO Principles of Surplus Disposal and Consultative Obligations, the Food Aid Convention and the WTO Agreement on Agriculture, and should meet the internationally agreed food safety standards, bearing in mind local circumstances, dietary traditions and cultures.
- 15.3** States and relevant non-state actors should ensure, in accordance with international law, safe and unimpeded access to the populations in need, as well as for international needs assessments, and by humanitarian agencies involved in the distribution of international food assistance.
- 15.4** The provision of international food aid in emergency situations should take particular account of longer-term rehabilitation and development objectives in the recipient countries, and should respect universally recognised humanitarian principles.

- 15.5** The assessment of needs and the planning, monitoring and evaluation of the provision of food aid should, as far as possible, be made in a participatory manner and, whenever possible, in close collaboration with recipient governments at the national and local level.

GUIDELINE 16

Natural and human-made disasters

- 16.1** Food should never be used as a means of political and economic pressure.
- 16.2** States reaffirm the obligations they have assumed under international humanitarian law and, in particular, as parties to the 1949 Geneva Conventions and/or the 1977 Additional Protocols thereto with respect to the humanitarian needs of the civilian population, including their access to food in situations of armed conflict and occupation, *inter alia*, Additional Protocol I provides, *inter alia*, that “the starvation of civilians as a method of warfare is prohibited” and that “it is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them, for their sustenance value to the civilian population or to the adverse party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive”, and that “these objects shall not be made the object of reprisals”.
- 16.3** In situations of occupation, international humanitarian law provides, *inter alia*: that to the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; that it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the Occupied Territory are inadequate; and that if the whole or part of the population of an Occupied Territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal.
- 16.4** States reaffirm the obligations they have assumed regarding the protection, safety and security of humanitarian personnel.
- 16.5** States should make every effort to ensure that refugees and internally displaced persons have access at all times to adequate food. In this respect, States and other relevant stakeholders should be encouraged to make use of the Guiding Principles on Internal Displacement when dealing with situations of internal displacement.
- 16.6** In the case of natural or human-made disasters, States should provide food assistance to those in need, may request international assistance if their own resources do not suffice, and should facilitate safe and unimpeded access for international assistance in accordance with international law and universally recognised humanitarian principles, bearing in mind local circumstances, dietary traditions and cultures.
- 16.7** States should put in place adequate and functioning mechanisms of early warning to prevent or mitigate the effects of natural or human-made disasters. Early warning systems should be based on international standards and cooperation, on reliable, disaggregated data and should be constantly monitored. States should take appropriate emergency preparedness

measures, such as keeping food stocks for the acquisition of food, and take steps to put in place adequate systems for distribution.

- 16.8** States are invited to consider establishing mechanisms to assess nutritional impact and to gain understanding of the coping strategies of affected households in the event of natural or human-made disasters. This should inform the targeting, design, implementation and evaluation of relief, rehabilitation and resilience building programmes.

2 1949 Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War, Articles 55, 59.

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GUIDELINE 17

Monitoring, indicators and benchmarks

- 17.1** States may wish to establish mechanisms to monitor and evaluate the implementation of these guidelines towards the progressive realisation of the right to adequate food in the context of national food security, in accordance with their capacity and by building on existing information systems and addressing information gaps.
- 17.2** States may wish to consider conducting “Right to Food Impact Assessments” in order to identify the impact of domestic policies, programmes and projects on the progressive realisation of the right to adequate food of the population at large and vulnerable groups in particular, and as a basis for the adoption of the necessary corrective measures.
- 17.3** States may also wish to develop a set of process, impact and outcome indicators, relying on indicators already in use and monitoring systems such as FIVIMS, so as to assess the implementation of the progressive realisation of the right to adequate food. They may wish to establish appropriate benchmarks to be achieved in the short, medium and long term, which relate directly to meeting poverty and hunger reduction targets as a minimum, as well as other national and international goals including those adopted at the World Food Summit and the Millennium Summit.
- 17.4** In this evaluation process, process indicators could be so identified or designed that they explicitly relate and reflect the use of specific policy instruments and interventions with outcomes consistent with the progressive realisation of the right to adequate food in the context of national food security. Such indicators could enable States to implement legal, policy and administrative measures, detect discriminatory practices and outcomes, and ascertain the extent of political and social participation in the process of realising that right.
- 17.5** States should, in particular, monitor the food security situation of vulnerable groups, especially women, children and the elderly, and their nutritional status, including the prevalence of micronutrient deficiencies.³
- ¹
- 17.6** In this evaluation process, States should ensure a participatory approach to information gathering, management, analysis, interpretation and dissemination.

GUIDELINE 18

National human rights institutions

- 18.1** States that have as a matter of national law or policy adopted a rights-based approach, and national human rights institutions or ombudspersons, may wish to include the progressive realisation of the right to adequate food in the context of national food security in their mandates. States that do not have national human rights institutions or ombudspersons are encouraged to establish them. Human rights institutions should be independent and autonomous from the government, in accordance with the Paris Principles. States should encourage civil society organisations and individuals to contribute to monitoring activities undertaken by national human rights institutions with respect to the progressive realisation of the right to adequate food.
- 18.2** States are invited to encourage efforts by national institutions to establish partnerships and increase cooperation with civil society.

GUIDELINE 19

International dimension

- 19.1** States should fulfil those measures, actions and commitments on the international dimension, as described in Section III below, in support of the implementation of the Voluntary Guidelines, which assist States in their national efforts in the progressive realisation of the right to adequate food in the context of national food security as set forth by the World Food Summit and the World Food Summit: *five years later* within the context of the Millennium Declaration.

Part III

INTERNATIONAL MEASURES, ACTIONS AND COMMITMENTS

International cooperation and unilateral measures

1. In the context of recent major international conferences, the international community has stated its deep concern over the persistence of hunger, its readiness to support national governments in their efforts to combat hunger and malnutrition and its commitment to cooperate actively within the global partnership for development, which includes the International Alliance Against Hunger.
2. States have the primary responsibility for their own economic and social development, including the progressive realisation of the right to adequate food in the context of national food security. Stressing that national development efforts should be supported by an enabling international environment, the international community and the UN system, including FAO, as well as other relevant agencies and bodies according to their mandates, are urged to take actions in supporting national development efforts for the progressive realisation of the right to adequate food in the context of national food security. This essential role of international cooperation is recognised, *inter alia*, in article 56 of the Charter of the United Nations as well as in the outcomes of major international conferences such as the Plan of Implementation of the World Summit on Sustainable Development. Food should not be used as a tool of economic and political pressure.
3. States are strongly urged to take steps with a view to the avoidance of, and refrain from, any unilateral measure not in accordance with international law and the charter of the United Nations that impedes the full achievement of economic and social development by the populations of the affected countries and that hinders their progressive realisation of the right to adequate food.

Role of the international community

4. Consistent with commitments made at various international conferences, in particular the Monterrey Consensus, developed countries should assist developing countries in attaining international development goals, including those contained in the Millennium Declaration. States and relevant international organisations according to their respective mandates should actively support the progressive realisation of the right to adequate food at the national level. External support, including South–South cooperation, should be coordinated with national policies and priorities.

Technical cooperation

5. Developed and developing countries should act in partnership to support their efforts to achieve the progressive realisation of the right to adequate food in the context of national food security through technical cooperation, including institutional capacity building, and transfer of technology on mutually agreed terms, as committed in the major international conferences, in all areas covered in these guidelines, with special focus on impediments to food security such as HIV/AIDS.

International trade

6. International trade can play a major role in the promotion of economic development, and the alleviation of poverty and improving food security at the national level.
7. States should promote international trade as one of the effective instruments for development, as expanded international trade could open opportunities to reduce hunger and poverty in many of the developing countries.
8. It is recalled that the long-term objective referred to in the WTO Agreement on Agriculture is to establish a fair and market-oriented trading system through a programme of fundamental reform encompassing strengthened rules and specific commitments on support and protection in order to correct and prevent restrictions and distortions in world agricultural markets.
9. States are urged to implement commitments expressed at various relevant international conferences and the recommendations of the São Paulo Consensus (the eleventh session of the United Nations Conference on Trade and Development) including, for example, those reproduced below:
75. Agriculture is a central element in the current negotiations. Efforts should be intensified to achieve the internationally agreed aims embodied in the three pillars of the Doha mandate, namely substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in tradedistorting domestic support. The negotiations on agriculture taking place in the WTO should deliver an outcome that is consistent with the ambition set out in the Doha mandate. Special and differential treatment for developing countries shall be an integral part of all elements of the negotiations and shall take fully into account development needs in a manner consistent with the Doha mandate, including food security and rural development. Non-trade concerns of countries will be taken into account, as provided for in the Agreement on Agriculture, in accordance with paragraph 13 of the Doha Ministerial Declaration.
77. Efforts at extending market access liberalisation for non-agricultural products under the Doha Work Programme should be intensified with the aim of reducing or, as appropriate, eliminating tariffs, including tariff peaks, high tariffs and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries. Negotiations should take fully into account the special needs and interests of developing countries and LDCs, including through less than full reciprocity in reduction commitments.
10. Such measures can contribute to strengthening an enabling environment for the progressive realisation of the right to adequate food in the context of national food security.

External debt

11. States and relevant international organisations should, as appropriate, pursue external debt relief measures vigorously and expeditiously in order to release resources for combating hunger, alleviating rural and urban poverty and promoting sustainable development. Creditors and debtors must share the responsibility for preventing and resolving

unsustainable debt situations. Speedy, effective and full implementation of the enhanced heavily indebted poor countries (HIPC) initiative, which should be fully financed by additional resources, is critical. Furthermore, all official and commercial creditors are urged to participate in this initiative. Heavily indebted poor countries should take or continue to take policy measures required to ensure the full implementation of the HIPC initiative.

Official development assistance

12. Consistent with the Monterrey Consensus, developed countries should assist developing countries in attaining international development goals, including those contained in the Millennium Declaration, by providing adequate technical and financial assistance and by making concrete efforts towards the targets for ODA of 0.7 percent of GNP to developing countries and 0.15 percent to 0.2 percent of GNP to least developed countries. This should be linked to efforts to improve the quality and effectiveness of aid, including through better coordination, closer integration with national development strategies, greater predictability and stability and genuine national ownership. Donors should be encouraged to take steps to ensure that resources provided for debt relief do not detract from ODA resources intended to be available for developing countries. Developing countries are encouraged to build on progress achieved in ensuring that ODA is used effectively to help achieve development goals and targets. In addition, voluntary financial mechanisms supportive of efforts to achieve sustained growth, development and poverty eradication should be explored.

International food aid

13. States that provide international assistance in the form of food aid should regularly examine their relevant policies and, if necessary, review them to support national efforts by recipient States to progressively realise the right to adequate food in the context of national food security. In the broader context of food security policy, States should base their food aid policies on sound needs assessment that involves both recipient and donors and that targets especially needy and vulnerable groups. In this context, States should provide such assistance in a manner that takes into account the importance of food safety, local and regional food production capacity and benefits, and the nutritional needs as well as cultures of recipient populations.

Partnerships with NGOs/CSOs/private sector

14. States, international organisations, civil society, the private sector, all relevant non-governmental organisations and other stakeholders should promote the strengthening of partnerships and coordinated action, including programmes and capacity development efforts, with a view to strengthening the progressive realisation of the right to adequate food in the context of national food security.

Promotion and protection of the right to adequate food

15. The organs and specialised agencies related to human rights should continue to enhance the coordination of their activities based on the consistent and objective application of international human right instruments, including the promotion of the progressive realisation of the right to adequate food. The promotion and protection of all human rights and fundamental freedoms must be considered a priority objective of the United Nations

in accordance with its purposes and principles, in particular the purpose of international cooperation. In the framework of these purposes and principles, the promotion and protection of all human rights, including the progressive realisation of the right to adequate food, is a legitimate concern of all Member States, the international community and civil society.

International reporting

16. States may report on a voluntary basis on relevant activities and progress achieved in implementing the Voluntary Guidelines on the progressive realisation of the right to adequate food in the context of national food security, to the FAO Committee on World Food Security (CFS) within its reporting procedures.



Dr NC Saxena
on food security



CONCERN FOR THE ‘AAM ADMI’ – HOW HAS IT BEEN MET IN THE BUDGET?

NC Saxena

Finance minister presented the budget for 2008-09 in an environment of growing recognition that the poor have been left behind in the mad race of high economic growth and getting rich quick. According to the Planning Commission’s Approach Paper for the XI Plan, there has been a sharp increase in unemployment (from 9.5% in 1993-94 to 15.3% in 2004-05) among the agricultural labour households. The NFHS III survey of the Ministry of Health showed that despite high economic growth of eight percent every year, malnutrition in the age group 0 to 6 years has declined only by one percentage point in the last eight years. The prevalence of child undernutrition in India is among the highest in the world, nearly double that of Sub-Saharan Africa, with dire consequences for morbidity, mortality, productivity and economic growth. Many developing countries which are poorer than India seem to be doing much better on the social front as shown below.

		India	Bangladesh	Myanmar	Vietnam	Bhutan
Infant Mortality Rate per 1000 births	1990	82	100	91	38	107
	2006	57	52	74	15	63
Underweight children under5		46	48	32	25	19
Immunised against measles		59	81	82	93	90
Rural population with adequate sanitation		22	35	72	50	70
Ratio of girls to boys in schools (%)		88	105	101	96	87
Global Hunger Index		25	28	16	18	NA

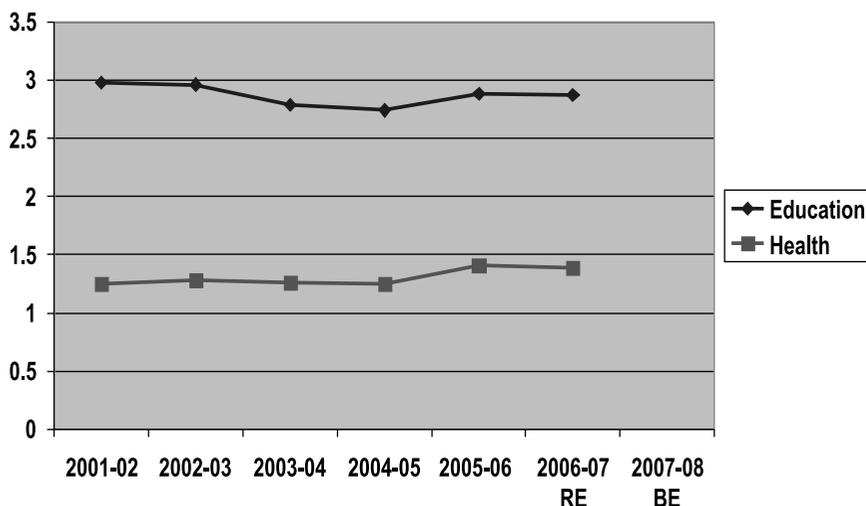
(Based on information on the World Bank, Unicef & IFPRI websites)

Social sector outlays

One of the reasons for pathetic progress on social indicators is inadequate allocation. Way back in 2004 the Common Minimum Programme of this government had announced its intention to increase the public spending on education to 6% of the GDP and on health to 2-3 percent of GDP, but there has been hardly any serious effort in the five budgets presented so far to move towards the announced targets. Overall expenditure on education and health has stagnated at about half the desired levels.

The central government may congratulate itself in increasing the outlays for social sector in the central budgets, but more than 80% of expenditure on these sectors is borne by the states, and unless they too fall in line, additional central allocations do not change the picture. Table below shows how expenditure on education and health as percentage of total expenditure has stagnated or even fallen in the states in the last eight years.

Trends of social sector expenditure as % of GDP: (Centre and State Governments combined)



Expenditure on education and health as % of total expenditure (all states)

Year	Education	Health
2000-01	17.4	4.7
2001-02	16.1	4.4
2002-03	15	4.1
2003-04	12.6	3.5
2004-05	12.7	3.5
2005-06	14.2	3.9
06-07 (RE)	14.2	4.1
07-08 (BE)	13.9	4.1

(RBI website)

One expected that the current budget of the UPA government would show some upward movement in allocations for the social sector, but it disappointed us and did not fulfil the promises made in the CMP.

NREGA

Allocations under wage employment schemes have not only been grossly inadequate, but have actually fallen. In 2005-06, that is, before the introduction of NREGA, when each worker was being given 5 kg of foodgrain per day as part of the wages, the RE figure for wage employment works under the Ministry of Rural Development was Rs 10200 crores excluding Rs 1500 crore meant to cover the cost of food component. According to the bulletin of the Ministry of Consumer Affairs, Food and Public Distribution for the month of November 2007, offtake of foodgrains from Central Pool in 2005-06 for wage employment schemes was as follows:

Scheme	Rice	Wheat	Total economic cost ² in crore Rs
	in lakh tonnes		
SGRY		24.21	15.71 4878
SGRY (spl. Component)		7.44	9.82 2021
National Food for Work Prog.	6.59	4.08	1307
Total		38.24	29.61 8206

Thus the overall cost borne by the central government for running wage employment programmes in 2005-06 came to 10,200 plus 8206 = Rs 18,406 crores.

The foodgrain component of SGRY has now been vastly reduced, and there is no such component in NREGA. In 2006-07 the total foodgrain released for wage employment schemes was only 24 lakh tonnes as compared to 68 lakhs in the previous year. This has further come down to only 7.3 lakh tonnes in the current year (upto Nov 2007), and may not even reach 15 lakh tonnes by the end of the March 2008.

Converting these figures into cash would imply that the total expenditure by GOI on wage employment schemes came down from Rs 18406 crores in 2005-06 to Rs 16,117 crores in 2006-07, and close to Rs 15,000 crores in the current year.

The allocation of Rs 16,000 crores for 2008-09 even at current prices does not match what was already being spent in 2005-06 on the scheme. If inflation is taken into account the allocation for 2008-09 is less than what government spent in 2005-06 by at least 30%!

No wonder the legal guarantee of 100 days wages, according to CAG, has been fulfilled in only 3% of the cases. According to a recent press note by the Ministry of Programme Implementation and Statistics on 'Employment and Unemployment Situation in India: 2005-06', among the persons of age 15 years and above in the rural area, only 5 percent got public works, 7 percent sought but did not get public works.

Thus the introduction of NREGA has actually reduced Government's financial liability to support wage employment. No wonder GOI is so keen to extend NREGA throughout the country, not taking into account that about one-fourth of the districts in India (many in north-west India, Himachal, Uttarakhand NE, and Kerala) are labour scarce districts! Wage-employment programmes should not be run in these districts, where wage rate is already high and where unskilled labour comes from other regions. Such districts should be offered more funds for other programmes, including irrigation and rural infrastructure. Reckless expansion will only promote migration and fudging of documents.

Child labour

How serious are we towards eradicating child labour in the country? As per the Census 2001, the total number of economically active children in the age group of 5-14 years is 1.26 crores. As per question no 1733 answered on 05.12.2007 in the Rajya Sabha expenditure under the National Child Labour Project in 2006-07 was only Rs 121 crores, which comes to less than 30 paise per child worker per day. (ADD a sentence on latest outlays from the current budget). No wonder they prefer begging on the street than be part of the government programme!

Old age pensions

The Prime Minister had said in August 2007 that the National Old Age Pension Scheme will be extended to all the persons Below Poverty Line above the age of 65 years. A pension of Rs. 200/- per month will be provided and States will be requested to add another Rs. 200/- to this scheme. However, 12 states, including Andhra Pradesh, Bihar, Himachal Pradesh, J&K, Orissa and some NE states, are only paying only 200 Rs per month, thereby implying that the state share is zero! Why couldn't the GOI insist that the central share would be given only when states contribute at least Rs 100 per month?

Delays

One of the commitments made in the NCMP was that Government will introduce a social security scheme for unorganised workers. In the Budget speech 2007 Finance Minister announced a new scheme called 'Aam Admi Bima Yojana' (AABY), and he specifically said that it would be implemented in 2007-08 itself. However, releasing the guidelines for the Scheme a few months back, Mr. Chidambaram said the scheme would be implemented from the next financial year! Such delays are because of indifference on the part of states and archaic procedures.

From outlays to outcomes

Enhanced allocations, howsoever vital for the social sector, are not sufficient to improve India's performance on MDGs. FM in his 2007 speech rightly said that 'There is no dearth of schemes; there is no dearth of funds. What needs to be done is to deliver the intended outcomes.'

How is outcome delivered in the states? By falsifying records! Sachin Pilot while trying to understand how ICDS functions in the districts observed (Economic Times 11th Feb, 2008):

'we discovered that all data of children at the centre for the past five months, weight, vaccinations, health records etc, were filled in with pencils. On probing further, I found it was done so that in case of an official inspection, the figures could be erased and "correct" data inserted to make the centre's performance look good!'

The practice is so widely prevalent in all the states, presumably with the connivance of senior officers, that the data reaching GOI shows only 8% as the overall percentage of malnourished children in case of 0-3 years (with only one percent children severely malnourished), as against 46% reported by NFHS-3. What is equally astonishing is the fact that records show a steep decline in the percentage of malnourished children from 29 to 8%, which is totally at variance with the findings of the various NFHS surveys. By sending bogus reports the field officials are thus able to escape from any sense of accountability for reducing malnutrition.

The CAG found similar discrepancies in record management in its study of the NREGA. In 282 GPs in 21 States, dated receipt of applications for demand for work were not given, and in 343 GPs in 19 States, Employment Registers were not maintained. In the absence of recorded date of demand, the entitlement to unemployment allowance could not be easily established.

In Orissa, no budget provision was made by the State government for payment of unemployment allowance. Resultantly, in 12 test checked blocks, no unemployment allowance was paid to 5143 registered households who were not provided with employment during 2006-07 despite demanding the same. In Uttar Pradesh, in four of the six districts covered in audit, 40,587 households demanding employment were neither provided employment, nor was any unemployment allowance paid to them.

The CAG's overall conclusion was that systems for financial management and tracking were deficient, with numerous instances of diversion and misutilisation. As against the government claim of 43 days, CAG's finding was that the average employment provided to each registered household was only 18 days in test-checked GPs.

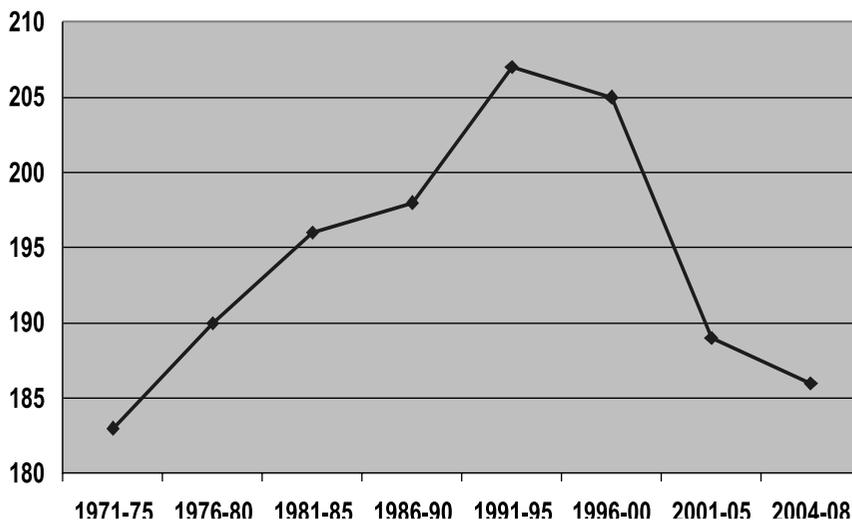
It is not the size of allocations on propoor services alone that matters. Government of India transfers more than three and a half lakh crore Rupees every year to the states. If even half of it was to be sent to the six crore poor families directly by money order, they would receive more than 50 Rupees a day! It proves that public expenditure needs to be effectively translated into public goods and services that reach the poor for it to have an impact on poverty and social outcomes. Unfortunately different kinds of distortions can come in the way of resource allocations reaching the intended beneficiaries. There is enough evidence to show that government's capacity to deliver has declined over the years due to rising indiscipline and a growing belief widely shared among the political and bureaucratic elite that state is an arena where public office is to be used for private ends. Weak governance, manifesting itself in poor service delivery, excessive regulation, and uncoordinated and wasteful public expenditure, is one of the key factors impinging on development and social indicators.

Rural distress & agriculture

According to a recent press note of the National Sample Survey Organisation on consumption and employment from the 62nd survey, as many as 19 percent of Indians in 2005-06 living in rural areas belong to households which cannot afford to spend more than Rs 12 a day per person on consumption, and in the towns and cities as many as 22 percent belong to households where the daily per capita expenditure is less than Rs 19. Such abysmal levels of consumption are surely linked to the very low wage rates. In rural India, the average daily wage of casual labour in 2005-06 was Rs 59 for men and Rs 38 for women; in urban India the rates were Rs 81 and Rs 45, respectively – in both areas below the statutory minimum. The pattern is unrelenting in all aspects of the quality of life. In India's villages, 50 percent of families live in kutchra or semi-pucca homes, 74 percent of households still use firewood for cooking and 42 percent are forced to depend on kerosene for lighting their homes. 'So much for life in a high-performing economy. In sum, the economy seems to be doing fine, it's just the people that aren't' (EPW 11Feb 2008).

A recent UNDP survey (known as PAHELI) of Gajapati district in Orissa showed that 22% people in the district did not get two meals a day and 60% women survived only with one or two sets of clothes, and yet 36% of the families did not own a BPL or Antyodaya (AAY) card. In fact in the entire country only about half of the poor have BPL/ AAY cards, whereas 17.4% of the richest quintile have managed to get the BPL/AAY cards, as shown below.

% of HH that possess ration card 2004/05 (NSS 61st round)				
	Any card	BPL card	APL card	AAY card
Poorest	77.3	44.2	28.2	4.9
Q2	81.6	40.5	38.4	2.7
Q3	83.3	40	41.6	1.8
Q4	84.9	30.5	52.7	1.7
Richest	87.5	16.8	70.1	0.6

Per Capita Production of Foodgrains (in kg)

The increase in rural distress is primarily because both per capita foodgrain production and agricultural production has fallen rapidly since 1996.

According to the MTA, X Plan, within the crop sector, only fruits and vegetables, condiments and spices and drugs and narcotics continued to grow at over 2.5 percent per annum. Excluding these, growth rate of output of remaining crops fell below 0.5 percent per annum after 1996-97 as compared to over 3 percent earlier. Assuming population rose by 1.7% during 1996-2005, this amounts to a decline of 1.2% per capita per annum in crop production.

According to the recent Economic Survey released by GOI, the consumption of cereals in India declined from a peak of 468 grams per capita per day in 1990-91 to 412 grams per capita per day in 2005-06, whereas the consumption of pulses declined from 42 grams per capita per day (72 grams in 1956-57) to 33 grams per capita per day during the same period. The decline for the bottom 50% would have been even sharper than the average.

Interventions in the budget

The UPA government has surely increased the plan allocation for agriculture several times, and introduced some new schemes but its impact on increased agricultural production or on reduced rural distress will still be marginal. As observed by Sainath, disastrous policies, woeful access to affordable credit, greedy and corrupt middlemen, and indifferent administrations are among the factors that have pushed farmers to their breaking point.

The number of rural bank branches has come down, and farmers are forced to take loans at exorbitant rates from moneylenders and suppliers of inputs. Little relief has been announced in the budget on loans from 'informal' sources. It may be recalled that the Radhakrishna Committee appointed by the Finance Ministry on rural indebtedness had in July 2007 suggested the creation of a "Moneylenders Debt Redemption Fund" under which banks will finance a one-time repayment of loans to moneylenders in identified districts under distress. The Finance Minister while announcing a huge loan waiver scheme for the lucky ones who obtain loans at a low interest of 8 to 12% from banks and

cooperatives has given no such relief to the unfortunate farmers who obtain loans from informal sources at an exorbitant 50 to 100% rate of interest.

Controls over water

By providing farmers with electricity at flat rather than metreed rates, and eventually for free, successive state governments across India let loose a chain of events with serious long-term consequences for depletion of groundwater. The successive budgets in the last four years have given many doles to farmers, but did little to control excessive mining of groundwater, leading to a situation where shallow wells that were a source of water for small farmers have gone completely dry.

Water famine – how real?

During the summer months of April-May 2000, the Maharashtra Government was supplying drinking water through tankers in about 3000 villages, many of these had a standing and well-irrigated sugarcane crop. Thus groundwater that should have been a community resource was being monopolised by a few rich farmers, who also took advantage of easy availability of two other scarce resources – electric power and capital. The responsibility to provide drinking water was then transferred to the State.

Mid term Appraisal of the 9th Plan, 2000, page 300

Flawed policy on agriculture

The policy approach to agriculture, particularly since the mid-1990s, has been to secure increased production through subsidies on inputs such as power, water and fertiliser, and by increasing the minimum support price rather than through building new capital assets in irrigation, power and rural infrastructure. This has shifted the production base from low-cost regions to high cost regions, causing an increase the cost of production, regional imbalance, and increasing the burden of storage and transport of foodgrains. The equity, efficiency, and sustainability of the current approach are questionable. The subsidies do not improve income distribution or the demand for labour. The boost in output from subsidy-stimulated use of fertiliser, pesticides and water has the potential to damage aquifers and soils – an environmentally unsustainable approach that may partly explain the rising costs and slowing growth and productivity in agriculture, notably in the Punjab and Haryana. Moreover, deteriorating State finances have meant that subsidies have, in effect i) 'crowded-out' public agricultural investment in roads and irrigation and expenditure on technological upgrading, ii) limited maintenance on canals and roads, and iii) contributed to the low quality of rural power. These problems are particularly severe in the poorer States. Although private investment in agriculture has grown, this has often involved macroeconomic inefficiencies (such as private investment in diesel generating sets instead of public investment in electricity supply). Public investment in agriculture has fallen dramatically since the 1980s and so has the share of agriculture in total gross capital formation. Instead of promoting low cost options that have a higher capital-output ratio, present policies have resulted in excessive use of capital on the farms, such as too many tubewells in water scarce regions.

The intensity of private capital is in fact increasing for all class of farmers, but at a faster pace in Green Revolution areas and for large farmers. Thus, fertilisers, pesticides and diesel accounted for a mere 14.9% of the total inputs in 1970–1 but 55.1% in 1994–5. For a large farmer in commercialised regions their contribution may have now become as high as 80%. But the proportion of output sold has increased at a much slower rate than the proportion of monetised inputs, including hired labour. The implication of this is a resource squeeze in agriculture. Whereas the need for resources to

purchase these inputs has been increasing, the marketable surplus has been increasing at a slower rate to contribute to this, as the growth of non-farm employment has become very sluggish. It is not surprising that the repayment of loans is such a problem in Indian agriculture and has even led to suicides in some cases. A better strategy would be to concentrate on small and marginal farmers, and on eastern and rainfed areas where returns to both capital and labour are high. The need is also for better factor productivity in agriculture and for new technologies, which would be more labour intensive and would cut cash costs.

But a major question is whether substantial and equitable productivity gains in agriculture can be made there without significant improvement in the quality of governance in these States. However, Governance is a non-monetary issue and therefore not of concern to the budget!

Increases in 2008 BE over 2007 BE			
	2007	2008	% increase
SSA	10671	13100	22.8
MDM	7324	8000	9.2
NRHM	9947	12050	21.1
ICDS	4761	6300	32.3
ARWSP	5850	6500	11.1
TSC	954	1200	25.8
Health	15855	16534	4.3
Education	32352	34400	6.3
WCD	5853	7200	23.0

HUNGER, UNDER-NUTRITION AND FOOD SECURITY IN INDIA

NC Saxena

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Executive Summary

This paper examines the hunger and nutrition situation prevailing in India and suggests policy measures for ensuring adequate food security at the household level, particularly for marginalised groups, destitutes, women and children.

Despite rapid economic growth in the last two decades India is likely to slip behind the MDG target of cutting the proportion of hungry people by half. Per capita availability as well as consumption of foodgrains in India has declined since 1996; the percentage of underweight children has remained stagnant between 1998 and 2006; and the calorie consumption of the bottom half of the population has been consistently going down since 1987. In short, all indicators point to the hard fact that endemic hunger continues to afflict a large proportion of Indian population.

Hunger in simple terms is the desire to consume food. However due to continued inadequacy in diet human body gets used to having less food than necessary for healthy development, and after a while the body does not even demand more food. In such cases hunger is not expressed, though lower intake of essential calories, proteins, fats, and micro-nutrients would result in under-development of the human mind and body. Thus objective indicators such as calorie consumption, body mass index (BMI), proportion of malnourished children, and child mortality capture hunger more scientifically than the subjective articulation by individuals.

Surveys on self-reported hunger depend on the responses of the head of the household, often a man, who may not admit that he cannot provide even two square meals to their dependents. Issues of pride, self-image and dignity are involved here, which leads to a deep sense of shame and reluctance on the part of the head of the households to publicly admit their incapacity to provide for their families. This may result in under-reporting on the number of meals family members are able to afford. Despite this limitation, a recent UNDP survey (2008) of 16 districts in the seven poor states of India showed that for 7.5 percent of respondents access to food is highly inadequate, and for another 29 percent of the households it is somewhat inadequate. A West Bengal government survey too reported 15 percent families facing difficulties in arranging two square meals a day for all months in a year. These figures are far more gloomy than the NSSO survey of the Ministry of Programme Implementation and Statistics claiming a drastic decline in self-reported hunger in India from 16.1 to 1.9 percent in the last twenty years.

However, NSSO's calorie data shows that at any given point of time calorie intake of the poorest quartile continues to be 30 to 50 percent less than the calorie intake of the top quartile of the population, despite the poor needing more calories because of harder manual work. The data also shows higher reliance of the poor on cereal based calories because of lack of access to fruits, vegetables and meat products. Second, daily calorie consumption of the bottom 25 percent of the population has gone down from 1,683 in 1987-88 to 1,624 in 2004-05. These figures should be judged against a national norm of 2,400 and 2,100 kilo calories/day for rural and urban areas fixed by GOI in 1979. Similar downward trend is observed for cereal consumption too. As the relative price of food items has remained stable over the past twenty years, declining consumption can only be explained as due to weak purchasing power and contraction of effective demand by the poor, who are forced to spend a greater part of their limited incomes to non-food items like transport, fuel and light, health, and education, which have become as essential as food.

Calorie intake refers to the most proximate aspect of hunger, but it neglects other effects of hunger, such as under-weight and mortality. These are captured by the Global Hunger Index (GHI) that was designed by IFPRI based on three dimensions of hunger: lack of economic access to food, shortfalls in the nutritional status of children, and child mortality, which is to a large extent attributable to malnutrition. IFPRI estimated the hunger index for India as 23 percent in 2008, which placed India in the category of nations where hunger was ‘alarming’, with Madhya Pradesh being categorised as ‘extremely alarming’. Worse, its score was poorer than many Sub-Saharan African counties, which have GDP less than India’s.

This is primarily because of the fact that anthropometric indicators of nutritional status for children in India are among the worst in the world. According to the National Family Health Survey, the proportion of underweight children remained virtually unchanged between 1998-99 and 2005-06 (from 47 to 46 percent for the age group of 0-3 years). These are appalling figures, which place India among the most “undernourished” countries in the world.

Higher child malnutrition rate in India (for that matter in the entire South Asia) is because of many factors. First, Indian women’s nutrition, feeding and caring practices for young children are inadequate. This is related to their status in society, early marriage, low weight at pregnancy and their lower level of education. The percentage of infants with low birth weight in 2006 was as high as 30. Underweight women produce low birth-weight babies which become further vulnerable to malnutrition because of low dietary intake, lack of appropriate care, poor hygiene, poor access to medical facilities, and inequitable distribution of food within the household.

Second, many unscientific traditional practices still continue, such as not immediately starting breast feeding after birth, no exclusively breastfeeding for the first five months, irregular and insufficient complementary feeding after between 6 months to two years of age, and lack of disposal of child’s excreta because of the practice of open defecation in or close to the house itself. Clearly government’s communication efforts in changing the age old practices are not working well.

And lastly, poor supply of government services, such as immunisation, access to medical care, and lack of priority to primary health care in government programmes also contributes to morbidity. These factors combined with poor food availability in the family, unsafe drinking water and lack of sanitation lead to high child under-nutrition and mortality. About 2.1 million deaths occur annually in under-5 year-old children in India. Seven out of every 10 of these are due to diarrhea, pneumonia, measles, or malnutrition and often a combination of these conditions.

1. Policy recommendations

First, rewrap small holder agriculture. Because of lack of growth in agriculture after the mid-1990s there has been employment decline, income decline and hence fall in aggregate demand by the rural poor. The most important intervention that is needed is more investment in irrigation, power, and roads in poorer regions. It is essential to realise the potential for production surpluses in Central and Eastern India, where concentration of poverty is increasing.

Two, launch watershed development programmes in uplands, where most tribals live. In a successful watershed programme the poor benefit in three ways. First, as net sown area and cropping intensity increases more opportunities for wage employment are created, which may also increase the wage rate besides the number of days of employment. Second, increased water availability and reduced soil erosion increases production on small and marginal farmers’ lands. And last, higher productivity of CPRs improves access of the poor to more fodder, fuelwood, water and NTFPs.

Three, start a drive to plant fruit trees on degraded forests and homestead lands that belong to or have been allotted to the poor. This will not only make the poor people's diet more nutritious, but will also diversify their livelihoods and reduce seasonal vulnerability.

Four, create more job opportunities by undertaking massive public works in districts of low agricultural productivity. The legal guarantee of 100 days wages available under the National Rural Employment Guarantee Act (NREGA), according to Comptroller and Auditor General of India (CAG), has been fulfilled in only 3 percent of the cases. In addition to increased outlays, the scheme should have a food component, now that GOI has a comfortable stock of foodgrains. Monitor the inclusion of old people especially widows among the wage workers, who are often turned away (though illegally) from the worksite. Their work guarantee should be extended through an amendment in the Act to 150 days.

Five, provide separate ration cards as well as NREGA job cards for all 'single' women, regardless of whether they live alone, with dependents, or in their natal or husband's home. Likewise for aged, infirm and disabled people who may or may not live with 'able-bodied' caregivers.

Six, improve the skills of the poor for market oriented jobs, so that they are absorbed in the sunrise industries, such as hospitality, security, health, and construction.

Seven, improve the distribution of subsidised foodgrains to the poor through the Public Distribution System (PDS). This would need correct listing of BPL families, as large errors of exclusion of BPL families and inclusion of above poverty line (APL) families are widely prevalent in the list. Launch a drive in collaboration with civil society to cover the poorest, as a large number of homeless and poor living in unauthorised colonies in urban areas have been denied ration cards, and are thus not able to avail of PDS, on the ground that they do not have an address!

Eight, restructure ICDS (Integrated Child Development Services). Despite a three-fold increase in its budget by GOI in the last five years and the contention of the Ministry of Women and Child Development that there are 1.5 early child-care centres (ICDS Centres) per village now, ICDS is reaching only 12.5 percent children in the age group 6 months to 6 years. As the Centre is likely to be located in the richer part of the village, it may be out of reach for the vulnerable children of poorer households and lower castes and those living in remote areas. The programme targets children mostly after the age of three when malnutrition has already set in. It does not focus on the critical age group of children under three years, the age window during which health and nutrition interventions can have the most effect.

The focus of ICDS should be health and nutrition education, encouraging women to breastfeed exclusively for six months and after that add semi-solid family food four to six times a day in appropriate quantities for the infant, which alone can improve his/her nutrition levels. For nutrition to improve, we have to strengthen proper breastfeeding and complementary feeding, together with complete immunisation and prompt management of any illness.

Nine, cover all adolescent girls under ICDS. They need to be graded according to age, such as 10-15 group, 16-19 group and pregnant girls. Then they should be weighed regularly, and given appropriate nutritious food containing all the desired micro-nutrients and iron. Similar initiative is needed for all women.

Ten, locate ICDS centres on priority within one year in all settlements of PTGs (primitive tribal groups) and most discriminated SC (Scheduled castes – previously the untouchable people) settlements, without any ceiling of minimum children; and all other hamlets with more than 50 percent SC/ ST/minority population within two years. In all these centres, ICDS staff should be local from the discriminated communities, and two hot meals served instead of one to children of 3 to 6 years; and double weaning foods given to children below 3 years.

Eleven, every two years prepare a full list of all destitutes needing free or subsidised cooked food. Open up mid-day meals kitchen to these old, destitutes and hungry in the village. This is already being done in Tamil Nadu, and its replication in other states should be funded by GOI. Establish community kitchens across cities and urban settlements to provide inexpensive, subsidised nutritious cooked meals near urban homeless and migrant labour settlements.

Lastly, what India requires is a significant increase of targeted investments in nutrition programs, clinics, disease control, irrigation, rural electrification, rural roads, and other basic investments, especially in rural India as the current budgetary allocations are inadequate. Higher public investments in these areas need to be accompanied by systemic reforms that will help overhaul the present system of service delivery, including issues of control and oversight (Bajpai et al. 2005). Outlays should not be considered as an end in itself. Delivery of food based schemes requires increasing financial resources, but more importantly the quality of public expenditures in these areas. This in turn requires improving the governance, productivity and accountability of government machinery.

2. Understanding hunger

In the last decade and a half that India has successfully embraced economic reforms, a curious problem has haunted the country and vexed its policy makers: India's excellent growth has made little impact on food security¹ and nutrition levels of its population. Per capita availability as well as consumption of foodgrains has gone down; cereal intake of the bottom 30 percent continues to be 20 percent less than the cereal intake of the top two deciles of the population despite better access of the latter group to fruits, vegetables and meat products; calorie consumption of the bottom half of the population has been consistently going down since 1987; unemployment among agricultural labour households has sharply increased from 9.5 percent in 1993-94 to 15.3 percent in 2004-05 (Planning Commission 2006); the percentage of underweight children has remained stagnant between 1998 and 2006; and more than half of India's women and three-quarters of children are anaemic with no decline in the last eight years. In short, all indicators point to the hard fact that endemic hunger continues to afflict a large proportion of Indian population. Internationally, India is shown to be suffering from alarming hunger, with its position being 66th out of the 88 developing countries studied (IFPRI 2008). India as part of the world community has pledged to halve hunger by 2015, as stated in the Millennium Development Goal¹, but the present trends show that this target is not likely to be met.

This paper examines the hunger and nutrition situation prevailing in the country and reviews the obligations and initiatives by the government of India (GOI) to ensure food security through various policies and schemes.

Scheme of the paper - In this section we look at various forms of hunger and make a distinction between explicit hunger and chronic or endemic hunger that manifests in lower intake of essential

¹ The commonly accepted definition adopted at the 1996 World Food Summit is: Food security is achieved when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life.

calories, proteins, fats, and micro-nutrients resulting in under-development of the human mind and body. Section three examines data, both from government and other sources on self-reported hunger. It also discusses India's record in improving its position on various indicators that are generally used to measure hunger, such as calorie consumption, body mass index (BMI), proportion of malnourished children, and child mortality.

The fourth section analyses various aspects of food security both at the micro- and macro level. The reasons for decline in food consumption are analysed, followed by a brief discussion on the recent global trend of reduced availability and increasing prices. The fifth section is devoted to suggesting changes in some of the major policies and programmes that affect food security; such as agricultural production, public wage works, Public Distribution System, Mid-day Meals Scheme, and the Integrated Child Development Services (ICDS) programme for improving child malnutrition. Then there is a brief write-up on the Supreme Court intervention on hunger related matters followed by a discussion on issues of accountability.

Types of hunger - There are essentially two types of hunger (Gopaldas 2006). The first is overt (or raw) hunger, or the need to fill the belly every few hours. Hunger in simple terms is the desire to consume food. It can also be termed as self-reported hunger, whereby people judge their own ability to fulfil the physiological urge to satisfy their hunger.

The second type of hunger occurs when the human body gets used to having less food than necessary for healthy development, and after a while the body does not even demand more food. If people have always eaten less than their needs, their bodies adjust to less food in what is known as biostatis (Krishnaraj 2006). It is also possible to fill up the stomach with non-nutritious food, which does not provide the required calories or micro-nutrients² (e.g., vitamins, iron, iodine, zinc, calcium) that are required in tiny amounts. Another situation could be when the essential calories, proteins, fats and micronutrients are not absorbed in the body due to ill-health and poor hygiene. In all such cases hunger is not articulated.

The second kind of hunger may also be termed as chronic or endemic hunger as this is not felt, recognised or voiced by the child or adult. Chronic hunger does not translate into pangs of hunger, but into subtle changes in the way the human body develops. For instance, the under-fed child may be underweight or stunted for his age, if not consuming sufficient calories and fats. If the child is deficient in Vitamin A, he or she will not be able to see properly at dusk ("night blindness"), and respiratory ailments may also occur. In severe Vitamin A deficiency, the child may go totally blind. In the case of iron-deficiency anaemia, the child will slow down both mentally and physically, perform poorly in school and experience chronic tiredness. In the case of iodine deficiency, there will be mental retardation. In its severe form, a goitrous lump may grow at the base of the neck. Thus prolonged hunger leads to non-achievement of a predetermined 'physiological requirement' or 'human potential', defined in terms of norms for calorie and other essential nutrients and growth standards.

Subjective hunger, or the first kind of hunger is a matter of articulation – people or populations have to indicate in some fashion that they are going hungry. This means there must be a state of not being hungry, so that the state of being hungry can be recognised as such. What if, not having such a base level, they cannot recognise or articulate hunger? What if they have always had less food than they

² Deficiency of micro-nutrients is often referred to as hidden hunger. However, micro-nutrients do not work unless the person is consuming sufficient calories through proper quantity of fat, protein, etc.

need? If body gets used to having less food then hunger may never be articulated. Self-reported hunger is also difficult to measure, since perceptions of hunger differ from one person to another. Therefore objective indicators offer a better measure for hunger, such as calorie consumption, body mass index, stunting, lack of sufficient variety in food intake, as it is perfectly possible to have a full belly and yet display every symptom of under-nutrition.

There is a link between nutritional status or health on the one hand and human effort and productivity. Hunger affects the ability of individuals to work productively, think clearly, and resist disease. Hunger may lead to low output and hence poor wages. Hunger is thus both cause and effect of poverty. Hunger in India has gender and age dimensions too. Women, children and the old people are less likely to get full nutritious meals needed for their development. Half of the country's women suffer from anaemia and maternal under-nourishment, resulting in maternal mortality and underweight babies. There are important seasonal variations in nutritional and health status depending on the cycle of agricultural work. Hunger and starvation also have regional and geographical dimensions. Tribal regions in India have higher incidence of food insecurity than the non-tribal regions in the same state. The pattern of agriculture has brought uneven development across regions and is characterised by low levels of productivity and degradation of natural resources in tribal areas, leading to low crop output and reduced gathering from CPRs.

Hunger can also be equated with chronic food insecurity as both refer to a situation in which people consistently consume diets inadequate in calories and essential nutrients. This often happens due to the inability to 'access' food for lack of purchasing power. Destitution, leading in extreme cases to starvation deaths but in any case to a life in misery, is more endemic amongst certain groups. These include persons with disabilities, persons with stigmatising illnesses such as leprosy or HIV/AIDS, the elderly and the young who lack family support and single women. Social and employment factors in destitution include scheduled caste population, tribal populations, manual scavengers, beggars, sex workers, landless labourers and artisans. Persons displaced by natural disasters or development projects are also often in this group. Due to prolonged deprivation of sufficient food and recurring uncertainty about its availability these people are forced to lose their dignity through foraging and begging, debt bondage and low end highly underpaid work; self denial; and sacrifice of other survival needs like medicine or children's education, and thus transferring their misery to the next generation (Mander 2008).

3. Dimensions of hunger

3.1 Self-reported hunger

Various NSSO³ rounds in India from 1983 onwards have statistically measured⁴ the first type of hunger, by asking people on the availability of two square meals a day. The results are shown in Table 1.

³ The National Sample Survey Organisation of the Ministry of Programme Implementation and Statistics (GOI) conducts surveys on various socio-economic issues annually. The 61st round of the National Sample Survey (NSS) conducted between July 2004 to June 2005 collected data on household consumer expenditure on a large sample basis and was the seventh quinquennial survey on the subject. It covered a sample of 79,298 rural and 45,346 urban households in all the states and union territories of India.

⁴ In 1999-2000 and 2004-05 the question asked was, Do all members of your household 'get enough food every day'? (NSSO 2007). In earlier surveys the respondents were asked about the availability of two square meals a day for their family members.

Table 1: Trend in self-reported hunger in India from 1983 to 2004-05

Year	Percent of population reporting hunger		
	Rural	Urban	Total
1983	18.54	6.33	16.1
1993-94	5.1	1.6	4.2
1999-00	3.3	0.9	2.6
2004-05	2.4	0.5	1.9

Source: Kumaran 2008

Explicit hunger is especially severe in rural Orissa, West Bengal, Kerala, Assam and Bihar. Non-availability of two square meals a day peaks in the summer months from June to September with longer duration suffering in West Bengal and Orissa (Mehta and Shah 2002).

The data showed a drastic decline in self-reported hunger in India from 16.1 to 1.9 percent, which can be interpreted as decline in food insecurity in its severest form, while much was left undone on other fronts i.e., food and nutritional insecurity in its not so severe form. The question that remains unanswered however is how does one reconcile the above data with significant reduction in cereal intake (see Table 16) over the years? Is that a result of declining demand or sign of distress?

An Expert Group (GOI, 1993), while evaluating the suitability of use of subjective hunger data for inferring the extent of poverty arrived at two critiques which are useful for the present context. First commenting on the limited reliability of the data as an objective measure the Expert Group noted:

‘It has to be kept in mind that the information regarding the adequacy or inadequacy of food for consumption, elicited through a single probing question, may not always be free from subjectivity and at the same time may not be adequately precise and objective. For instance the size of ‘square meal’ would differ not only from person to person but also from place to place’ (GOI 1993:53).

Second important aspect, noted by the Expert Group, relates to the problem involved in relying on the male head of households for the information on hunger experienced by other family members.

‘Very often, particularly in rural India, the head of the family, usually a man, who is the main respondent in the survey, would not be sufficiently aware of the quantity and content of meal left for his wife and other female members of the house. Therefore, this data would probably give only a broad idea about the perceptions of the people on adequacy of food’ (GOI 1993:54).

There is yet another problem in interpreting the data given in Table 1. Often men, as bread-winners would hate to admit that they cannot provide even two square meals to their dependents (Kundu 2006: 120). Issues of pride, self-image and dignity are involved here, which leads to a deep sense of shame and reluctance on the part of the head of the households to publicly admit their incapacity to provide for their respective families. This may result in under-reporting on the number of meals family members are able to afford. For these reasons the NSSO data on decline in hunger over the years cannot be relied upon.

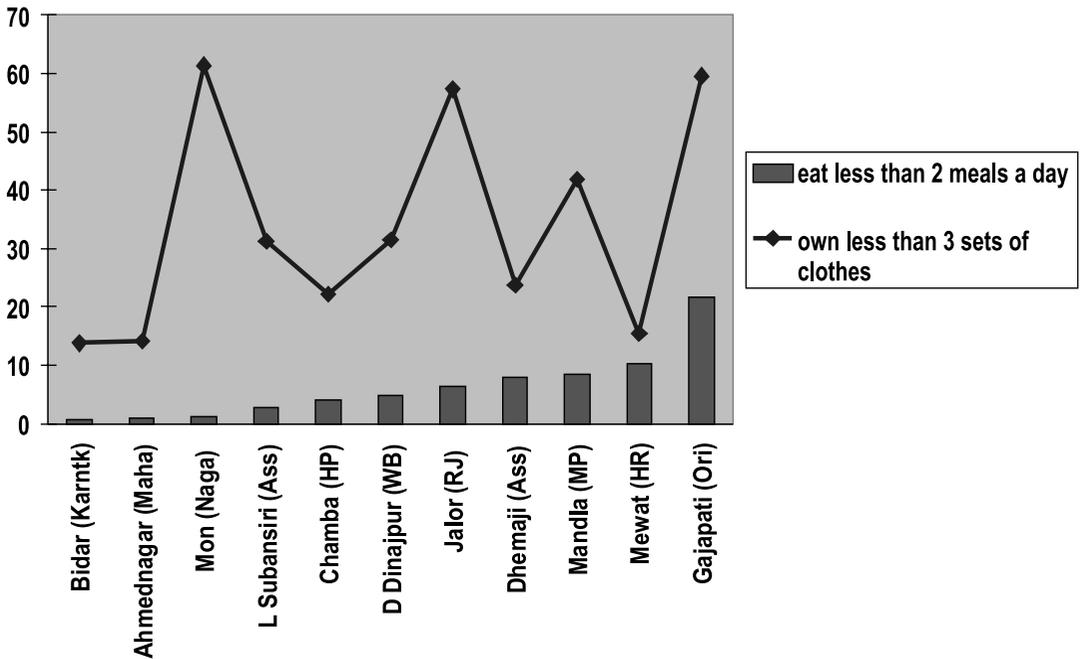
In addition to NSSO, there have been other empirical studies too on subjective hunger. Government of West Bengal conducted a rural household survey (Roy 2008) in 2006 through the panchayats and

rural development department in which 3.5 percent of the population reported that they are not assured of even one meal a day. Another 16.5 percent face difficulties in arranging two square meals a day for all months in a year. In all around 12 million rural people⁵ (around 2.5 million rural families) do not get two square meals a day throughout the year.

A survey (UNDP 2007) was done of selected districts by Pratham, a reputed voluntary organisation. The rural people were asked on the number of meals they consumed on most days in a year, and the number of clothes the young women in the family possessed. The results in shown in the figure below.

This shows that the number of people consuming less than two meals a day varied from 5 to 23 percent in the rural areas of selected districts, whereas the number of women having just one or two set of clothes was as high as 60 percent in some districts.

Fig 1: Percentage of rural households who



A recent UNDP study (2008) selected 16 districts (9 backward and 7 non-backward) from the backward states and conducted a perception study of households selected at random. The finding on access to food is given in Table 2.

⁵ The total population of West Bengal in 2001 was 80 million.

Table 2: District-wise distribution of households according to adequacy of access to food

State	District	Highly Adequate	Some what Adequate	Average	Some what Inadequate	Highly Inadequate	Total
Rajasthan	Barmer	29.5	8.5	39.5	20.5	2	100
	Dungarpur	2	4.5	65.5	25.5	2.5	100
U.P.	Sitapur	8	24	10	49	9	100
	Lalitpur	3.5	5	5.5	76.5	9.5	100
M.P.	Azamgarh	6	15.5	21.5	41	16	100
	Mandla	0.5	2	43.5	50.5	3.5	100
Bihar	Tikamgarh	14	45.5	23.5	10.5	6.5	100
	Gaya	4	16.5	23.5	46	10	100
Jharkhand	Muzz.Pur	5.5	4	14	46	30.5	100
	Purnia	4.5	3.5	16.5	49.5	26	100
Chhattisgarh	Palamau	17.5	35	40.5	7	0	100
	Dumka	12	41.5	37.5	9	0	100
Orissa	Kanker	10	45	35.5	9.5	0	100
	Bilaspur	14	69	16	1	0	100
Orissa	Ganjam	5.5	45	37.5	10	2	100
	Keonjhar	2.5	36.5	40	18	3	100
Total		8.69	25.06	29.38	29.34	7.53	100
Number		278	802	940	939	241	3200

Thus 7.5 percent of respondents state that the access to food grains is highly inadequate, and in about 29 percent of the households it is somewhat inadequate. It is only in about 9 percent of the households which report that access to food grain is considered highly adequate. However, the district-wise variations are very stark, more than 76 percent of the households in Lalitpur have somewhat inadequate access, but the situation in Muzaffarpur appears very bad with nearly 31 percent of the households reporting highly inadequate access. This stresses the need for governance and monitoring at the district level as very critical.

3.2 Measuring hunger by calorie consumption

Hunger has many faces: loss of energy, apathy, increased susceptibility to disease, shortfalls in nutritional status, disability, and premature death. No single indicator can provide a complete picture, and that a variety of different indicators should be used in analysing different aspects of the problem. One needs to measure dietary diversity, rather than just the consumption of food staples. Some aspects of hunger, such as the stability of food consumption between seasons and between years, are generally not captured by the existing data. In this paper we shall use several indicators – calorie consumption, BMI, low weight and height among children, and anaemia among women and children – to see how the picture has changed over the years in India.

In this section we focus on hunger-poverty, as measured by calorie deficiency – the inability to consume the energy required by the body. Mean per capita consumption of calories, protein, and fats as calculated by Deaton and Dreze (2008) for various NSS rounds is shown below:

Table 3: Mean per capita consumption of calories, protein, and fats.

Year	Round	Calories (kc)		Protein (gms)		Fats (gms)	
		Rural	Urban	Rural	Urban	Rural	Urban
1983	38	2,240	2,070	63.5	58.1	27.1	37.1
1987-8	43	2,233	2,095	63.2	58.6	28.3	39.3
1993-4	50	2,153	2,073	60.3	57.7	31.1	41.9
1999-0	55	2,148	2,155	59.1	58.4	36.0	49.6
2000-1	56	2,083	2,027	56.8	55.3	34.6	46.1
2001-2	57	2,018	1,982	54.8	54.2	33.6	46.1
2002	58	2,025	2,014	55.4	54.9	34.7	47.0
2003	59	2,106	2,020	58.0	55.5	36.4	46.7
2004	60	2,087	2,036	56.9	55.9	35.5	46.8
2004-5	61	2,047	2,021	55.8	55.4	35.4	47.4

Thus, in spite of India's rapid economic growth, there has been a sustained decline in per capita calorie and protein consumption during the last twenty-five years, indeed fats are the only major nutrient group whose per capita consumption is unambiguously increasing. Patnaik (2007) points out that during the same period the calorie intake at poverty line households was also declining. The calorie intake at poverty line was 2170 kcal in 1977-78, 2060 Kcal in 1983, 1980 Kcal in 1993-94 and 1820 Kcal in 2004-05.

The decline in calorie consumption of the top quartile could be due to more sedentary life style or increasing diversity in food intake, but the decline for the bottom quartile since 1987, as shown in Table 4, cannot be interpreted as a sign of prosperity.

Several inferences can be drawn from Table 4. First, at any given point of time calorie intake of the poorest quartile continues to be 30 to 50 percent less than the calorie intake of the top quartile of the population, despite the poor needing more calories because of harder manual work. Second, calorie consumption of the bottom fifty percent of the population has been consistently going down since 1987, which is a matter of concern. And last, whereas the top quartile derived only 58 percent calories from cereals in 2004-05, the bottom quartile still depended on cereals for 78 percent of their calorie consumption.

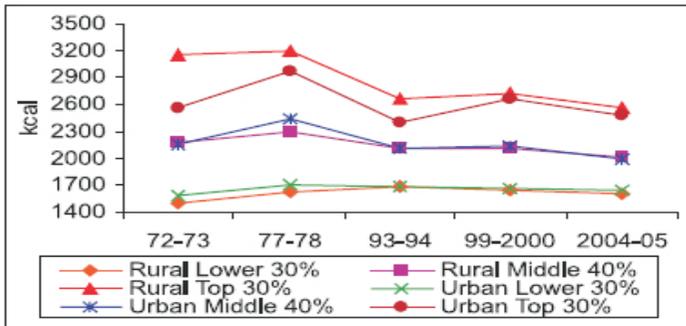
Table 4: Total and cereal calorie consumption by decile and quartile of per capita expenditure, rural India, 1983 to 2004-05.

	Bottom decile	Bottom Quartile	Second Quartile	Third Quartile	Top Quartile
Total calories					
1983	1,359	1,580	2,007	2,328	3,044
1987-88	1,488	1,683	2,056	2,334	2,863
1993-94	1,490	1,659	2,000	2,251	2,702
1999-00	1,496	1,658	1,978	2,250	2,707
2004-05	1,485	1,624	1,900	2,143	2,521
Cereal Calories					
1983	1,150	1,309	1,589	1,738	1,974
1987-88	1,221	1,359	1,598	1,715	1,894
1993-94	1,203	1,316	1,504	1,591	1,690
1999-00	1,197	1,289	1,591	1,509	1,566
2004-05	1,189	1,259	1,690	1,430	1,471

Source: Deaton and Dreze 2008

Similar picture, of wide gap between the consumption of the bottom 30 percent and top 30 percent, as well as falling calorie consumption of all groups including the lower 30 percent, emerges when one looks at variation for a longer period since 1972-73, as shown in figure 2.

Figure 2: time trends in average per capita energy intake by expenditure classes



(Ramachandran 2007)

Another study on hunger (Ahmed et al. 2007) based on the same NSSO data disaggregated those consuming fewer than 2,200 calories in India into three groups:

- Subjacent hungry: those consuming more than 1,800 but fewer than 2,200 kilocalories (kcal) a day

- Medial hungry: those consuming more than 1,600 but fewer than 1,800 kcal a day
- Ultra hungry: those consuming less than 1,600 kcal a day

The study found that in all 58 percent people in India suffered from hunger in 1999, of which a good 17.4 percent were classified as ultra hungry.

Table 5: Incidence of Hunger in India (1999)

	National	Rural	Urban
Subjacent hungry	28.6	28.9	27.9
Medial hungry	12.1	12.1	12.3
Ultra hungry	17.4	17.1	18.0
Total	58.1	58.1	58.3

3.2.1 How many calories are needed for healthy living?

The calculation of calorie norms or requirements is complicated as the daily calorie requirement for healthy life is a function of age, sex and nature of work. The required average for the entire society will decline if rising incomes lead to a shift from manual to sedentary life style, but would go up if the proportion of children and old people increases as indeed is happening in India due to demographic changes. In the absence of well accepted norms of calorie consumption for different time periods valid for India it is difficult to come to any definite conclusion about the percentage of population that is not able to satisfy the minimum required calorie needs for healthy living in a particular year.

Planning Commission constituted a ‘Task Force on Projection of Minimum Needs and Effective Consumption Demand’ which on the basis of a systematic study of nutritional requirements recommended (GOI 1979) a national norm of 2,400 and 2,100 kilo calories/day for rural and urban areas (the difference being attributed to the lower rates of physical activity in the urban areas) respectively⁶. These are not arbitrary figures, but were derived from age-sex-occupation-specific nutritional norms by using the all-India demographic data from the 1971 Census. However, these

⁶ The average calorie norm of 2,110 kcal per capita per day prescribed by the FAO for South Asia (Bajpai et al. 2005) in the eighties is much lower than the 2,400 kcal norm that has been typically used by government in India. The latest calorie norm used by FAO for India is 1820 kcal (IFPRI 2008).

have not been revised, and hence the confusion in interpreting subsequent data based on old norms of calorie consumption.

There is yet another problem in interpreting calorie data, when it is disaggregated to the Indian states. The diet of people in poorer states, such as Assam, Orissa and Bihar, is not diversified and they eat more cereals as contrasted with Kerala and Tamil Nadu where diets include more vegetables, fats, and fish. The result is that per capita calorie consumption is higher in Orissa and Bihar but in the absence of proteins and essential fats these states report higher malnutrition than Kerala and Tamil Nadu, as shown in column 3 of Table 9. Therefore calorie consumption cannot be the sole determinant of hunger. Because of these problems Deaton and Dreze (2008) concluded, 'there is no tight link between the numbers of calories consumed and nutritional or health status. Although the number of calories is important, so are other factors, such as a balanced diet containing a reasonable proportion of fruits, vegetables, and fats, not just calories from cereals, as are factors that affect the need for and retention of calories, such as activity levels, clean water, sanitation, good hygiene practices, and vaccinations.'

The MDGs call for halving of hunger-poverty between 1990 and 2015. Assuming constant norms of 2400/2100 kcalories for India, this would mean bringing down the headcount ratio of calorie deficiency from 62.2 percent in 1990 to 31.1 percent in 2015. However, the number of people below the norm has consistently increased over the years, and more than three quarters of the population live in households whose per capita calorie consumption is less than the norm, as shown in Table 6.

Table 6: Fractions of the population living in households with per capita calorie consumption below 2,100 urban and 2,400 rural

Year	Round	Rural	Urban	All India
1983	38	66.1	60.5	64.8
1987-8	43	65.9	57.1	63.9
1993-4	50	71.1	58.1	67.8
1999-0	55	74.2	58.2	70.1
2004-5	61	79.8	63.9	75.8

(Deaton and Dreze 2008)

The mere consumption of an adequate number of calories may not ensure sufficient intake of other nutrients, such as proteins, fats and micro-nutrients, which are just as essential for human health. It can further be argued that there is a distinction between gross calorie intake and net calorie absorption, and that the relationship between the two may change over time depending upon the incidence and severity of gastro-intestinal disorders.

Table 7: Percentage of Undernourished Population in India Below the Threshold Levels of Protein and Fat, 1983 and 1999-2000

Year	Bottom Group			Upper Group		
	Rural	Urban	All India	Rural	Urban	All India
Protein						
1983	51	64	55	9	20	13
1999-00	65	65	65	14	14	14
Fats						
1983	61	40	55	10	4	8
1999-00	48	16	36	4	2	3

(Kumar et al. 2007)

Notes: Bottom group : Below poverty line; Upper group : Above 150 percent of poverty line

Table 7 reveals a general worsening of protein consumption, particularly in the bottom income group in rural areas⁷, where the population below threshold level had increased from 51 percent to 65 percent in terms of protein intake. Ideally, the source of protein should be pulses and meat. But the data showed that cereals contributed 67 percent of the protein source in rural India. It can perhaps be explained in terms of lack of purchasing power for procuring adequate quantity of high-value non-cereal commodities to compensate for loss in nutrition owing to replacement of cereals.

To conclude this section, there is strong evidence of a sustained decline in per-capita calorie and protein consumption in India during the last twenty five years. The proportionate decline was larger among better-off sections of the population, but also existed for the bottom quartile of the per-capita expenditure scale. While calorie deficiency is an extremely important aspect of nutritional deprivation, close attention needs to be paid to other aspects of food deprivation, such as the intake of vitamins and minerals, fat consumption, the diversity of the diet, and breastfeeding practices.

3.2.2 The official poverty line

The national-level official poverty lines for the base year (1973-74) expressed as monthly per capita consumption expenditure of Rs 49 in rural areas and Rs 57 in urban areas corresponded to a basket of goods and services, which satisfy the calorie norms of per capita daily requirement of 2400 Kcal in rural areas and 2100 Kcal in urban areas. These figures have been updated for price rise for the subsequent years. However, the new poverty lines do not correspond to the minimum calorie norm, as the poor have been forced to shift their priorities to essential non-food items.

Thus for the year 1999-00 the monetary cut-off corresponding to the minimum calorie requirements norms should have been Rs 565 in rural areas and Rs 628 in urban areas, whereas by the price updated methodology as used by Planning Commission the poverty line was Rs 328 and Rs 454 respectively. The current value of the poverty line does not permit the poverty line class to consume the calorific norm, and the periodic price corrections that have been carried out to update the poverty lines are inadequate and indeed may be even inappropriate (Sen 2005). Consequently, the poverty estimates made in the years after 1973-74 understate the true incidence of poverty in the country. There is a compelling case for re-estimating the poverty lines. The proportion of people living below the official poverty line has declined from 56 percent in 1973-74 to 35 percent in 1993-94, and further to 28 percent in 2004-05, whereas there has been no decline in the number of people consuming less calories than the norm (Table 6). The set of food insecure in India is larger than the set of poor in India.

⁷ The sample households were grouped into poor (bottom) and non-poor (upper) classes. The non-poor class comprised households which were above 150 percent of the poverty line, whereas, the poor class consisted of households below the poverty line. The poverty line for rural and urban areas in different states corresponding to various NSS rounds, as defined and adopted by the Planning Commission, was used in the study.

Several features of poverty in India stand out. First, poverty is getting concentrated in the poorer states. In terms of absolute numbers, Uttar Pradesh, Bihar and Jharkhand account for around 27 percent of the country's population but 30 percent of India's poor lived there in 1973-74, which has increased to over 41 percent by 2005 (Himanshu 2007). Second, more than three-fourths of the poor live in rural areas. Third, more than three-fourths of the rural poor depend on agriculture. Agricultural growth will therefore have greatest potential of poverty reduction.

Fourth, poverty has many social dimensions. There has been hardly any decline in poverty for the Scheduled Tribe households, almost half of them continue to be below the poverty line. Although poverty among the Scheduled Castes has declined from 46 to 37 percent during 1993-2004 (Planning Commission 2008), the caste system confines those from lower castes to a limited number of poorly paid, often socially stigmatised occupational niches from which there is little escape, except by migrating to other regions or to towns where their caste identity is less well known. Many states, especially in the north and western part of the country, are characterised by long-standing and deeply entrenched social inequalities associated with gender. Gender cuts across class, leading to deprivations and vulnerabilities which are not necessarily associated with household income.

And lastly, poverty is intimately connected with vulnerability and shocks. Severe and chronic deprivation in India is compounded by general uncertainty with respect to livelihood and life, which threatens an even wider section of the population than might be counted as poor.

Thus poverty is an extremely complex phenomenon, which manifests itself in a range of overlapping and interwoven economic, political and social deprivations. These include lack of assets, low income levels, hunger, poor health, insecurity, physical and psychological hardship, social exclusion, degradation and discrimination, and political powerlessness and disarticulation. Therefore, policy instruments should be designed to address not only the low income and consumption aspect of poverty, but also the complex social dimensions (Sen and Himanshu 2004).

The existing types of poverty programmes may not be enough to tackle hunger and food insecurity. Important food security issues are often left out of poverty programmes, such as the stability of food consumption, dietary diversity, and food absorption and utilisation. Furthermore, poverty programmes may fail to recognise how hunger and malnutrition impair people's capacity to participate in productive activities and result in worse school performance. Hence there is need to mainstream hunger in the existing programmes.

3.3 IFPRI's composite index on hunger

Calorie intake refers to the most proximate aspect of hunger, but it neglects other effects of hunger, such as under-weight and mortality. These are captured by the Global Hunger Index (GHI) that was designed to capture three dimensions of hunger: lack of economic access to food, shortfalls in the nutritional status of children, and child mortality, which is to a large extent attributable to malnutrition (Wiesmann et al. 2007). Accordingly, the Index includes the following three equally weighted indicators: the proportion of people who are food-energy deficient as estimated by the Food and Agriculture Organisation of the United Nations (FAO⁸), the prevalence of underweight in children under the age of five as estimated by the World Health Organisation, and the under-five mortality rate as estimated by UNICEF.

⁸ According to FAO, after seeing a decline of 20 million in the number of undernourished between 1990-1992 and 1995-1997, the number of hungry people in India increased from 201.8 million in 1995-1997 to 212.0 million in 2001-2003.

The Global Hunger Index recognises the interconnectedness of these dimensions, and therefore captures performance on all the three of them. The index has been an effective advocacy tool which has brought the issue of global and national hunger to the fore in policy debates, especially in developing countries. The ranking of nations on the basis of their index scores has been a powerful tool to help focus attention on hunger, especially for countries like India which under perform on hunger and malnutrition relative to their income levels.

IFPRI estimated⁹ that the hunger index for India had declined from 34 percent in 1990 to 23 percent in 2008, although India still continued to be in the category of nations where hunger was ‘alarming’. Worst, its score was poorer than many Sub-Saharan African countries, which have GDP less than India’s. This indicates continued poor performance at reducing hunger in India.

Table 8. GDP per capita in relation to scores on the Global Hunger Index 2008

Country	GHI 2008	GDP per Capita*
Nigeria	18.4	1977
Cameroon	18.7	2124
Kenya	19.9	1535
Sudan	20.5	2088
India	23.7	2753

* Gross Domestic Product (GDP) dollar estimates at Purchasing Power Parity (PPP) per capita Source: World Development Indicators, 2007 (World Bank)

A recent IFPRI report (2008) estimated hunger index for 17 major states in India, covering more than 95 percent of the population of India, shown in Table 9. All 17 states have GHI scores that are well above the “low” and “moderate” hunger categories. Twelve of the 17 states fall into the “alarming” category, and one - Madhya Pradesh – into the “extremely alarming” category. The study concluded that GHI scores are closely aligned with poverty, but there is little association with state level economic growth. High levels of hunger are seen even in states that are performing well from an economic perspective, such as Gujarat and Karnataka.

3.4 BMI

A widely used measure of nutritional status is a combination of weight and height measurements known as the Body Mass Index (BMI). Low body weight, associated with low intakes, is an indication that people could not reach their growth potential and hence is essentially a sign of continued hunger and nutritional distress. This is defined as weight in kg divided by height in metre squared. A BMI of below 18.5 for adults indicates chronic energy deficiency (CED). It would be due to an intake of calories and other nutrients less than the requirement for a period of several months or years.

According to the XI Plan, volume 2 (Planning Commission 2008), in 1998–99 as much as 36 percent of the adult population of India had a body mass index (BMI) below 18.5; eight years later (2005–06) that share had barely fallen to 33 percent of the population, despite a decade of robust economic

⁹ IFPRI used a cut-off of 1,632 kcals per person per day as the national calorie under-nutrition norm which showed 20 percent calorie deficient people in India. FAO has also used the norm of 1632 kcal, showing a reduction in the number of under-nourished population from 25 to 20 percent during 1990-2005. Had it used 1,820 kcals per person per day as the cut-off the number of under-nourished population in 2005 would have been 34 percent.

growth. These figures are based on the NFHS data, which is collected from all the states. Changes in BMI are also monitored by the National Nutrition Monitoring Bureau (NNMB, shown in Table 10), but it covers only ten¹⁰ states.

Table 9: Underlying components of India State Hunger Index and India State Hunger Index scores

State	Prevalence of calorie under-nourishment	Proportion of under weight among children < 5 years	Under five mortality rate, reported as deaths per hundred	India State Hunger Index score	India Hunger Index Ranking	percent of people below poverty line in 2004-05
1	2	3	4	5	6	7
India	20.0	42.5	7.4	23.31		27.5
Andhra Pradesh	19.6	32.7	6.3	19.54	3	15.79
Assam	14.6	36.4	8.5	19.85	4	19.73
Bihar	17.3	56.1	8.5	27.30	15	41.35
Chhattisgarh	23.3	47.6	9.0	26.65	14	40.88
Gujarat	23.3	44.7	6.1	24.69	13	16.75
Haryana	15.1	39.7	5.2	20.01	5	14.03
Jharkhand	19.6	57.1	9.3	28.67	16	40.35
Karnataka	28.1	37.6	5.5	23.74	11	24.98
Kerala	28.6	22.7	1.6	17.66	2	15.04
Madhya Pradesh	23.4	59.8	9.4	30.90	17	38.29
Maharashtra	27.0	36.7	4.7	22.81	10	30.75
Orissa	21.4	40.9	9.1	23.79	12	46.37
Punjab	11.1	24.6	5.2	13.64	1	8.41
Rajasthan	14.0	40.4	8.5	20.99	7	22.06
Tamil Nadu	29.1	30.0	3.5	20.88	6	22.53
Uttar Pradesh	14.5	42.3	9.6	22.17	9	32.81
West Bengal	18.5	38.5	5.9	21.00	8	24.72

(IFPRI 2008)

Table 10: Nutrition Status of Indian Adults, 1975-9 to 2004-5 (Body Mass Index)

	Proportion (percent) of adults with BMI below 18.5					percent decline (1975-9 to 2004-5)
	1975-79	1988-90	1996-97	2000-01	2004-05	
Men	56	49	46	37	33	41
Women	52	49	48	39	36	31

(Deaton and Dreze 2008)

Predictably the percentage of women in rural areas with BMI below 18.5 in 2004-05 was 41.2 according to NNMB, which is twice that among urban women 22.7 (Arnold et al. 2004). As regards age distribution, the percentage of women with BMI below 18.5 ranges from 41.7 for the age group 15-19 to 43.2 for 20-

¹⁰ Andhra Pradesh, Karnataka, Kerala, Tamil Nadu, Maharashtra, Madhya Pradesh, Orissa, Uttar Pradesh, Gujarat, and West Bengal

24, 39.4 for 25-29, 35.1 for 30-34 and 31.1 for 35-49. Ironically, at the most vulnerable ages when their reproductive demands are highest women are most deficient. So much for this country's esteem for mothers!

The data for each social group is available for 1996-97, shown below:

Table 11: Percentage of population with BMI < 18.5

Overall	47
Scheduled castes	53.2
Scheduled tribes	60.9
Others	46.8

(Sen 2004)

The prevalence of undernutrition was thus relatively higher among low socio-economic category of households such as those belonging to SC and ST communities.

A 20-year trend (Sen 2004) based on a large number of studies and the NNMB surveys of Indians (1977-1996) show that there have been minimal improvements in the weights of populations (of the same age) in India. The mean weight of children at five years of age in 1977 was 12.7 kg and 14.1 kg (girls and boys); when compared to the NCHS (US National Centre for Health Statistics) median weights of 17.7 and 18.7 kg, this deficit is of about 4 kg at the age of five. This increased to a deficit of 14 and 23 kg by the age of 18, and the mean weights of Indian women and men were a mere 42.3 and 45.4 kg compared to the NCHS standard of 56.6 and 68.9 kg. There was a small improvement in the weights of Indians as they reached the age of 25 (42.8 and 49.9 kg), but it was still way below their desirable weight. At the age of 60+ they slipped back to mean weights of 39.7 and 47.6 kg. By the year 1996 the nutritional status of a large number of people had not changed, or perhaps had improved only marginally. After observing a average weight gain of 1.25 Kg to 2.5 kg at each age group, the author notes that these are mean weights, and approximately half the population in India has lower weights than these (weights as low as 38 kg) for adults, a condition very close to chronic energy deficiency or starvation' (Shatrugna 2001:2). Fast economic growth did not help them to gain much height or weight for decades.

Similarly, Shatrugna found that the average height of children from 1977 to 1996 experienced no secular increase in heights or a minimal increase of 1 cm. Comparing the weight and height gain in high income groups in India, the author notes that there is a clear potential to improve height and weight of Indian population as reflected by the considerable weight gain by high income groups, captured by the field studies. However there is a huge gap between actual and potential weight and height of the average Indian. In other words, the under-nutrition condition is severely distressing which is still forcing generations to remain stunted and remain thin, so they cannot engage in hard work, given the low level of the calorie intake.

3.5 Undernourished children

Just as for adults, for children too, anthropometric indicators of nutritional status in India are among the worst in the world. According to the National Family Health Survey, the proportion of underweight children remained virtually unchanged between 1998-99 and 2005-06 (from 47 to 46 percent for the age group of 0-3 years). These are appalling figures, which place India among the most undernourished countries in the world. The overall levels of child under-nutrition in India (including not only severe but also "moderate" under-nourishment) are shown in Table 12.

Table 12: Trends in Child Nutrition: NFHS Data

	Proportion (percent) of children under the age of three years who are undernourished				
	NCHS ¹¹ Standards New W			WHO Standards	
	1992-3	1998-9	2005-6	1998-9	2005-6
Weight-for-age					
Below 2 SD	52	47.0	45.9	42.7	40.4
Below 3 SD	20	18.0	n/a	17.6	15.8
Height-for-age					
Below 2 SD	n/a	45.5	38.4	51.0	44.9
Below 3 SD	n/a	23.0	n/a	27.7	22.0
Weight-for-height					
Below 2 SD	n/a	15.5	19.1	19.7	22.9
Below 3 SD	n/a	2.8	n/a	6.7	7.9

The data for children under five in 2005-2006 is similar to the above.

percent of under-fives suffering from: underweight, moderate & severe	43
percent of under-fives suffering from: underweight, severe	16
percent of under-fives suffering from: wasting, moderate & severe	20
percent of under-fives (suffering from: stunting, moderate & severe	48

source: http://www.unicef.org/infobycountry/india_statistics.html

Over 70 to 80% of the calories consumed by the children (even though inadequate) are derived from cereals and pulses. This results in two things: (i) Children cannot consume more cereals to make up for the calorie deficiency because of its sheer monotony and lack of energy density. (ii) In the absence of fats, milk, eggs, and sources of iron, children starve themselves. The resultant iron deficiency anaemia (IDA), further worsens their appetite. Therefore in the absence of foods other than cereals and pulses in the diets of children and the inability of children in the age groups of (1–18 years) to derive and satisfy their protein-calorie and other nutrient needs from cereals, the malnutrition scenario can only get worse. Even fats that provide energy density in the diets are not available in adequate quantities (normally fats should provide 30–40% of calorie needs). It is therefore not surprising that there is massive hunger leading to multiple nutrient deficiencies. This is not hidden hunger; it is hunger for nutrient rich foods (Planning Commission 2008).

¹¹ Until 2006, the World Health Organisation (WHO) recommended the US National Centre for Health Statistics (NCHS) standard, and this was used inter alia in the first and second rounds of the National Family Health Survey. In April 2006, the WHO released new standards based on children around the world (Brazil, Ghana, India, Norway, Oman, and the United States) who are raised in healthy environments, whose mothers do not smoke, and who are fed with recommended feeding practices. These new standards were used in the third National Family Health Survey.

The main reason that explains a higher child malnutrition rate in India (for that matter in the entire South Asia) than in poorer, conflict-plagued Sub-Saharan Africa is that Indian women's nutrition, feeding and caring practices for young children are inadequate. This is related to their status in society, early marriage, low weight at pregnancy and their lower level of education. The percentage of infants with low birth weight in 2006 was as high as 30. Underweight women produce low birth-weight babies which become further vulnerable to malnutrition because of low dietary intake, lack of appropriate care, poor hygiene, poor access to medical facilities, and inequitable distribution of food within the household.

Estimates based on available data from institutional deliveries and smaller community-based studies suggest that even now nearly one-third of all Indian infants weigh less than 2.5 kg at birth. Studies (Ramachandran 2007) have shown that LBW children have a low trajectory for growth in infancy and childhood.

Indian mothers on average put on barely 5 kg of weight during pregnancy. This is a fundamental reason underlying the LBW problem. They should put on at least 10 kg of weight, which is the average for a typical African woman (Planning Commission 2008). Middle class Indian women tend to put on well over 10 kg weight during pregnancy. But this is not the only problem; LBW is also partly explained by low BMI of women in general, prior to their becoming pregnant. Small women (who are small before they become pregnant) give birth to small babies.

Worse is the story about the number of anaemic children, as their percentage during 1999-2006 has gone up from 74 to 79 percent.

Table 13: Levels of Anaemia among Indian Children (Percent)

Children aged 6-35 months who are anaemic	NFHS-2 (1998-99)				NFHS-3 (2005-06)			
	All India	Urban	Rural	Rural Urban Ratio	All India	Urban	Rural	Rural Urban Ratio
	74	71	75	1.1	79	73	81	1.1

(Kumar 2007)

When one looks at the Indian states, unlike calorie consumption which is only weakly co-related with poverty, child malnutrition has a strong correlation with poverty (see Table 9), with poorer states such as Madhya Pradesh, Bihar and Jharkhand showing high degree of malnutrition, whereas better-off states such as Punjab, Haryana, Tamil Nadu and Kerala show comparatively better performance on this indicator.

Determinants of Indian children's malnourishment can be broadly divided in two categories. In the first list are factors such as the irrational traditional practices which still continue, not immediately starting breast feeding after birth, no exclusively breastfeeding for the first five months, irregular and insufficient complementary feeding after between 6 months to two years of age, and lack of disposal of child's excreta because of the practice of open defecation in or close to the house itself. NFHS-3 data shows that only 21 percent of mothers dispose of their children's stool safely. There is wide variation between urban and rural households. Whereas 47.2 percent urban mothers did so, this percentage was only 11.4 for rural mothers. Clearly government's communication efforts in changing

the age old practices are not working well, and critical public health messages are simply not reaching the families with children.

In the second category would fall factors relating to poor supply of government services, such as immunisation, access to medical care, and lack of priority¹² to primary health care in government programmes. Table 14, based on NFHS-3 results, gives data on both, child rearing practices and government delivery.

Table 14: Access to and Reach of Basic Health Services for children 2005-06

	Total	Urban	Rural
Children under three years breastfed			
within one hour of birth	23	29	22
Children aged 0-five months exclusively breastfed	46	40	48
Children aged six to nine months receiving solid or semi-solid food and breastmilk	56	62	54
Children 12-23 months fully immunised (BCG, measles and three doses each of polio/DPT)	44	58	39
Children aged 12-35 months who received a vitamin A dose in last six months	21	23	20
Children with diarrhoea in the last 2 weeks who received ORS	26	33	24
Children with diarrhoea in the last 2 weeks taken to a health facility	58	65	56
Mothers who had at least three antenatal care visits for their last birth	51	74	43
Mothers who consumed IFA (a vitamin A supplement tablet) for 90 days or more when they were pregnant with their last child	22	35	18

(Kumar 2007)

Despite the importance of breastfeeding and appropriate feeding for preventing malnutrition, only 23 percent of children under three years were breastfed within one hour of birth and less than half the babies (46 percent) aged 0-5 months were exclusively breastfed. Equally striking is the low proportion of children of 6-9 months – 56 percent – who received solid or semi-solid food and breast milk. It is well known that frequent illnesses during early childhood and failing to treat them properly seriously affects the nutritional well-being of children. With only one exception, namely, children aged 0-5 months exclusively breastfed, all other indicators reveal lower reach and access to health services and care in rural than in urban areas. And this explains at least partially the higher levels of under-nourishment in rural than in urban areas. Also affecting the health and nutritional well-being of children is the status of women's health and their access to maternal care services.

¹² Until 2006, the World Health Organisation (WHO) recommended the US National Centre for Health Statistics (NCHS) standard, and this was used inter alia in the first and second rounds of the National Family Health Survey. In April 2006, the WHO released new standards based on children around the world (Brazil, Ghana, India, Norway, Oman, and the United States) who are raised in healthy environments, whose mothers do not smoke, and who are fed with recommended feeding practices. These new standards were used in the third National Family Health Survey.

Inter-state differences - By and large, in the four states with the lowest proportion of underweight children – Punjab, Kerala, Jammu and Kashmir and Tamil Nadu – provisioning of health services, care of children especially newborns and the nutritional status of women are better than in the four high malnutrition states of Chhattisgarh, Bihar, Jharkhand and Madhya Pradesh. For instance, the proportion of fully immunised children varied between 60 and 81 percent in the low malnutrition states and between 33 and 49 percent in the high malnutrition states. In the low malnutrition states, between 73 and 97 percent of mothers received at least three antenatal care visits; this proportion varied between 17 and 55 percent in the high malnutrition states. And whereas 14-24 percent of women in the low malnutrition states have a BMI below normal, the proportion varied from 40-43 percent in the high malnutrition states. There are, however, some exceptions that need more careful examination. Chhattisgarh and Jharkhand seem to be doing much better in their efforts to promote exclusive breastfeeding in the initial years of a child's life. Eightytwo percent of children of 0-5 months in Chhattisgarh and 58 percent in Jharkhand are exclusively breastfed whereas in the low malnutrition states, the highest proportion is 56 percent in Kerala. Also, it is disturbing to find that Gujarat ranks among the top five states reporting the highest proportion of underweight children – a phenomenon that needs a closer examination.

The proportion of fully immunised children during 1998-99 to 2005-06 has declined surprisingly, in eight states – Andhra Pradesh, Gujarat, Himachal Pradesh, Karnataka, Kerala, Maharashtra, Punjab and Tamil Nadu – generally regarded as better performing states in health and economically more prosperous than other states. On the other hand, immunisation coverage rates have shown a significant improvement in West Bengal, Bihar, Jharkhand and Chhattisgarh.

On the whole, children's access to certain critical components of treatment of childhood diseases has declined over the past seven years. For instance, the proportion of children with diarrhoea who received ORS in the two weeks preceding the survey had risen from 18 percent in 1992-93 to 27 percent in 1998-99; but since then it has fallen to 26 percent in 2005-06.

The contrast between India and China¹³ is also of some interest in this context. There is evidence of a steady growth in the heights of Chinese children in recent decades, not only during the period of fast economic growth that followed the "economic reforms" of the late 1970s, but also before that. For instance in a representative sample of Chinese children aged 2-5 years, the average increase in height between 1992 and 2002 was 3 cm in rural areas (for both boys and girls), and even higher in urban areas (3.6 cm and 3.8 cm for boys and girls, respectively). According to an earlier study, "the average heights of Chinese children between the ages of 7 and 14 years increased by approximately 8.04 cm between 1951-8 and 1979". NNMB data suggests much slower growth rates and heights of Indian children. The increase in children's heights between 1975-9 and 2004-5 was a little below 2 cm per decade at age 3, and barely 1 cm per decade at age 5. The NNMB data also suggests that the growth rates of heights and weights were particularly slow in the later part of this period, with, for instance, very little growth in the heights of children at age 5 between 1996-7 and 2004-5.

3.6 Women's malnutrition¹⁴

According to NFHS-3, while more than one-third of women suffer from CED during 2005-06, over half the women in the age group of 15-49 years suffer from iron deficiency anaemia. The incidence of anaemia among pregnant women is even higher: nearly 59 percent.

¹³ This para is based on Deaton and Dreze 2008

¹⁴ This section is based on Jose and Navaneetham 2008.

The implications that women's malnutrition have for human development are multiple and cumulative. It tends to increase the risk of maternal mortality. Maternal short stature and iron deficiency anaemia, which increase the risk of death of the mother at delivery, account for at least 20 percent of maternal mortality. Additionally, maternal malnutrition impinges significantly on such important but interconnected aspects as intrauterine growth retardation, child malnutrition and rising emergence of chronic diseases, among others.

Why has malnutrition been so high among women in India? The reasons are multiple and complex. Seemingly, the discriminatory practices associated with the rigid social norms and the excessive demands made on the time and energies of women join hands with the usual determinants in blighting women's nutrition. However, one of the usual determinants, namely poverty, seems equally important: not only is poverty one of the basic causes of malnutrition, but also malnutrition is considered to be both an outcome and a manifestation of poverty.

Table 15 gives the data for women's nutrition for various social and economic groups, suggesting huge socio-economic disparities.

Thus nearly 47 and 68 percent of women (15-49 years) from the scheduled tribes suffer from CED and anaemia, respectively. What is more, more than one-third of them suffer from the double burden of CED and anaemia together. The incidence of malnutrition declines with the so-called rise in social status. By extension, such decline also means huge disparities between social groups: more than 15 percentage points difference is found between women from ST and others. Thus, the proportion of women suffering from CED and anaemia together among ST comes closer to double the proportion of the same among advantaged social groups. More than 50 and 64 percent of women from the poorest quintile suffer from CED and anaemia, respectively. Also, about one-third of them suffer from the double disadvantage of CED and anaemia. As we have observed among social groups, malnutrition among women goes down drastically with a rise in the household wealth status, creating equally large disparity between the wealth groups. The proportion of the poorest women suffering from CED and anaemia together comes around to more than three times that found in the highest quintile.

Table 15: Women's nutrition for Social and Economic Groups (in percent)

	CED	Anaemia	CED and Anaemia		
			Both	Either	Neither
Social groups					
ST	46.6	68.5	33.5	47.8	18.7
SC	41.1	58.3	25.7	47.7	26.6
OBC	35.7	54.4	20.8	48.3	30.9
Others	29.2	51.1	16.8	46.6	36.6
ST/others	1.60	1.34	1.99	1.03	0.51
Wealth groups					
Lowest	51.5	64.3	34.0	47.5	18.5
Second	46.3	60.3	29.0	48.3	22.7
Middle	38.3	56.0	22.9	48.2	28.9
Fourth	28.9	52.2	16.4	48.2	35.4
Highest	18.2	46.1	9.4	45.5	45.1
Lowest/highest	2.83	1.39	3.62	1.04	0.41

It is also important to add here that the proportion of women suffering from anaemia is not low even within the richest quintile. This suggests that a substantially large proportion of women in India, irrespective of the household wealth status, suffer from iron deficiency anaemia. The huge disparity in women’s malnutrition between economic and social groups in India is a matter of serious concern, as the levels of nutritional attainment appear to be not only unequal but also unjust.

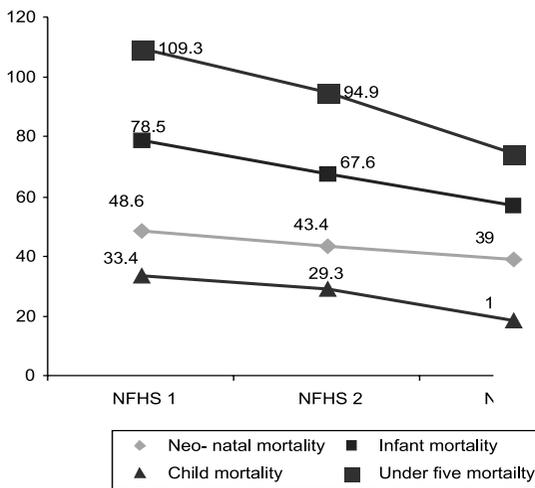
Further analysis would suggest that though economic and social disparities matter significantly and independently, the former seems to matter more, at least as far as women’s malnutrition is concerned, than the latter. Eastern states, mainly Bihar, Jharkhand, Orissa and West Bengal, emerge as the repository of women’s malnutrition in India. Though these four states account for 22 percent of women considered for the analysis, 30 percent of women suffering from CED and anaemia together live in these states.

How does one change the situation? Ensuring equity in women’s rights to land, property, capital assets, wages and livelihood opportunities would undoubtedly impact positively on the issue, but underlying the deep inequity in woman’s access to nutrition is her own unquestioning acceptance of her status as an unequal member of the family and society. Eventually, gender empowerment alone is likely to be the key to the resolution of the hunger challenge amongst women in India (Ramachandran 2007)

3.7 Child mortality

Malnutrition in children weakens their immune system, making them more susceptible to disease and less able to fight off infection. It has been estimated that a child is almost ten times more likely to die from key diseases if he/she is severely underweight, and two and a half times more likely to die if he/she is moderately underweight, as compared to an average weight child (Black et al., 2008). Given the fact that more than 3.5 million children die globally on account of under-nutrition, it emerges as a major factor leading to child deaths. Therefore, under-five mortality has been taken by IFPRI as the third indicator for measuring Hunger Index.

Figure 2: Neonatal, infant, child and under-five mortality rates



About 2.1 million deaths occur annually in under-5 year-old children in India. Seven out of every 10 of these are due to diarrhea, pneumonia, measles, or malnutrition and often a combination of these conditions.

Child mortality is known to be the outcome of a wide variety of factors, such as nutritional status of the child and its mother, food availability in the family, level of immunisation, availability of maternal and child health services, economic status, availability of safe drinking water, basic sanitation, and so on. India accounts for 21 percent of a total of 9.7 million children dying globally before they reach the age of five. This is despite the fact that child mortality has declined

by 48 percent (from 142 to 74) between 1990 and 2006. Under-five mortality has strong co-relation with the education level of mother; while it was 94.7 for illiterate mothers, it was only 29.7 for those who had

12 years of education. As expected, child mortality is highest at 95.7 for ST social groups, followed by 88.1 for SCs, and 59.2 for others (excluding OBCs for whom it was 72.8).

NFHS-3, reflects, to a large extent, the limited access to and reach of public health services for women and children. In 2005-06, for instance, only 44 percent of children of 12-23 months were fully immunised. The national immunisation coverage in urban areas has slipped over the past seven years from 61 percent in 1998-99 to 58 percent in 2005-06 and has increased only slightly in rural areas from 37 percent to 39 percent. Only 26 percent of children with diarrhoea were given oral rehydration salt (ORS) and barely two-thirds (64 percent) of children suffering from acute respiratory infection or fever were taken to a health facility. This shows both the poor reach of public health services and also the limited accessibility of such services to children. There are huge gaps in women's access to and reach of maternal health services. Improvements in women's access to safe delivery, for instance, have been minimal. Between 1998-99 and 2005-06, the proportion of births assisted by a doctor, nurse, LHV, ANM or other health personnel went up marginally from 42 to 48 percent; and institutional births went up from 36 percent to 41 percent over the same period.

A study conducted by Save the Children, which compares child mortality in a country to its per capita income, shows that India lags far behind its poorer neighbours like Bangladesh and Nepal, when it comes to reducing child deaths. A new Wealth and Survival Index, which is part of the study, has ranked 41 countries on the criterion of how well they use their resources to boost child survival rates. While Bangladesh and Nepal are listed in the top ten performers, India stands at a low 16th in the index. This can be elucidated by comparing India and Bangladesh. While India's per capita income increased by 82 percent from 2000 to 2006, its child mortality rate declined from 94 to 76 per 1000 live births. As against that, over the same period, Bangladesh saw a much smaller increase in per capita income – only 23 percent – but its child mortality dropped from 92 to 69 (UNICEF 2007).

4 Food security

4.1 Consumption and prices

The NSSO data on consumer expenditure on food consumption indicates a declining trend in the annual per capita consumption of cereals, for all classes of people, as shown in Table 16.

Table 16: Trends in Cereal Consumption across Expenditure groups (kg per month)

RURAL	Percentile				
	lowest 5%	5 percent-10 percent	40 percent 50 percent	90 percent 95 percent	95 percent 100 percent
1993-94	9.68	11.29	13.33	14.98	15.78
1999-00	9.78	11.15	12.89	13.73	14.19
2004-05	9.88	10.87	12.16	12.77	13.50
URBAN	Percentile				
	lowest 5%	5 percent-10 percent	40 percent 50 percent	90 percent 95 percent	95 percent 100 percent
1993-94	8.91	10.11	10.99	10.19	10.29
1999-00	8.99	10.15	10.80	9.94	9.72
2004-05	9.25	10.04	10.25	9.50	9.10

The above Table clearly shows that as India moved to greater prosperity in the last twenty years the cereal consumption of the rich went down, but there was no increase for the poor. At any given point of time cereal intake of the bottom 10 percent in rural India continues to be at least 20 percent less than the cereal intake of the top decile of the population, despite better access of the latter group to fruits, vegetables and meat products. Their sedentary life style too should be taken into account while assessing the difference between the two groups. For the upper segment of population the decline may be attributed to diversification in food consumption, easy access to supply of other high value agricultural commodities, changed tastes and preferences, and consumption of more expensive non-foodgrain products (Mittal, 2006). Higher economic growth and per capita incomes thus contribute to reduction in per capita demand for cereals for the rich.

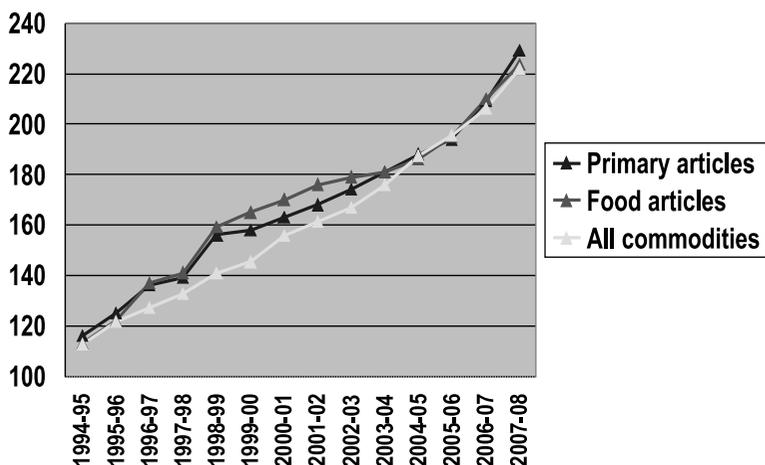
However for those who are around the poverty line, this has to be understood as a distress phenomenon, as with marginal increase in their incomes over time they are forced to cut down on their food consumption to meet other pressing demands that were not perceived important in the past. For instance, as more schools open, the poor too wish to send their children to schools, where expenses are incurred on clothes, books, etc. despite the school fees being met by government. These expenses would thus become a new item on the household budget, and food expenditure may be curtailed to make room for it. Fighting sickness leads to another chunk of essential expenses, for which opportunities did not exist in the past, as there were no doctors in the vicinity. The share of fuel and light in total consumer expenditure has risen from under 6 percent to 10 percent in both rural and urban areas between 1972-73 and 2004-05. Finally, the rural labouring masses have to spend on transport in order to earn their livelihoods. Food is still needed, but not demanded.

A survey (Mander 2008) of 474 destitute people in eight villages found that intense food shortages often demand the most unreasonable choices, such as between food and medicines, between eating to save life and relieving unbearable pain. Most hungry people reported that their most hazardous tumble into pauperisation was because they, or a loved one, fell gravely ill. Many old people simply try to wait out an attack of illness, and if that does not work they consult a local untrained practitioner, who demands his fees in advance, never guaranteeing cure. They do this by cutting back their food intake even further.

Food prices - Between 1972-73 and 2004-05, the share of food in total consumer expenditure has fallen from 73 percent to 55 percent in rural areas and from 64 percent to 42 percent in urban areas¹⁵. Could the falling share of food expenses in the total budget of the poor be because of rising food prices? Not likely. In rural India, food (and therefore calorie) prices moved along with general prices from 1983 until about 2000, and then fell by a little less than five percent relative to general prices. In urban India, there was a slow secular increase in the relative price of food, by less than five percent, from 1983 until the late 1990s, followed by a more pronounced decline, by more than ten percent, until the end of the period. In both sectors, the relative price of food was lower in 2004-05 than at the start of the period in 1983. The decline in food consumption cannot therefore be attributed to any increase in the relative price of food. As already pointed out, food budget has been squeezed out because the cost of meeting the minimum non-food requirements has increased (Sen 2005). Thus, it is not possible for households around the poverty line to purchase their initial food basket within their current food budget.

¹⁵ NSSO 61st round (Report No. 508)

Figure 3: Changes in price index (1993-94=100)



However, as figure 4 shows, there has been faster increase in food prices after 2005-06. This has resulted in higher spending on cereals, but the quantity of cereals consumed has not increased. The average per capita monthly rural consumption of cereals fell from 11.92 to 11.69 kg, but the price increased from 106 to 115 Rupees between 2005-06 and 2006-07. For urban areas the figure was from 9.76

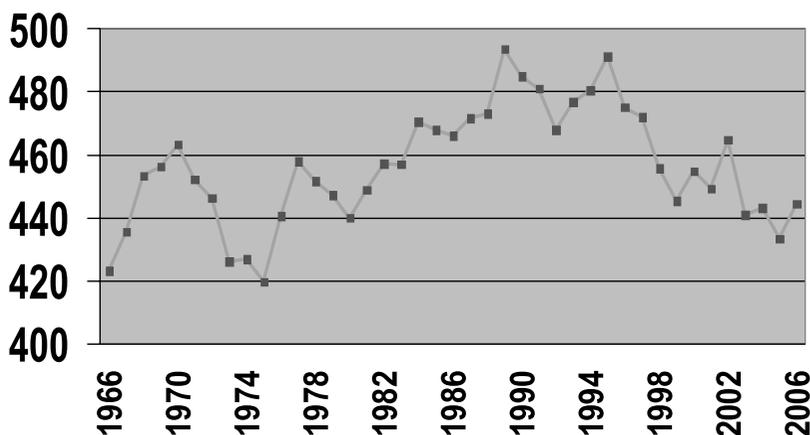
to 9.63 kg, and the increase in money spent was from 110 to 119 Rupees (Economic Times 11th November, 2008, based on NSSO 63rd round).

4.2 Food production, procurement and availability at the macro-level

At the macro level foodgrain availability in India is calculated as 87.5 percent of gross production (the rest estimated as requirement for seeds, farm animal feed, and waste) plus net imports minus changes in government stocks. Assuming no net change in private stocks it could be taken as a good proxy for overall foodgrains consumption in the country.

During the last fifty years before Independence foodgrain availability declined from 545 grams to 407

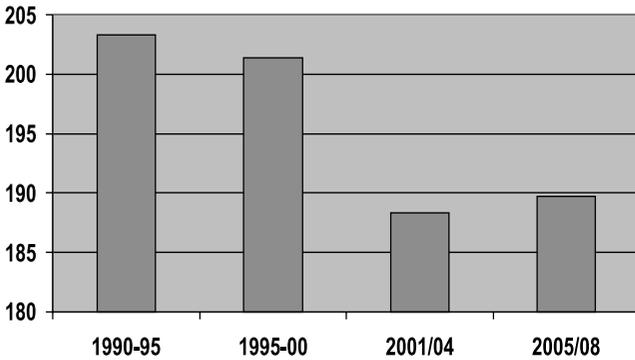
Figure 4: Per capita foodgrain availability per day in gms



grams per head per day. Considering five-year averages India saw a rise in the foodgrains availability per head from 416 grams during 1950-55 to 485 grams by 1989-91 (Patnaik 2004). However since then there has been the slide-back to a low of 445 gram per head per day by 2006, a level not seen since the early drought years of 1970s.

(based on Economic Survey, GOI, 2007-08)

Figure 5: Annual per capita production of foodgrains (average of five years)

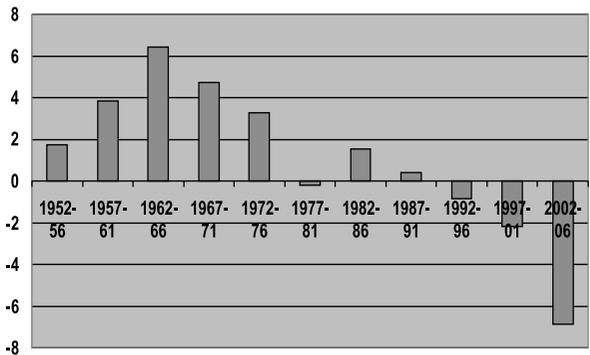


The fall in availability is because of both, drop in production and exports. During 2001-2005 government exported a record 28 million tonnes of foodgrains at subsidised rates. Independent India has never before seen such huge exports, and it was highly unethical that the government preferred to feed foreigners and their cattle by exporting foodgrains, applying a heavy subsidy to beat low world price, rather than undertake widespread internal distribution of foodgrains.

(based on Economic Survey, GOI, 2007-08)

Despite the fact that growth of foodgrain production in the period 1989-2004 was lower than the increase in population during the same period, procurement of cereals on government account went up, suggesting a decline in poor people’s consumption and their purchasing power. This may have happened because of the structural imbalances (high MSP, rising capital intensity, lack of land reforms, failure of poverty alleviation programmes, no new technological breakthrough in agriculture, etc.) created in the economy, as well as due to production problems in less endowed regions (erratic rainfall, soil erosion and water run-off, lack of access to credit and markets, poor communications) which led to a dangerous situation of huge surplus in FCI godowns during 2000-03 coupled with widespread hunger.

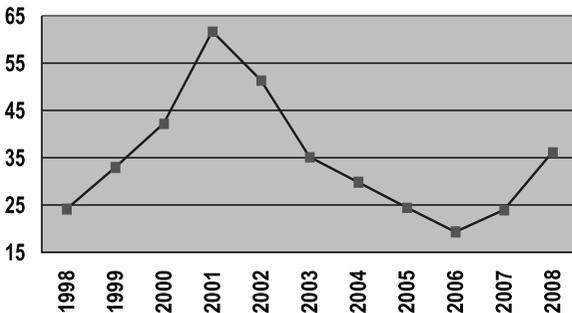
Figure 6: Average annual imports in Million Tonnes



situation of huge surplus in FCI godowns during 2000-03 coupled with widespread hunger.

(based on Economic Survey, GOI, 2007-08)

Figure 7: Stocks of foodgrains in government godowns in July in million tonnes



Falling availability and increase in government procurement reflects a contraction of effective demand¹⁶, as the poor are forced to spend a greater part of their incomes to transport, health, and education. In other words, non-food items have become more “essential” than food in a particular sense. This argument is supported by empirical evidence from various sample surveys, as between 1972-73 and 2004-05 the share of food in

¹⁶ This is despite the fact that the expenditure of bottom three deciles increased by about 10 percent during 1993-2005.

total consumer expenditure has fallen from 73 percent to 55 percent in rural areas and from 64 percent to 42 percent in urban areas (Ramachandran 2008).

(based on Economic Survey, GOI, 2007-08)

Because of lack of growth in agriculture after the mid-1990s there has been employment decline, income decline and hence fall in aggregate demand by the rural poor. Normally when there is a fall in per capita output and government stocks get depleted, net imports take place in order to maintain availability per head at an unchanged level; but precisely the opposite happened in India during 1999-2004. Despite falling per capita output, there were both rising net exports as well as huge addition to stocks year after year. This was a highly abnormal situation never seen before in independent India: it reflects the unprecedented magnitude of continuous demand-deflation of foodgrains, especially in the rural sector since 1996 (Sen 2004).

4.2.1 Recent developments and imports¹⁷

When GOI decided to open up wheat procurement for large companies in 2006 the official procurement fell from a high annual level of 15-19 million tonnes in 2002-05 to 9 million tonnes only in 2006. It had to resort to massive imports of 5.4 million tonnes in 2006 followed by 1.8 million tonnes in 2007 at a price higher than what it paid to its farmers. After these difficulties government became careful and banned export of wheat as early as February 2007, and the export of non-basmati varieties of rice in October 2007 to prevent domestic shortage due to export. The bumper foodgrain harvest in 2007-08 and various direct and indirect restrictions on large-scale purchases by the private sector in 2008 helped GOI procure an impressive 23 MT of wheat which also helped in controlling its market price. However, the biggest factor that prevented a sharp rise in food prices in India was that fertiliser prices and diesel prices were not increased in response to the increase in international prices. It is worth mentioning that about half of the increase in global food prices is due to the increase in prices of crude oil. By providing a subsidy on fertiliser and diesel, India could ensure that the increase in global crude oil prices, which raised global food prices by 47 percent, does not affect food prices in India.

4.3 Global developments

The per capita annual production of cereals in the world increased from 271 kg during 1961-65 to 295 kg during 1966-70, which were the initial years of the green revolution. The uptrend continued for about two decades and per capita cereal production peaked by the mid-1980s at a level of 334 kg per person per year. The growth rate of cereal production decelerated to 1.09 percent after the mid-1980s, compared to 2.51 percent in 1961-85. The recent growth rate turned out to be lower than the growth rate in population even though the growth rate in population was coming down. The per capita production of cereals declined to less than 315 kg in the first eight years of the 21st century (Chand 2008).

Though there is some improvement in per capita availability of cereals during the last four years (2003-07) this increase has not been available for use as food and feed, due to diversion of foodgrain for production of biofuel. When total production is netted out for the corn used for biofuel in the United States then per capita production falls to 307 kg, the lowest in any five-year period after 1966-70. This shows that the shortage of staple food has been building up over several years and it became quite large in the recent years.

¹⁷ Based on Chand 2007, 2008

The per capita consumption of cereals, meat, milk and eggs in India, China, US and the World averages are presented in Table 17.

Table 17: Per Capita Consumption during 2004-06 (kg/year)

	India	China	US	World
All cereals	175.1	287.9	953	316
Meat	5.3	56.8	126.6	40.2
Milk 84.5	22.7	Na	97.8	
Eggs 1.8	21.6	15.2	9.7	

Chand 2008

It is pertinent to mention that consumption here indicates total use as food and feed which thus captures the impact of dietary change on cereal demand as feed. The per capita consumption of cereals in the US is 953 kg, which is three times the World average, 3.3 times the average in China and 5.4 times the average in India. The main factor behind such a high level of cereal consumption in the US is their meat and egg consumption. An average US consumer consumes 127 kg of meat in a year, which is more than the quantity of meat consumed by 25 consumers in India. So much for President Bush's statement that the international food prices are rising because of higher consumption in India and China!

4.3.1 Recent global financial crisis

The recent global meltdown in the financial and equity markets follows hard on the heels of soaring food price and energy crisis caused primarily on account of intensified bio-fuel programme. The global commodity prices, though still ruling high, has marked a dip due to good harvest in the current season. According to the latest issue of FAO's Crop Prospects and Food Situation report, global grain production this year is forecast to increase 4.9 percent to a record 2,232 million tonne. Commodity prices have dipped in recent times as investors have apprehended recession. Wheat futures for December delivery closed at recently at 62 percent down from a record set in February. Corn futures dipped 53 percent from their all-time high and soybean futures registered 47 percent lower¹⁸.

Commodity prices are currently declining, mainly on the expectation of favourable crop prospects but also due to the threat of a global recession. It is feared that borrowing, bank lending, official development aid, foreign direct investment and workers' remittances may be compromised by a deepening financial crisis. The impact of the financial crisis may also be felt in developing countries at the macro level with potentially negative impact on agriculture and food security. The falling grain prices and liquidity problems may cause lower investment in agriculture and shrinkage in crop area and reduced harvest in the major exporting countries. Given the low grain stock, this situation can lead to another turn of record high food prices next year. Subprime meltdown, downturn in the equity market, intensification of bio-fuel programme leading to use of food for fuel and consequent rise in food prices, speculation in commodity futures, fluctuations in currency exchange rates, the threat of recession, increasing corporate monopoly over the farm sector and wilful distortion in global farm trade have collectively endangered food security.

However global financial crisis should not be used as an excuse for inaction in the worsening battle against wrenching hunger across the developing world. The world now has the responsibility of

¹⁸ Based on <http://www.financialexpress.com/news/global-meltdown-to-have-a-negative-impact-on-food-security/379640/0>

fulfilling the Millennium Developmental Goals (MDGs) by lifting nearly one billion people out of poverty, who do not have enough food to eat on a day-to-day basis. This is the time to think of an alternative model of development as the belief in the self-regulating market was no longer credible.

Implications for India - India has almost insulated itself against transmission of the current level of an abnormally high global prices of cereals. Wheat prices in India increased by about 20 percent between December 2005 and 2006, which is considered quite high. International prices in the same period increased by 24 percent. What is remarkable is that between December 2006 and December 2007 international wheat prices increased by 80 percent, whereas domestic prices declined by 1.3 percent. The annual rate of inflation estimated on a month-to-month basis shows that food price inflation in international markets¹⁹ in the first half of this year has crossed 40 percent, whereas in India it has remained below 8 percent. This was due to

- ▶ an increase in food production during 2006-07 and 2007-08 in which favourable weather also played an important role,
- ▶ timely and effective government intervention in the domestic market, and
- ▶ almost complete insulation of the cost of crop production from transmission of the increase in crude oil prices in the international market.

4.4 Future scenario for India's food production

While in the short and medium term, there might be surplus of cereals in the country, primarily due to lack of purchasing power, these prospects are likely to diminish in the years to come (Mittal 2008; Chand 2007a).

Demand projections in general are estimated on the basis of assumptions about the base year demand, population, expenditure elasticity and economic growth. Assuming that GDP growth rates to be 8 percent for the next twenty years, the total cereal demand projected for 2011 and 2026 is 188 and 274 million metric tonnes respectively. As regards projections of supply of cereals, it is estimated to be 210 mt in 2011, 242 mt in 2021 and 260 mt in 2026. Thus India may be somewhat surplus in the short run, but is likely to fall short of the demand in the long run. This situation is even more alarming for edible oil, sugarcane and pulses. To meet the future food requirements, the country shall have to either increase agricultural production, or depend on imports. If India wishes to avoid large scale imports the policy focus needs to be laid, towards productivity enhancement in agriculture, through public investment in irrigation, development of roads, power, and extension.

Unfortunately the trend so far has been disappointing. After recording unprecedented high growth of 4.7 percent a year during the period of Eighth Five Year Plan (1992-1997), growth of the agriculture and allied sectors decelerated to 2.1 percent during the Ninth Plan (1997-2002). It further dipped to 1.0 percent during the Tenth Five year Plan (2002-07) against the targeted growth of 4 percent per annum.

India's low average wheat and rice yields compared with other major world producers suggest that there is significant scope to further boost yields and output. Rice yields are among the lowest for major producers and wheat yields remain near the world (and U.S.) average despite the fact that a relatively high share—about 87 percent—of Indian wheat area is irrigated. Although roughly 90 percent of wheat area and 75 percent of rice area is already planted to HYVs, average wheat yields in

¹⁹ There are indications of sharp fall in the international food prices in the last three months.

major States remain about 25 percent lower than levels achieved in experiment stations, while rice yields are about 50 percent lower (Jha et al 2007). Increasing the yields would however need new policies, discussed in section 5.1.1.

5 Analysis of major programmes and policy options

5.1 Agricultural production

The agricultural scene in India in the last fifteen years has four features that distinguish it from the earlier ‘green revolution’ phase (1970-85). First, the policy approach to agriculture in the 1990s has been to secure increase in production through subsidies on inputs such as power, water, and fertiliser, and by increasing the minimum support price (MSP) rather than through building new capital assets in irrigation, power and rural infrastructure. According to the Planning Commission, budgetary subsidies in agriculture increased from around 3 percent of agricultural GDP around the late-1970s to about 7 percent in the early 2000s. During the same period, public investment in agriculture declined from 3.4 percent of agricultural GDP to 1.9 percent (Bisaliah 2007).

This has shifted the production base from low-cost regions to high-cost ones, causing an increase in the cost of production, regional imbalance, and an increase in the burden of storage and transport of foodgrains. The equity, efficiency, and sustainability of the current approach are questionable. The subsidies do not improve income distribution or the demand for labour (Saxena 2004). The boost in output from subsidy-stimulated use of fertiliser, pesticides and water has the potential to damage aquifers and soils – an environmentally unsustainable approach that may partly explain the rising costs and slowing growth and productivity in agriculture, notably in Punjab and Haryana. Although private investment in agriculture has grown, this has often involved macroeconomic inefficiencies (such as private investment in diesel generating sets instead of public investment in electricity supply). Public investment in agriculture has fallen dramatically since the 1980s and so has the share of agriculture in the total gross capital formation (GCF). Instead of promoting low-cost options that have a higher capital-output ratio, present policies have resulted in excessive use of capital on the farms, such as too many tubewells in water-scarce regions.

Second, the intensity of private capital is in fact increasing for all class of farmers, but at a faster pace in the ‘Green Revolution’ areas and for larger farmers. Thus, fertilisers, pesticides and diesel accounted for a mere 14.9 percent of the total inputs in 1970–1 but 55.1 percent in 1994–5. For a large farmer in commercialised regions their contribution may have now become as high as 80 percent. But the proportion of output sold has increased at a much slower rate than the proportion of monetised inputs, including hired labour. The implication of this is a resource squeeze in agriculture. Whereas the need for resources to purchase these inputs has been increasing, the marketable surplus has been increasing at a slower rate to contribute to this, as the growth of non-farm employment has become very sluggish. It is not surprising that the repayment of loans is such a problem in Indian agriculture and has even led to suicides in some cases. A better strategy would be to concentrate on small and marginal farmers, and on eastern and rainfed areas where returns to both capital and labour are high. The need is also for better factor productivity in agriculture and for new technologies, which would be more labour intensive and would cut cash costs.

Whereas the use of capital has increased amongst the small and marginal farmers, markets in eastern and central India continue to be imperfect. Therefore the poor farmers are forced to sell part of their product to payoff their loans (mostly from informal sources) for purchased seeds, water and fertiliser,

but they do not get a good price and market conditions benefit the trader and moneylender more than it benefits the producer.

Third, the proportion of total bank credit earmarked for agriculture has steadily fallen from near 18 percent in the mid-1980s to 10.0 percent in 2005-2006. This decline has been much sharper in direct lending. A substantial part of agricultural loans since the 1990s has been in the form of indirect credit, that is, lending for various intermediary agencies and instruments like the Rural Electrification Corporation (REC), the special bonds issued by NABARD (National Bank for Agriculture and Rural Development) and deposits placed by banks in Rural Infrastructure Development Fund (RIDF) in lieu of priority sector lending. In the same period there has been a precipitate fall in small borrowal accounts (credit limits of Rs 25,000 or below) from 62.55 million to 36.87 million or more pointedly, in terms of amount outstanding from 25 percent to 5.4 percent. Small loans are mostly agricultural loans.

Undoubtedly, institutional credit has been scarce for the agricultural sector rather significantly in the 1990s and in this decade. Are banks reluctant to offer agricultural loans because their earning potential from these loans has been relatively low? A more palpable cause for the banks' poor lending to agriculture or to small borrowers is their professional reluctance to operate in rural areas. And this is a more daunting issue to be addressed. Given the option, the scheduled commercial banks will not operate in rural areas. Since March 1995 after the disbanding of branch licensing policy and the grant of freedom to bank boards, the number of rural branches has declined from 32,981 to 32,137, i.e., the closure of roughly 840 rural branches instead of an addition of at least 8,000 branches under normal circumstances. This approach to rural banking has spawned a serious institutional vacuum in rural credit. It is no use goading banks to expand rural and agricultural credit base without ensuring that there is an adequate spread of the institutional network for rural lending.

And lastly, groundwater as opposed to surface and sub-soil (through shallow wells) water has become the main source of irrigation. Due to this nearly 30 percent of the blocks in the country are presently classified as semi-critical, critical or overexploited (mostly in 'green revolution' areas) as groundwater use exceeds the rate of groundwater recharge. As there is no effective control over digging of tubewells in water-scarce regions, farmers are borrowing money from informal sources at high interest rates to dig tubewells, but many such borings fail leading to indebtedness, and even suicides by some of them. Since sinking a bore well involves a heavy investment upfront, it is the rich and the affluent farmer that goes in for it, whereas the small farmer continues to depend on the shallow dug well that has been in existence for decades. Bore wells drain much larger quantities of water and it is usually from the same aquifers that feed the dug wells. It is the small farmer that gets adversely affected in the village when the richer farmers install bore wells fitted with electric motors. It is the affluent farmers owning bore wells and electric motors that corner most of the benefit of electricity subsidy. Ironically, they in turn sell their surplus water to the adjacent small farmers at commercial rates. The built-in biases of the green revolution strategy now stand exposed.

The impact of these four factors has been increasing landlessness, sharpened inequalities (both inter-state and inter-class), and stagnation in production. The index number of agricultural production rose by 4.4 percent annually during the 1980's, but dropped to 2.8 percent during 1990-91 to 1996-97, and the growth rate further plummeted to just 0.5 percent in the next ten years. Similar is the trend for foodgrains. During the eleven year period 1996-2007, foodgrain production increased only by 9 percent, from 199 to 217 mT, or much less than one percent a year as against an annual rate of growth of 3.5 percent achieved during the 1980s. The availability of cereals declined from a peak of 468 grams per capita per day in 1990-91 to 412 grams per capita per day in 2005-06, indicating a decline of 13

percent during this period. The availability of pulses declined from 42 grams per capita per day (72 grams in 1956- 57) to 33 grams per capita per day during the same period.

Moreover, poverty reduction has become disconnected from agricultural growth because as opposed to substantial agricultural growth in the 1980s, there was little between 1997 and 2006. This has also resulted in a slower increase of real agricultural wages, with the poorer states showing no increase or even a decline in wages. In addition, the casualisation of a mass of rural workers without safety nets, the feminisation of agricultural labour accompanied by low wages, and the persistence of child labour are worrying trends.

The stagnation is despite the soaring annual cost of food subsidies, which rose from Rs 61 billion in 1996-97 to Rs 120 billion in 2000-01 to Rs 310 billion in 2007-08. If subsidies on free rural power and fertilisers are added the figure may well reach a staggering figure of 1000 billion Rs, or about Rs 70 per day per poor rural family.

5.1.1 What needs to be done?

It is thus obvious that Indian agriculture is in a serious crisis, and needs several innovative policy interventions, some are discussed below.

The most important intervention that is needed is more investment in irrigation, power, and roads in poorer regions. It is essential to realise the potential for production surpluses in Central and Eastern India, where most poor live. Many states in this region do not benefit from the MSP for rice, as FCI does not buy paddy from the farmers in these states, but buys rice from the millers²⁰. A basic focus of policy should, therefore, be to ensure effective price support in states and areas with future production potential. To achieve the growth target of 4.5 percent in agriculture, the investment should grow at an annual rate of about 12 percent, as compared to the present level of about 5 percent.

Since level of public investment is an important determinant of private investment through complementary/inducement effect, the choice of public sector investment portfolio is crucial. Public investment has to be considered as a policy instrument for reducing regional agricultural development disparities and for realising full potential of small and marginal farmer. Any demand-induced diversification would place new demands on market infrastructure (like more investment on cold storage, rural roads, communication, marketing network, etc.) and institutions. In fact, price induced crop diversification is not sustainable in the absence of back up from non-price factors such as technology, irrigation and rural infrastructure.

Water is a critical input for achieving higher agricultural growth and ensuring greater food security. Only about 40 percent of cultivated area in India is currently irrigated. Greater emphasis should be put to shift the balance in favour of surface irrigation and on the more effective use of existing irrigation systems.

Many states, however, lack the policy, regulatory, and institutional framework for efficient, sustainable, and equitable allocation and use of water, or for articulating the environmental costs of inefficient use. Many states often do not allocate sufficient public funds for the operations and maintenance of

²⁰ FCI buys paddy from farmers only in Punjab, Haryana and Andhra Pradesh. In the last few years, some states, such as Chhattisgarh and UP have started buying paddy directly from the farmers, providing to them the much needed price support.

canals. This leads to the rapid deterioration of irrigation canals and reduces the availability of water to farmers. Limited cost recovery also limits funds for operations and maintenance and undercuts farmer incentives to use water more efficiently, leading to waterlogging and salinity problems in some areas. Some states have adopted participatory irrigation management on a wide scale to improve the management and sustainability of surface irrigation systems. These need to be replicated on a large scale.

Free power to farmers by some states or highly subsidised power encourages the excessive use of ground water. This has led to an increase in the over-exploited areas in the country and large fiscal costs to state governments. This must be checked.

The bans or restrictions on land leasing limit the access to land by poor and landless rural households and drive tenancy underground. They also limit the productivity of land use. However, reverse tenancy from the poor to the rich should not be legalised.

Regulated markets were supposed to improve efficiency, but many official market committees such as in UP, Punjab, and Haryana make it illegal for farmers to sell through alternative channels (i.e. selling directly to millers). The markets have thus emerged as taxing mechanisms, rather than facilitating farmers to get the best price. This needs to be changed and farmers be allowed to develop direct contact with large (and even corporate) buyers, with a complete ban on exports.

The present extraction rates for both wheat and rice are about 10 to 30 percent below the international standards due to reservation of agro-processing units for small sector which uses inefficient technologies. Therefore, remove licensing controls on Roller Flour Mills and other food processing industry. De-reserve food processing units, especially rapeseed and groundnut processing units, from the SSI list. On the whole, laws and controls have repressed private foodgrain marketing, undercutting its potential contribution to long-term food security.

Finally, pay more attention to rainfed areas, especially eastern plains, where land is fertile and groundwater is still unexploited. These regions need better infrastructure of markets, roads and power.

Agriculture – poverty linkage - How is poverty reduction correlated with agricultural production? Early pessimism with green revolution (Griffin 1974) was soon replaced by an agrarian optimism that connected poverty reduction with agricultural growth. Ahluwalia (1978) observed an inverse relationship between poverty and agricultural performance for rural India as a whole. According to Lipton (1989) this was because the new Modern Varieties became smallholder-friendly, they yielded more even with low inputs, were more pest-proof, and, unlike hybrids, did not need annual replenishment of seeds. They also raise labour use per acre-year, thus benefiting the poor. Therefore one needs to stress the fundamental role of the agricultural sector in supporting rural livelihoods, generating employment and providing food security.

However there could be situations where agriculture could immiserise some people (Bardhan 1985), and therefore one must take precautions against the following developments:

- ▶▶ adoption of labour-displacing machinery
- ▶▶ eviction of small tenants by large landlords

- ▶ driving some small farmers, with limited access to resources and credit, out of cultivation and into crowding the agricultural labour market
- ▶ a similar crowding of the agricultural labour market by displaced village artisans, as the demand pattern of the new rural rich shifts away from local handicrafts and services to mass-produced urban consumer goods and services
- ▶ the use of pump sets, enabling richer farmers to appropriate communal groundwater, resulting in a possible drop in water tables and making the traditional shallow well technology even less effective than before for poorer farmers without pump sets
- ▶ the increased political bargaining power of the rural rich and surplus regions, resulting in higher administered prices of foodgrains (of which the rural poor are net buyers), while typically wages lag behind the price rises (and as monetisation of wage payments increases with agricultural progress).

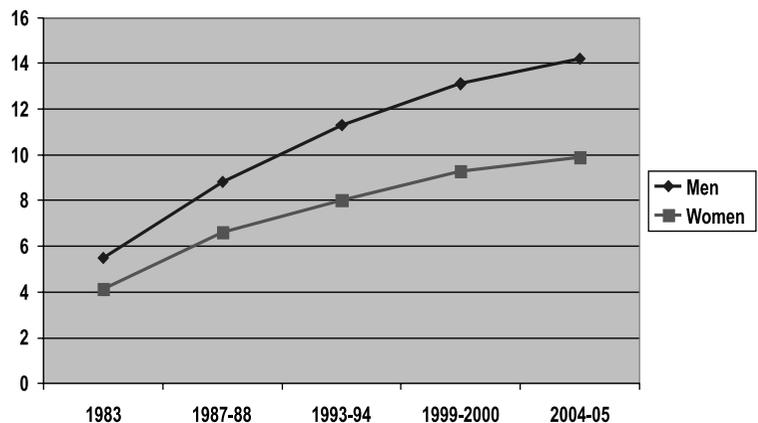
5.2 Agricultural labour and wage employment programmes

Household food security is contingent on many factors – the ability to grow enough for self-sufficiency among farming households, and/or having enough income to buy food. Access to food then depends on prices at which food can be bought or prices at which the cost of cultivation is covered to yield a decent return for others. Problems of small farmers have already been discussed above, here we touch upon the plight of the agricultural labourers.

With falling agricultural growth rates and increasing capital intensity, the growth rate of employment has lagged behind (Lanjouw and Mugai 2008). Unemployment among agricultural labour households has sharply increased from 9.5 percent in 1993-94 to 15.3 percent in 2004-05. There is a secular decline in employment elasticity in agriculture over time (Bhalla and Hazell 2003). What is of special significance is the predominance of women among rural workers and their larger numbers as subsidiary and casual workers.

As per the NSS data, the proportion of households without any access to land in the total rural households has increased from 25.1 percent in 1973-74 to 38.7 percent in 1993-94 to 40.9 percent in 1999-00 and further to 43.1 percent during 2004-05. Due to the increase in supply, the rate of growth of real wages of adult casual labourers has seen a declining trend, as shown below.

Figure 8: Average daily earnings of workers in Agricultural Operations (Rs) at 1986-87 prices



(Jha 2007)

At the same time, casual labour and self-employment in the non-farm sector reveals greater involvement by disadvantaged groups in 2004 than in the preceding rounds. The poor are thus *pushed* into low-return casual non-farm activities due to lack of opportunities in the agricultural sector rather than

being *pulled* by high returns offered by the non-farm sector. This has resulted in a decline in the wages of adult casual labourers in the urban sector during 1999-2000 to 2004-05 by 0.51 percent annually for men and by 0.74 percent for women (Sundaram 2007).

As it may take time for agriculture to create more jobs at higher wages for the poor, government needs to step in with wage employment programmes in districts where wages are depressed. However, allocations under wage employment schemes have been grossly inadequate. The legal guarantee of 100 days wages under the National Rural Employment Guarantee Act (NREGA), according to CAG, has been fulfilled in only 3 percent of the cases. West Bengal's poor implementation of this project left at least Rs 650 crore unspent (Anandabazar Patrika, February 3, 2008; Statesman, February 11, 2008). A great number of people are not given job cards, those who have jobs are given (on an average) 12-14 days work. In backward villages, a government survey shows that only 38 percent of people got work under the NREGA.

According to a recent press note by the Ministry of Programme Implementation and Statistics on 'Employment and Unemployment Situation in India: 2005-06', among the persons of age 15 years and above in the rural area, only 5 percent got public works, 7 percent sought but did not get public works. In addition to increased outlays, the scheme should have a food component, now that GOI has a comfortable stock of foodgrains.

The National Rural Employment Guarantee Act (NREGA), which in principle gives every person who is willing to work, the statutory right to 100 days of guaranteed wage labour at minimum wages per family, is legally open to all the destitute people. But in practice, a study (Mander 2008) found that it remains barred to most. Old people report that they are discouraged to apply for work, with remarks such as that "you are too old and will fall sick because of the heavy work involved". Instead of identifying less physically demanding work like standing guard at the sites, taking care of children, filling stones and soil in baskets, and planting and irrigating saplings, they are given the most back-breaking work, and are therefore themselves eventually compelled to opt out of the work. Many older widows are turned away openly: 'When I go to ask for work, they say that this is your age to relax, but if I do not work, how will I live?' Others are again intentionally given work that they cannot manage, so they leave "voluntarily". We suggest as follows:

1. Ensure that single women, aged and disabled people in practice enjoy at least equal legal claim to employment in NREGA works as households 'led' by able-bodied men, and that their work guarantee should be extended through an amendment in the Act to 150 days.
2. NREGA guidelines and handbooks in each state should carefully identify specific tasks in public works which can be undertaken by disabled adults and aged people; and they should be encouraged to undertake such tasks when people of these categories apply for work.
3. Provide separate NREGA job cards for all 'single' women, regardless of whether they live alone, with dependents, or in their natal or husband's home. Likewise for aged, infirm and disabled people who may or may not live with 'able-bodied' caregivers.

As already discussed, there has been no real increase in per capita food expenditure for the poor, particularly after 1987-88. In fact, the food share has fallen at all levels of per-capita expenditure, including the poverty line. Both Dharm Narain (1979) and Saith (1981) have found a very strong positive association between rural poverty and the consumer price index for agricultural labourers,

therefore the poor must get not only more employment opportunities at higher wages but also cheap subsidised foodgrains²¹, as discussed below.

5.3 Public Distribution System (PDS)

With a network of more than 0.4 million Fair Price Shops (FPS) claiming to distribute annually commodities worth more than Rs 150 billion to about 160 million families, the PDS in India is perhaps the largest distribution network of its type in the world. These shops distribute a total of 35 kg of wheat and rice to about 65 million BPL families at Rs 4.2 per kg for wheat and Rs 5.6 for rice (present market rate is about double the PDS price). Another 25 million poorest families (referred to as AAY families) get 35 kg of foodgrains at a highly subsidised rate of Rs 2/ per kg. for wheat and Rs 3/ per kg for rice. In addition there are welfare schemes such as hot cooked mid-day meals (MDM) for school going children, and supplementary nutrition (SNP) for pre-school children.

The overall lifting under PDS and welfare schemes has shown considerable improvement in the last five years, at least on paper. The percentage offtake of BPL/AAY foodgrains as percentage of allocation has gradually improved since 2001-02 from 59 percent to 78 percent in 2007-08.

Table 19: Production, Procurement & Offtake of Foodgrains (in mT)

	1997	2001	2002	2003	2004	2005	2006	2007
	-98	-02	-03	-04	-05	-06	-07	-08
Food Subsidy in billion Rs	79	176	240	270	290	235	242	313
Production of foodgrains	192.3	212.9	174.8	213.2	198.4	208.6	217.3	230.7
Procurement of foodgrains	23.6	42.6	40.3	34.5	41.4	42.2	34.3	37.4
Distribution through FPS	17.0	13.8	20.1	24.2	29.7	31.4	31.6	33.5
Disposal through welfare schemes	2.1	8.9	11.4	13.5	10.6	9.7	5.1	3.9
Open market sale	0.06	5.6	5.66	9.66	0.25	1.1	.01	.02
Subsidised exports	0	4.7	12.5	10.3	1.0			

(based on several issues of Monthly Food bulletin, Ministry of Food & Consumer Protection)

However, not all states lift their entire quota, Bihar and Orissa being the worst defaulters, lifting less than half their allotment. In 2006-07, they lifted only 22 percent and 58 percent of the allotted food grains for the BPL category. It is significant that the allocation of poorer states such as UP, Bihar and Assam got more than doubled since 1997, yet due to poor off-take by the states and even poorer delivery by the FPS to BPL families, the scheme has not made any impact on the nutrition levels in these states.

²¹ Some marginal and small farmers may also be 'net purchasers' of cereals because either they do not produce enough to meet their needs, or they are forced to sell cereals soon after harvesting to meet other expenditures and buy back cereals for own consumption during lean season.

There are significant inclusion and exclusion errors in possession of BPL ration cards, as shown below:

Table 20: Possession of ration cards by type, and socio-economic status, 2004/05

	percent of HH that possess ration card	percent of HH that possess BPL card	percent of HH that possess APL card	percent of HH that possess AAY card
Poorest	77.3	44.2	28.2	4.9
Q2	81.6	40.5	38.4	2.7
Q3	83.3	40.0	41.6	1.8
Q4	84.9	30.5	52.7	1.7
Richest	87.5	16.8	70.1	0.6
Rural	84.8	38.7	43.2	2.9
Urban	78.8	20.8	57.0	1.0

Source: World Bank 2007

The Table clearly shows that almost half of the poor are left out from the appropriate category of ration cards.

All is not well with the Public Distribution System in India. The Planning Commission (2008) has concluded that ‘PDS seems to have failed in serving the second objective of making foodgrains available to the poor. If it had, the consumption levels of cereals should not have fallen on average—as it has consistently over the last two decades.’

The problems associated with PDS are being summarised below.

1. Large errors of exclusion of BPL families and inclusion of above poverty line (APL) families
2. Prevalence of ghost BPL/AAY cards in the custody of FPS dealer
3. Diversion of subsidised grains to unintended beneficiaries
4. Section of the APL households not lifting their ration quota and thus a part of the entitlement of these households leaking out of the PDS supply chain.
5. The present procedure for selection of BPL beneficiaries is opaque, bureaucratic, and does not involve gram sabhas (council of all voters in the village). The basis on which village wise cap on the maximum number of entitled beneficiaries is fixed, is not clear and not well defined.
6. Some states, such as Bihar, Jharkhand and UP are not being released the APL quota on the ground that they did not lift it in the past when the market price was low. This policy favours the southern states which have been subsidising the APL quota out of state funds, and punishes the poorer states
7. Selection procedure of FPS dealers is not transparent, and often based on patronage or bribes
8. Inadequate storage capacity with FCI in some districts
9. Poor financial condition of many State Food Corporations who are supposed to reach grain from the FCI depot to the FPS
10. Allocations from GOI are valid only for a month, and if the state government is not able to lift within that time, its quota lapses.
11. The poor do not have cash to buy 35 kg at a time, and often they are not permitted to buy in instalments.

12. Low quality of foodgrains
13. Weak monitoring, lack of transparency and inadequate accountability of officials implementing the scheme
14. Price charged exceeds the official price
15. The shop does not open for more than 2-3 days in a month, and the card holders are not allowed to lift their quota of previous months, or in instalments during a month.
16. Ration cards are mortgaged to ration shop owners
17. No grievance redressal mechanism
18. A large number of homeless and poor living in unauthorised colonies in urban areas have been denied ration cards, and are thus not able to avail of PDS, despite being Indian citizens.
19. Seasonal and temporary migrants face problems in receiving their entitlements during the period they are out from the village.

5.3.1 Policy and procedural reforms

The following policy and procedural reforms may help in improving both the offtake of PDS rations and availability for the poor:

Improving procedure for selection of BPL – This must be changed in favour of a more transparent and participative procedure. The number of BPL cards should be fixed for each district, based on the percentage of SC, ST population and the inverse of agricultural production.

Separate cards for single women - Single adult women who live with or without dependents, as well as old people, who live with relatives by blood or marriage under the same roof, should be treated for purpose of all food schemes as separate families. Specifically this means that single adult women and old people will be eligible for separate ration cards, even if they live under the same roof and share the same kitchen. This will assure them greater dignity and autonomy. The same would of course apply to bonded workers who may stay with their employers.

Fixation of APL quota – The norm for release of APL quota should be transparent and realistic, and should be based on population and poverty. Some states, such as Bihar, Jharkhand and UP are not being released the APL quota on the ground that they did not lift it in the past when the market price was low. This policy favours the southern states which have been subsidising the APL quota out of state funds, and punishes the poorer states.

Abolish APL quota – One of the main reasons for the black marketing of the APL quota is the fact that GOI does not release full quota as per the number of APL cards, which gives a handle to the dealer to refuse supplies on the ground that the limited quota has already been lifted. A better option is to increase the number of BPL cards from 7.8 to 12 crores, and abolish the APL category. Including AAY, this policy would cover almost 70 to 75 percent of the population. If the entitlement is reduced to 25 kg per card, the total requirement of foodgrains would be $14.5 * 12 * 25 = 43.5$ mT, which is the present level of annual procurement, and hence feasible. Small amounts can always be imported, whereas there should be complete ban on exports, except basmati rice. In its place, private traders should be allowed to import broken rice to stabilise market price of rice.

Elimination of Ghost Ration Cards – All card holders must be photographed, and their details along with their photographs should be in the public domain. This will make it easy for the civil society or consumers to check the list.

There should be only one annual order from the district indicating quota of each dealer, so that the dealer does not have to wait every month for the district to issue allotment order. The district office should also issue just one order in the beginning of the year in which quota of all the dealers can be mentioned.

Making it obligatory for dealers to sell non-cereal items: Dealers should be asked to improve their viability by selling items of mass consumption other than wheat and rice, as in Gujarat.

Selecting FPS dealer: In many states the selection needs approval by the Minister or a committee of MLAs and thus the process is highly subjective and opaque. FPS should be allotted to people who are already running a viable shop in the area. This will ensure that the shop remains open on all working days.

Reduce control of inspectors over shops: Whereas government should set up and strengthen transparent arrangements for social audit, it may be desirable to remove some of the irritants, such as no distribution can take place unless the arrival of the stock has been verified by the Inspector. The Inspectors should on the other hand meet the consumers regularly and collect Report Cards from them as regards the degree of consumer satisfaction.

Take photographs of the stock in the shop: Supply Inspectors should be supplied with cheap digital cameras so that they can show the stocks at the FPS along with that day's newspaper and consumers, and send it to their superiors with a copy to the dealer. This would show that the grain had actually reached the shop, which often does not happen in the rural areas.

Oversight by citizens – There should be quarterly meeting of the dealer with all consumers which should be attended by senior staff.

Develop grievance redressal mechanism – State Governments should provide a free toll number, where complaints can be registered online. The entire operation should be outsourced and web-enabled, so that anyone could see how many complaints have come from each shop, and how many have been satisfactorily disposed off.

Launch a drive to cover the poorest – A large number of homeless and poor living in unauthorised colonies in urban areas have been denied ration cards. A drive should be launched in collaboration with civil society to cover them in a timebound manner with ration cards, preferably AAY cards.

Provide cash subsidy – The economic price of foodgrains in FCI godowns (which is the cost to government after adding storage and transport) is between 9 to 11 Rs per kg. It is distributed to the consumers at Rs 2 to 6=50 per kg. Thus the Government spends about 2 to 8 Rs per kg on PDS. Since the entitlement is 35 kg per month, there is a subsidy of Rs 70 to 300 Rs per family per month. In certain urban areas government should try to give the subsidy amount as cash to the consumers and ask them to buy grain in the open market. The female head of the family should be asked to open a bank account and the amount should be centrally transferred from the bank to her without involving any intermediary or bureaucracy. The results of the pilot experiment should be carefully analysed before extending it.

Use e-governance - Banking and Information technologies have advanced rapidly and should enable governments to bring transparency and speed in all applications without extra expenditure. In addition,

computerisation can help in modernising the PDS. A number of states are already innovating in PDS implementation, and improved performance can be seen in some cases. Although the introduction of modern tools such as smart cards may not be a panacea for all the evils, it can solve many of the problems particularly that of pilferage and spurious beneficiaries. They are like low hanging fruits which can be picked up easily.

5.4 Fighting children's malnutrition

In 1993 the country evolved National Nutrition Goals for the year 2000. These included reduction by one-half of severe and moderate malnutrition among young children; reducing below 10 percent the incidence of low birth weight; eliminating blindness due to vitamin A deficiency; reducing to 25 percent iron deficiency anaemia in pregnant women; reducing iodine deficiency disorders to 10 percent; producing 250 million tonnes of foodgrains; and improving household food security through poverty alleviation programmes. However these goals were not well disseminated, with the result that failure to achieve them did not attract criticism whether in legislatures or in the press.

While there have been some real success stories (Tamil Nadu), in most cases there is sufficient evidence to show that for fighting child malnutrition the GOI's main early child development intervention, the Integrated Child Development Services (ICDS) programme, has not succeeded in making a significant dent in reducing child malnutrition. Tamil Nadu, for example, spends Rs 732 on every malnourished child annually, and West Bengal only Rs 36, which together with Rajasthan and Madhya Pradesh account for half the malnourished children in 12 major states.

ICDS, the main outlet for public spending on child nutrition, has been in existence since 1975. It operates through centers in villages, called *anganwadi*, where local workers are to provide nutrition and health services. While the government provides salaries for the *anganwadi* staff, state governments are responsible for procuring food for supplemental nutrition feeding (SNP). However, since 2005, as a result of Supreme Court direction, GOI meets half the cost of SNP.

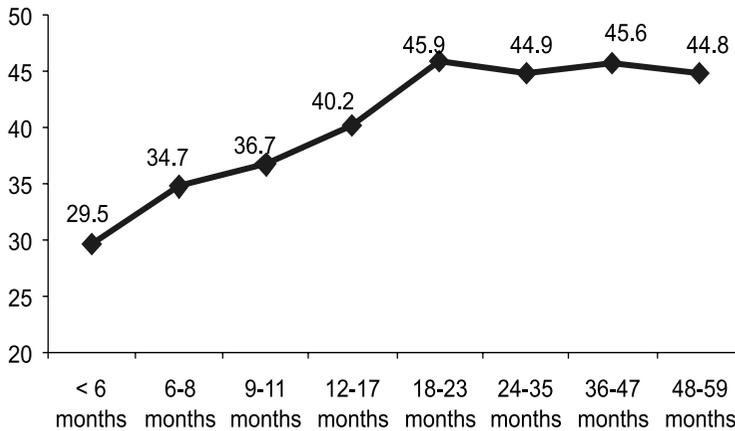
Despite a three-fold increase in its budget by GOI in the last five years and the contention of the Ministry of Women and Child Development that there are 1.5 ICDS Centres per village now, according to the 61st round of the National Sample Survey done in 2005, ICDS is reaching only 12.5 percent children in the age group 6 months to 6 years. As the Centre is likely to be located in the richer part of the village, it may be out of reach for the vulnerable children of poorer households and lower castes and those living in remote areas. The programme targets children mostly after the age of three when malnutrition has already set in. It does not focus on the critical age group of children under three years, the age window during which health and nutrition interventions can have the most effect. Finally, ICDS faces substantial operational challenges, such as lack of monitoring.

The focus of ICDS should be health and nutrition education, encouraging women to breastfeed exclusively for six months and after that add semi-solid family food four to six times a day in appropriate quantities for the infant, which alone can improve his/her nutrition levels. We need to convert the ICDS into a true health, nutrition and development programme and not limit it to a food dole programme. For nutrition to improve, we have to strengthen proper breastfeeding and complementary feeding, together with complete immunisation and prompt management of any illness.

We propose the following measures to improve its implementation.

Shift focus to under two years: There should be increased spending on infant and young child nutrition during the first 24 months when malnutrition is frequent and disturbs the very foundation of life and development. The percentage of underweight children (moderate and severe) in 2005-06 by age is shown in Figure 8, clearly showing that malnutrition starts setting in quite fast in the age group 6 to 12 months, and that adequate precautions need to be taken at that age, otherwise malnutrition tends to become irreversible.

Figure 9: Percentage of underweight children by age



As already stated (Table 14), only 46 percent of babies under the age of six months are exclusively breastfed. Each Centre should be given a target to increase this percentage to 90-100 percent, and this should be monitored by independent sources.

Severe malnutrition: Rehabilitation facilities (e.g. Nutrition Rehabilitation Centres) should be available at the PHC level in each district for children suffering from Grade 3 or 4 malnutrition, and their mothers. ICDS workers should be responsible for identifying such children and referring them to rehabilitation facilities.

Minimum infrastructure: Each Centre should have the minimum infrastructure and equipment required for effective delivery of ICDS services. A checklist of minimum facilities (including weighing scales, storage arrangements, drinking water, cooking utensils, medicine kits, child-friendly toilets, a kitchen shed, toys, etc.) should be drawn up.

Cooked food: For children aged 3-6 years, the supplementary nutrition programme (SNP) should consist of two hot cooked meals (breakfast and lunch) prepared at the Anganwadi, based on local foods and with some variation in the menu on different days of the week. ICDS should learn from the success of mid-day meals programme that runs fairly well even in states not known for efficiency, whereas the supply of packaged food in the ICDS programme even in efficient states is not popular with the children, besides leading to grand corruption in procurement of packaged food.

Take-home rations: For children below the age of three years, nutritious and carefully designed locally prepared take-home rations (THR) based on locally procured food should be the recommended option, but there could be centre specific variations. The budget for weaning foods should be suitably enhanced.

Nutrition counselling: Supplementary nutrition should always be combined with extensive nutrition counselling, nutrition and health education, and home-based interventions (such as boiling water before drinking) for both growth and development, particularly for children under three.

Local involvement: The scheme will succeed only when the panchayats and other community groups have sufficient involvement and control over the programme, including selection of workers. In some states, the ICDS worker is appointed by a committee headed by the local MLA. This must change, and powers be given to the gram sabha (the council of all village adults).

Grading AWCs: GOI should introduce accreditation of AWCs based on well defined and transparent criteria through a consultative process by involving panchayats, mothers' committees, and community groups. Some experiments have been done on Himachal Pradesh and Orissa which recognise good performance and reward them.

Adolescent girls: The programme components need to be expanded and sharply defined. First and foremost is the universal screening and weighing of adolescent girls. After screening, there is a need for gradation among adolescent girls such as 10-15 group, 16-19 group and pregnant girls among these groups. Then they should be weighed regularly, and given appropriate nutritious food containing all the desired micro-nutrients and iron. Similar initiative is needed for all women.

Special category of children: Children of migrant workers should be admitted and permitted to avail of all facilities and services in ICDS, regardless of their place of origin, with no paper work required by their parents/guardians. Data should be disaggregated at the ICDS level for enrolment and actual coverage, to reflect the numbers and proportion of disabled children; and children from vulnerable local SC /ST minority communities; and poor coverage should be penalised.

Expansion of the programme: State governments should be directed to ensure full coverage of urban slums within two years. In urban areas, ICDS should develop prefabricated structures, to enable it to function in unauthorised slum settlements, or construction and brick kiln sites.

In rural areas, care should be taken to locate ICDS centres on priority within one year in all settlements of PTGs and most discriminated SC settlements, without any ceiling of minimum children; and all other hamlets with more than 50 percent SC/ ST/minority population within a maximum of 2 years. In all these centres, ICDS staff should be local from the discriminated communities, and two hot meals served instead of one to children of 3 to 6 years; and double weaning foods given to children below 3 years.

ICDS centres should extend their nutrition and health services which at present cater to expectant and lactating mothers, also to all categories of single women, recognising them to be intensely nutritionally vulnerable.

Learn from International experience: Thailand has been one of the most outstanding success stories of reducing child malnutrition in the period 1980-1988 during which child malnutrition (underweight) rate was effectively reduced from 50 percent to 25 percent. This was achieved through a mix of interventions including intensive growth monitoring and nutrition education, strong supplementary feeding provision, high rates of coverage ensured by having high human resource intensity, Iron and Vitamin supplementation and salt Iodisation along with primary health care. The

programme used community volunteers on a huge scale (one per 20 children), and involved local people, so as to instil self-reliance and communicate effectively with target groups. Communities were involved in needs assessment, planning, programme implementation, beneficiary selection, and seeking local financial contributions but central government control was kept over resource allocation, so as to ensure a coherent national program.

This has significance for nutrition programmes in India as the levels of per capita GDP, proportion of women in agricultural workforce and child malnutrition rates around 1980 in Thailand were similar to what we have in India in 2008.

It is absolutely crucial that the multidimensional nature of malnutrition be recognised and reflected in ICDS implementation: food intake is only one determinant of child nutritional status. It is however necessary, as it attracts children to other components of the programme. Therefore in addition to supplementary feeding, state resources should also be redirected towards effecting improvements in the delivery of other ICDS services. Supplementary feeding should be expanded and used strategically, i.e., as an incentive for poor and malnourished children and their mothers, so that they receive health and nutrition education interventions.

5.5 Mid Day Meal Scheme (MDM)

The Mid Day Meal Scheme (MDM) provides a free cooked meal to every child in classes I-V of government, government aided and local body schools. This is a primarily a centrally assisted scheme with the state governments contributing partially towards the cooking costs.

Under the Mid Day Meal Scheme that was launched by the Central Government in 1995, the Government of India provided only free foodgrains while the cooking costs were entirely borne by the state governments. It was seen however that, many State Governments/ UT Administrations resorted to distribution of food grains, rather than providing cooked mid day meals because they were unable to provide adequate funding for meeting the cooking costs. Under orders from the Supreme Court (see section 6) the scheme was revised in September 2004 to provide cooked mid day meal with 300 calories and 8–12 grams of protein to all children studying in classes I – V in Government and aided schools. Some states have extended the scheme to cover children in the upper primary schools.

The scheme is generally considered to be a great success, though there are problems. In 2005–2006, only 76.8 percent of the grain allocated for the mid-day meal scheme was actually lifted by the state governments. Since the allocations are based on estimates of enrolments and attendance, this means that either not all institutions/children were covered under the mid-day meal scheme or that the quality of the mid-day meal was compromised in the sense that not enough quantity of food was given to the children or that mid-day meal was not provided on all working days.

A clear order was passed by the Supreme Court on April 20th, 2004 stating that preference must be given to SCs and STs in the appointment of cooks and helpers. However, only about half of the appointments are from that category.

CAG²² has recently audited the scheme and found that many states resort to over-reporting of the enrolment while projecting the requirement of funds. There is no system of cross checking the data

²² Performance Audit on National Programme for Nutritional Support to Primary Education (Mid-day Meal Scheme), Report no. PA 13 of 2008, available at cag.gov.in

of enrolment furnished by the state Governments. In most states the children were not administered micro nutrient supplements and de-worming medicines. The provisions for programme evaluation and regular monitoring and inspections in the scheme design were not effectively followed nor were the results analysed for review of errors and introduction of changes on the basis of lessons learnt. The Ministry failed to put in place an effective system to ensure that teachers are not assigned the responsibilities that would interfere with teaching activities. Many instances of the teachers spending considerable teaching time in supervising the cooking and serving of meals were noticed, resulting in loss of teaching hours.

The CAG recommended that the Ministry needs to establish a system to ascertain the improvement in nutritional levels of the children. The Ministry should coordinate with the state governments and ensure maintenance of health cards in all the schools to monitor the health status of the children.

The Supreme Court Commissioners have made the following recommendations in their Seventh Report²³ submitted in 2008.

- ▶▶ Currently the mid-day meal is provided only to children who are attending schools, whereas the most vulnerable children in the school going age are out of schools working as child labour, street children etc. The mid-day meal should be expanded to cover all children in the school-going age, irrespective of whether they are enrolled in school. The location of the meal served can continue to be the school, this might further encourage those out of school to join schools.
- ▶▶ The provision for cooking costs under the mid-day meal should be increased to Rs. 3/- per child per day (not including foodgrains costs) from the current Rs. 2/- per child per day in order to be able to provide a nutritious and filling meal to the child. Further this norm should be inflation-linked, in the sense that it is constantly reviewed based on the price indices.
- ▶▶ Mid-day meals should be linked with nutrition education and related educational activities. State governments should be encouraged to adapt their textbooks for this purpose, as the NCERT has already done for some textbooks. Nutritious items such as eggs and green leafy vegetables should be provided regularly.
- ▶▶ Proper infrastructure for mid-day meals should be mandatory, including cooking sheds, storage space, drinking water, ventilation, utensils, etc.
- ▶▶ Serious action should be taken in the event of any form of social discrimination in mid-day meals, such as discrimination against Dalit children or Dalit cooks.
- ▶▶ Priority should be given to disadvantaged communities (especially Dalits and Adivasis) in the appointment of cooks and helpers. All cooks and helpers should be paid no less than the statutory minimum wage.
- ▶▶ Community participation in the monitoring of mid-day meals should be strengthened, particularly to prevent corruption and ensure quality.
- ▶▶ Mid-day meals should be integrated with school health services, including immunisation, deworming, growth monitoring, health checkups and micronutrient supplementation.

Orders of the Court are awaited.

5.6 Tribals and hunger

As pointed out in various sections of this paper, tribal groups are the worst sufferers from malnutrition and hunger. They live in agriculturally depressed areas, remote from roads, and the reach of administration and government programmes is weakest there.

²³ <http://www.sccommissioners.org/>

A civil society onesisation (CEFS 2005) covered a sample of 1000 randomly selected tribal households from 40 sample villages in Rajasthan and Jharkhand and found that 25.2 percent of surveyed tribal households reported not having two-square meal in the previous week of the survey. Of the surveyed tribal households 24.1 percent did not have two square meal in the previous month of the survey and around 99 percent of the tribal households were not able to manage two square meal at some point of time (at varied level) during the previous year.

From the viewpoint of policy, it is important to understand that tribal communities are vulnerable not only because they are poor, assetless and illiterate compared to the general population; often their distinct vulnerability arises from their inability to negotiate and cope with the consequences of their forced integration with the mainstream economy, society, cultural and political system, from which they were historically protected as the result of their relative isolation. Post-independence, the requirements of planned development brought with them the spectre of dams, mines, industries and roads on tribal lands. With these came the concomitant processes of displacement, both literal and metaphorical – as tribal institutions and practices were forced into uneasy existence with or gave way to market or formal State institutions (most significantly, in the legal sphere), tribal peoples found themselves at a profound disadvantage with respect to the influx of better-equipped outsiders into tribal areas. The repercussions for the already fragile socio-economic livelihood base of the tribals were devastating – ranging from loss of livelihoods, and land alienation on a vast scale, to hereditary bondage (Saxena and Farrington 2003).

As tribal people in India perilously, sometimes hopelessly, grapple with these tragic consequences, a small clutch of official programmes has done little to assist the precipitous onesisation, exploitation and disintegration of tribal communities. Tribal people respond occasionally with anger and assertion, but often also in anomie and despair, because the following persistent problems have by and large remained unattended to:

- ▶▶ Land alienation
- ▶▶ Indebtedness
- ▶▶ Relation with forests, and government monopoly over Non-Timber Forest Products (NTFPs)
- ▶▶ Ineffective implementation of Panchayats (Extension to the Scheduled Areas) Act of 1996 for Schedule²⁴ V areas
- ▶▶ Involuntary displacement due to development projects and lack of proper rehabilitation
- ▶▶ Shifting Cultivation

In at least one-third of tribal blocks in central India extremists groups are active and normal administration does not function.

Apart from policy failures listed above, tribals have also suffered because of the poor quality of governance. Programme delivery has deteriorated everywhere in India, but more so in tribal areas, where government servants are reluctant to work, and are mostly absent from their official duties. Government seems to have surrendered to political pressures from the staff, as many of their posts have now been officially transferred from tribal regions to non-tribal regions, where they can draw their salaries without doing any work! It is a pity that massive vacancies exist in tribal regions in the face of acute educated unemployment in the country.

²⁴ Regions with significant tribal population in Central India have been specifically mentioned in the fifth Schedule of the Constitution, and have been provided with some safeguards, which however have not worked well because of political and administrative apathy.

Subsistence agriculture, gathering of non-timber forest produce and wage labour are the main sources of livelihood among tribal people. They are concentrated in the least developed, rain-fed, undulating and often in remote hilly regions of the country, largely untouched by 'green revolution'. Thus, while landlessness is relatively low among tribal people compared to other poor communities, agriculture productivity is low and other farm-based avenues, such as dairy and horticulture are also poorly developed, leading to widespread food insecurity.

Rather than discuss these issues, howsoever crucial they may be, for lack of space, we will end this section by giving a few suggestions for improving their livelihoods.

First, launch watershed development programmes in uplands, where most tribals live. In a successful watershed programme the poor benefit in three ways. First, as net sown area and cropping intensity increases more opportunities for wage employment are created, which may also increase the wage rate besides the number of days of employment. Second, increased water availability and reduced soil erosion increases production on small and marginal farmers' lands. And last, higher productivity of CPRs improves access of the tribals to more fodder, fuelwood, water and NTFPs.

Two, start a drive to plant fruit trees on degraded forests and homestead lands that belong to or have been allotted to the tribals. This will not only make the poor people's diet more nutritious, but will also diversify their livelihoods and reduce seasonal vulnerability.

Three, their work guarantee should be extended through an amendment in the NREGA to 150 days.

And lastly, promote civil society action in these districts, not only because the reach of administration is limited, but also because tribal societies are more homogeneous and respond well to the calls for collective action, which will improve their social capital so necessary for the success of many government programmes.

6 Supreme Court intervention

In April 2001, the Peoples' Union for Civil Liberties (PUCL), a human rights organisation, filed a Public Interest Litigation (PIL) in the Supreme court of India arguing that the right to food is a fundamental right of all Indian citizens, and demanded that the country's gigantic food stocks (about 50 million ones of grain at that time) should be used without delay to prevent hunger and starvation. It argued that the right to food should be seen as a corollary of the fundamental "right to life" (Article 21 of the Indian Constitution), in so far as it is impossible to live without food. Supreme Court hearings have been held at regular intervals since, and the case has attracted wide national and international attention. Although the final judgment is still awaited, significant "interim orders" have been passed from time to time.

For instance, the Supreme Court has passed orders directing the Indian government to:

- (1) introduce hot cooked mid-day meals in all primary schools,
- (2) provide 35 kgs of grain per month at highly subsidised prices to 15 million destitute households under the Antyodaya (AAY) component of the PDS,
- (3) double the resource allocations for Sampoorna Grameen Rozgar Yojana (India's largest rural employment programme at that time, now superseded by the Employment Guarantee Act),
- (4) universalise the Integrated Child Development Services (ICDS) by increasing the number of centres from 0.6 million to 1.4 million, and
- (5) identify SC and ST hamlets/habitations for new ICDS centres on a priority basis.

Realising the gravity of impact that lapses in implementation has on the well-being and even the survival of poor people, the Supreme Court in an interim order dated 28 November 2001, converted the benefits of nine food-related schemes into “legal entitlements” and directed all the State governments to fully implement these schemes.

The initial petition focused on the drought situation prevailing at that time, especially in Rajasthan, but the litigation now has a much broader scope. The main concern is to put in place permanent arrangements to prevent hunger and starvation. The Court itself noted in an interim order dated 2 May 2003, “reference can also be made to Article 4725 which inter alia provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties”.

The Supreme Court appointed two Commissioners, Dr. N.C. Saxena and Harsh Mander (also a former IAS officer), for the purpose of monitoring the implementation of the interim orders. The Commissioners present periodic reports to the Supreme Court. These typically deal with the implementation of Supreme Court orders. In addition these reports attempt to highlight issues that need further directions from the Court. These are based on extensive correspondence with governments, reports from the Commissioners’ Advisors, interaction with citizens’ organisations, and field visits made by the Commissioners. So far, eight reports and a few interim reports have been submitted. They are a rich source of information on the food situation in India, the implementation of interim orders, the functioning of various schemes, and so on. The reports also include detailed recommendations to the Court.

Experience shows that Court’s orders have been a useful tool for action. First and foremost, this is an opportunity to hold the state accountable. Court orders can also be used to help people to understand that they are entitled to certain forms of public support as a matter of right. And lastly, governments on their own have started giving higher priority to the monitored schemes and have often improved the design in order to increase the coverage of the schemes. For instance, the number of old age pensioners has been doubled and the scale of pension has increased from Rs 75 per month to Rs 20026 per month. Several improvements have been made in the contents of MDM, and in 2006, the calorie content has been increased from 300 calories to 450 calories and the protein content from 8-12 grams to 12 grams.

On the other side, the interim orders are far from being fully implemented, primarily because of poor delivery structure and weak implementation capacity. For instance, the Court directed that the AAY cards should be given to the following²⁷:

- (1) Aged, infirm, disabled, destitute men and women, pregnant and lactating destitute women;
- (2) widows and other single women with no regular support;
- (3) old persons (aged 60 or above) with no regular support and no assured means of subsistence;
- (4) households with a disabled adult and no assured means of subsistence;
- (5) households where due to old age, lack of physical or mental fitness, social customs, need to care for a disabled, or other reasons, no adult member is available to engage in gainful employment outside the house; and
- (6) primitive tribes.

However, in actual practice the commissioners have found gross violation of these orders, and there are serious errors of omission and inclusion, as shown in Table 20. Lapses have been reported to the Court, and twice the Court summoned and pulled up the States’ Chief Secretaries. On the whole, the

case has certainly enhanced the profile of the hunger related schemes, and administrators at all levels give a much higher priority to these schemes than ever before.

Whereas there is remarkable improvement since the case commenced, the highly uneven performance of the majority of state governments confirms that the achievement of assured food security of all people, especially vulnerable social groups, cannot be left to executive discretion alone. It must become a judicial legal entitlement binding on every government, union, state and local, if the enormous human suffering, indignity, economic and social cost and enduring injustice associated with entirely preventable food denials and malnutrition is to be overcome, and hunger banished from every home in the country.

7 Improving accountability

The State in India implements massive food, livelihood and social security programmes – some of the largest in the world – which theoretically support vulnerable people from even before their birth to their survivors after death. Expectant mothers are fed in ICDS centres, along with infants, children up to the age of six, and adolescent girls. The child in school gets school meals. As adults, women receive maternity support, bread earners are guaranteed 100 days of wage employment in public works; and if identified to be poor, they can buy subsidised cereals from a massive network of half a million ration shops. The aged – and in many states widows and disabled people – are given pensions. And if an earning adult dies prematurely, the survivor is entitled to insurance.

These programmes are plagued by corruption, leakages, errors in selection, delays, poor allocations and little accountability. They also tend to discriminate against and exclude those who most need them, by social barriers of gender, age, caste, ethnicity, faith and disability; and State hostility to urban poor migrants, street and slum residents, and unorganised workers. Therefore, not only we need to identify the destitutes and run special programmes for them, but improve monitoring and accountability for all programmes that impinge on hunger.

7.1 Destitutes

Government programmes are also woefully inadequate to address destitution; in fact they tend to be blind to or in denial of the fact that large numbers of people lack even the elementary means and power to survive with dignity. Government needs to act, not after there is an emergency like a drought or flood, not even *after* people die of starvation, but pro-actively before people slip into destitution, and fail to access in an assured and reliable manner, with dignity, the nutritious and culturally appropriate food they require to lead healthy lives.

Identification – One feature which is common to public policy relating to the dispossessed groups²⁸ is the fact that for almost all, there is very little authentic official data, about their numbers and lists. This is not a chance or random default. It is the outcome of what we describe as ‘invisibilisation’ of these powerless people by the state. We therefore recommend an effort at least once every two years to not just estimate these groups, but to conduct a full listing. This should be undertaken in each district of the country, led by the state government and district collectors, but with active participation of local bodies such as gram sabhas and municipalities, professionals, experts, civil society groups and representatives of these populations. These lists should be updated every two years, and should form the basis for them to receive the due entitlements.

Free food – All old people from the neighbourhood should be permitted to share in the school mid-day meal of hot cooked meal in schools or ICDS centres without any conditions, as practiced in the

state of Tamil Nadu. This serves as a last defence against starvation of the aged destitute, without requiring any additional administrative costs.

Establish community kitchens across cities and urban settlements to provide inexpensive, subsidised nutritious cooked meals near urban homeless and migrant labour settlements, with committed source of external funds (preferably government funded or in partnership with civil society: both citizens and private sector), which are managed by community groups of homeless people, preferably women, and will provide employment as cooks to homeless people themselves (at least 50 such kitchens per city with population more than one million; and 100 with populations more than one million, and 500 in those more than ten million).

Residential Care for food security of most vulnerable children – For children of rural seasonal migrants, the village school should be converted into a community based temporary residential school, to enable the child to access food and education, without having to migrate every year with their guardians. The aged of the village, who are often left behind in destitute conditions, may take care of the children in return for sharing the food in the community based hostels. This model has been adopted by Orissa government for Bolangir district, and is widely recognised internationally as a best practice, applauded among others by Dr Amartya Sen.

For children who still migrate, it should be the duty of the education department of the host state to provide education in local language at work sites, and permit the child to access mid-day meals at the nearest government school. This is again a best practice adopted by the governments of Andhra Pradesh for migrant families from Orissa.

For children who live and work on the streets, the only way to secure their right to food (and with this their rights to education, health and protection), is to provide them alternatives to move decisively away from the streets and any kind of work. This is possible only through guarantees of comprehensive long term care in open voluntary residential homes. Every city would need a large network of such schools. This could be done by converging the Sarva Shiksha Abhiyan (a programme to bring every child to schools) and the Women and Child Department's night shelter programmes, as well as Labour Department programmes for child workers, to pool resources to create hostels for urban street and working children, and greatly enhancing allocations. This best practice has been adopted by the governments of Andhra Pradesh and Delhi. The aim should be in the first phase of three years to start at least 100 such centres in all metropolises; and 50 in all other urban areas of population more than 5 lakhs.

7.2 Problems of delivery and implementation

Outlays should not be considered as an end in itself. Delivery of food based schemes requires increasing financial resources, but more importantly the quality of public expenditures in these areas. This in turn requires improving the governance, productivity and accountability of government machinery. We give below some suggestions.

Shift from input controls to monitoring of outcomes – Officials at all levels spend a great deal of time in collecting and submitting information, but these are not used for taking corrective and remedial action or for analysis, but only for forwarding it to a higher level, or for answering Parliament/Assembly Questions. Often data on performance reaches late, or is not available district-wise, or is 'doctored', with the result that accountability cannot be enforced. For instance, we do not have

district-wise figures on IMR, MMR, malnutrition, or poverty. Had this data been available every year and for each district, it would have been easier to fix responsibility and help in outcome monitoring.

It is not enough that the central government departments and the state governments use professional and academic organisations to undertake impact studies from time to time. Their findings must be publicised and discussed with key stakeholders so that improvements in design and delivery can be effected at the earliest. Governments should also put on its website findings of the impact studies, and distribute these in the workshops it organises. Dissemination of results is critical for use.

Assess quality – There are unfortunately no indicators for assessing the quality of programme outcomes. GOI and civil society may like to fill this void and produce reports that assess the quality of outcomes. For instance, one would like to know how many newly constructed toilets are being used, and what impact has it had on peoples’ health and hygiene.

Measure absenteeism – While satisfaction may be subjective, and with economic progress people’s aspirations for high quality services may have increased, quantitative data on absenteeism of both service providers and service receivers (number of days the ration shops open, or women turning up for institutional deliveries) throws a great deal of light on the quality of service. For instance, a study of Rajasthan indicated that 45 percent of doctors were absent from PHCs, and 56 percent of the time sub-centres were closed. Worse, the patterns of absences and facility closures were essentially unpredictable, so people could not plan their visits.

Social audit – Governments should introduce social audit by assessing the experience of the people service providers are intended to serve. With community participation, the evidence should be collected from stakeholders, so as to promote accountability, equity, effectiveness, and value for money. Such an audit will supplement conventional audit and will often provide leads to it. Financial audit aims at making organisations accountable to the government and to the legislature. Social audit makes them accountable to their stakeholders especially in relation to the social objectives.

Promote public private partnership – The role of private sector in social sector is not sufficiently recognised in India. For instance, most health care is now given in the private sector and, for the poor, by very poorly or untrained practitioners. Rather than trying to replace private services, the Government should try to improve the private market, with the carrot of training and the stick of public information. Public funds should be increased to combating communicable diseases and providing health insurance cover to all.

Link performance with fiscal transfers – Very little of GOI’s annual transfers to the states (roughly Rs 3,000 billion, not including subsidies, such as on food, kerosene, and fertilisers) is linked with performance and good delivery. The concept of good governance needs to be translated into a quantifiable annual index on the basis of certain agreed indicators such as infant mortality rate, extent of immunisation, feeding programmes for children, availability of safe drinking water supply, malnutrition, rural and urban unemployment, percentage of girls married below 18 years, percentage of villages not connected by all weather roads, and so on. Once these figures are publicised states may get into a competitive mode towards improving their score. Central transfers should be linked to such an index.

Summing up

In the ultimate analysis, the constraints to reduction in hunger are rooted in bad policies, faulty design, lack of appropriate M & E, poor governance and lack of political will. Action is needed on all the fronts. Economic growth alone is insufficient to bring about significant reductions in the prevalence of malnourishment among children, or increase in food intake of the poor. Without a major shake up in policy and an improvement in the effectiveness of its implementation, the attainment of the MDGs by India in this regard looks extremely unlikely.

Development is an outcome of efficient institutions rather than the other way around. Focus therefore must be shifted from maximising the quantity of development funding to maximising of development outcomes and effectiveness of public service delivery. Concerted policy action is needed to improve the hunger indicators of the marginalised groups, women and children, and of the 300 million poor increasingly concentrated in the poorer states. This requires additional resources, as well as better policies and sound delivery mechanisms. Unless ration shops open and distribute food, doctors attend health centres and provide health care, and incentives for them to do so are not perverse, mere increase in the social sector expenditure would only result in further leakages and swelling of the already non-functional parasitic bureaucracy.

8 Abbreviations

AAV	Antyodaya Anna Yojana
APL	Above Poverty Line
AWCs	Anganwadi Centres
BMI	Body Mass Index
BPL	Below Poverty Line
CAG	Comptroller and Auditor General of India
CED	chronic energy deficiency
Dalits	Oppressed, refers to the ex-untouchables
FAO	Food and Agricultural Organisation of the United Nations
FCI	Food Corporation of India
GDP	Gross Domestic Product
GHI	Global Hunger Index
GOI	Government of India
ICDS	Integrated Child Development Services
IFPRI	International Food Policy Research Institute
IMR	Infant Mortality Rate
LBW	low birth weight
MDG	Millennium Development Goals
MDM	Mid-Day Meal Scheme
MPCE	monthly per capita expenditure
MSP	minimum support price
MT	metric tons
NABARD	National Bank for Agriculture and Rural Development
NFHS	National Family Health Surveys of India
NGO	non-governmental organisation
NNMB	National Nutrition Monitoring Bureau
NREGS	National Rural Employment Guarantee Scheme
NRHM	National Rural Health Mission
NSS	National Sample Surveys of India

OBC	other backward castes
PDS	Public Distribution System
PPP	purchasing power parity
PTGs	primitive tribal groups
RCH	reproductive and child health
REC	Rural Electrification Corporation
RIDF	Rural Infrastructure Development Fund
SC	scheduled castes
SSI	Small-scale Industries
ST	scheduled tribes
UNDP	United Nations Development Programme
WCD	Women and Child Development (Department of)

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LIST OF PRINCIPAL ACRONYMS

AAJ	Antyodaya Anna Yojana
APL	Above Poverty Line
BPL	Below Poverty Line
EAS	Employment Assurance Scheme
FCI	Food Corporation of India
ICDS	Integrated Child Development Scheme
IMF	International Monetary Fund
JPEGY	Jay Prakash Narayan Employment Guarantee Yojana
JSY	Janani Suraksha Yojana
MDMS	Mid-Day Meal Scheme
MHUs	Mobile Health Units
NFBS	National Family Benefit Scheme
NHRC	National Human Rights Commission
NMBS	National Maternity Benefit Scheme
NOAPS	National Old Age Pension Scheme
NSAP	National Social Assistance Programme
PDS	Public Distribution System
RLTAP	Revised Long Term Action Plan
RWSS	Rural Water Supply and Sanitation
SEMS	Self-Employed Mechanic Scheme
SC/ST	Scheduled Caste/Scheduled Tribe
SGRY	Sampoorna Gramin Rozgar Yojana
TPDS	Targeted Public Distribution Scheme
UOI	Union of India

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As the first few orders came in the right to food case, there was a noticeable revival in the right to food campaign, almost as if it had received a shot in the arm. The groups that had put in enormous work over decades immediately became involved in the legal proceedings. Women's organisations, tribal groups, NGOs of all types, child rights organisations, health rights NGOs, economists, nutritionists, academics, lawyers and journalists got involved. It was magnificent to see the spread and depth of the movement. These organisations and individuals became the backbone of the case. They collected information, conducted surveys, did public hearings and submitted data and information, which was in turn, handed over to the Court. They guided the petitioner and the advocates as to the issues to be taken up and the demands to be made. They decided strategy and tactics. They monitored the court orders and immediately reported instances of non-compliance. They wrote articles in the newspapers and they held numerous meetings where governments came in for trenchant criticism. It is this campaign that is responsible for the success of the case.