

Securing State Accountability for Right to Food

**Manual for State Advisors
To the Commissioners of the Supreme Court**

by
**Commissioners' Secretariat
Right to Food**

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Food security, food rights and food sovereignty: Brief Overview

In the discourse in academic, public policies and activist circle around hunger, under-nutrition and public policy, three distinct but inter-related terms – food security, food rights and food sovereignty – tend to be used often inter-changeably and sometimes loosely. We will here dwell briefly on these three concepts and some theoretical debates around them.

Food Security

The most widely used term is ‘food security’, but its definition has both evolved over the years, and varied at any point of time; a decade ago, some 200 different definitions of the term were identified in the literature¹. Tracking the path of changes in the official definition of food security in international forums like the UN and FAO is instructive, because it reflects evolution over the decades of consensual official perceptions internationally about the causes of global hunger, and the nature of state responsibility.

The notion of food security first arose in international forums in the mid 1970s; in the background of devastating famine and widespread hunger in many countries. In the world food summit of 1974, the focus was on the supply side of food production and food shortages, both its quality and stability. Accordingly, in this summit, food security was defined as the ‘availability at all times of adequate world food supplies of basic foodstuffs to sustain a steady expansion of food consumption and to offset fluctuations in production and prices’².

In the decade that followed, the persistence of famines and hunger despite dramatic expansions of agricultural production globally through green revolution technologies, led to a gradual sensitisation to demand side barriers to food security, and the awareness that hunger would not end only through the technical expansion of food production but by ensuring actual assured access of vulnerable groups to this food. The 1983, FAO definition of food security laid stress on ‘ensuring that all people at all times have both physical and economic access to the basic food that they need’. In other words, people would be free of hunger if food was available locally and they had the means to purchase it. The shift of focus to access reflects also the influence of Amartya Sen, and his analysis of famine and approach to entitlements. This paves the way to the concept of food rights, to which we will look at in next section.

In 1986, the World Bank’s report ‘Poverty and Hunger’ made a further important distinction between two types of household food insecurity- chronic and transitory. Chronic food security is a persistently inadequate diet caused by the continual inability of households to acquire needed food, either through market purchases or through production, primarily due to poverty. Transitory food security, on the other hand, is a temporary decline in a household’s access to needed food, due to seasonal factors such as instability in food prices, production, or incomes. Reflecting these new nuance of official understanding of food problems and broader understanding of the

¹ See FAO website

² *ibid*

food needs, the definition became the ‘access of all people at all times to *enough food* for an *active, healthy life*’.

Over the decade of the 1990s, yet more nuanced considerations entered public policy, of food safety, nutritional balance and respective people’s cultural preferences for certain type of food. Apart from physical and economic access, debates over ‘*social*’ access acknowledged that people may be barred from access to food even if it is locally available and they have the economic means due to social barriers including gender, caste, race, disability or stigmatised ailments. While discussing access, the spotlight also shifted to household, each individual and barriers of access resulting from intra-family inequities such as of gender. Concerns from some quarters were evident over intra-family inequities over age or disability and neglected individuals who are deprived of families (for instance, street children, homeless women, and old people or people with stigmatised ailments like mental illness, leprosy or HIV AIDS, who many have been cast away by their families).

Further, food adequacy was looked at as nutritional adequacy. Apart from availability and access, utilisation/ absorption (the biological capacity to absorb and utilise nutrients in the food that they eat) became an important factor explaining malnutrition. For instance, a major cause of malnutrition in children in India has been identified to be repeated infections, often caused by unsanitary environment, which in turn makes them more vulnerable to further infections, in a debilitating and potentially fatal downward spiral. Food security was seen as a necessary but not sufficient condition for a healthy life, which requires also prevention of disease, sanitation, health-care and a range of factors associated with mental and emotional well being.

Most these concerns as reflected in the most evolved international official definition so far at the time of writing that we could locate in the literature of food security 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).

Food Sovereignty

With the influence of rights based approach to food security the concept of food security was carried much further through the concept of food sovereignty, an idea that has gained increasing currency since the mid 1990s, influenced in part by green politics. The concept sees ‘*access to productive resources*’ as necessary condition for ‘*access to food*’ and ‘*access to productive resources*’ becomes a focal point of discussion and debate.

The most widely used definition of food Sovereignty is the one developed by ‘The People’s Food Sovereignty Network (2002)’:

Food Sovereignty is the right of peoples to define their own food and agriculture; to protect and regulate domestic agricultural production and trade in order to achieve sustainable development objectives; to determine the extent to which they want to be self reliant; to restrict the dumping of products

*in their markets; and to provide local fisheries- based communities the priority in managing the use of and the rights to aquatic resources. Food Sovereignty does not negate trade, but rather it promotes the formulation of trade policies and practices that serve the rights of peoples to food and to safe, healthy and ecologically sustainable production.*³

The concept of food sovereignty seeks to challenge the recent mainstream development paradigm built on liberalised international agricultural trade, trade-based food security, and industrial agriculture and food production by well-resourced producers. It seeks to promote rural development and food and agricultural policies that respect and support the interests and needs of smallholder farmers, pastoralists and fisherfolk and the environment.

Its premise is that people facing hunger and malnutrition are, to a large extent, precisely these groups of smallholders, landless workers, pastoralists or fisherfolk, often situated in marginal and vulnerable ecological environments, who cannot compete with increasingly subsidized industrialized agriculture. For many of them market liberalization has resulted in damaging and often unfair competition with farmers or commercial entities that have ‘acquired’ comparative advantages through decades of direct and indirect subsidies. The situation often results in smallholders being forced off their land and moving to even more marginal areas or migrating to the shantytowns around cities. It is still developing the full blue print of its alternative paradigm, but most discussion on food sovereignty includes the following features:

1. priority of local agricultural production to feed people locally;
2. access of smallholder farmers, pastoralists, fisherfolk and landless people to land, water, seeds and livestock breeds and credit. Hence the need for land reform; for the fight against GMOs and patents on seeds, livestock breeds and genes; for free access to seeds and livestock breeds by smallholder farmers and pastoralists and for safeguarding water as a public good to be distributed equitably and sustainably used; and for secure access to fishing grounds by artisan fisherfolk;
3. the right to food;
4. the right of smallholder farmers to produce food and a recognition of Farmers Rights;
5. the right of consumers to decide what they consume, and how and by whom it is produced;
6. the right of countries to protect themselves from under-priced agricultural and food imports;
7. the need for agricultural prices to be linked to production costs and to stop all forms of dumping. Countries or unions of states are entitled to impose taxes on excessively cheap imports, if they commit themselves to using sustainable production methods and if they control production in their internal markets to avoid structural surpluses (supply management);
8. the populations’ participation in agricultural policy decision-making;
9. the recognition of the rights of women farmers who play a major role in agricultural production in general and in food production in particular;

³ Windfuhr, Michael and Jennie Jonsén, (2005): Towards democracy in localized food systems, FIAN-International

agroecology as a way not only to produce food but also to achieve sustainable livelihoods, living landscapes and environmental integrity.

Right to food

Despite (a) better and progressively more insightful understanding of food security problems and their nuances reflected in evolving definitions of food security; (b) alternative concepts like food sovereignty; (c) greater consensus about the central role of the state as the most important duty-bearer in ensuring food security of *all* its citizens at *all* times; still hunger and malnutrition is not effectively countered in the world. The major limitation has been the absence of the binding legal obligation of the state to eradicate hunger.

Public policy documents and statements in many countries were fast enough in adopting internationally accepted definition and approaches and thereby seeming to respond to the rights and needs of food insecure people. However the battle against hunger involves more than adopting new definitions and strategies.

For instance, the Tenth Five-Year Plan in India adopts a paradigm shift from the objective of *'household food security and freedom from hunger'* to *'nutrition security for the family and individuals'* and in conformity also shifts to *'screening of all persons from vulnerable groups for identification of those with various grades of under-nutrition and targeting the schemes'*. However the only practical outcome of the new approach was the targeting of the schemes where the real vulnerable people were mostly left out. The planned focus on *'individuals'* never resulted in any entitlements for *'individuals'* with real vulnerability such as aged people, single women, migrant labours, urban poor including homeless and street children, who as before are left-out completely.

Similarly the stated focus on *'families and individuals'* and *'nutrition security'* in the 10th plan rather than on *'food security'* gives a false impression that (a) hunger; and (b) food shortages are no longer significant policy issues. This is despite frequently reported hunger and malnutrition deaths in media and the manifest lack of basic mechanisms to assess and verify hunger deaths and to hold government accountable, which is never acknowledged as an issue by the government. Further, reliance on the strategy of identification of individuals through surveillance and their *'management'* through institutional mechanisms or targeted programmes is also seen as an attempt to transform the issue of food security to a clinical problem, ignoring the structural reasons. Moreover this strategy is worryingly accompanied by failing infrastructure of the public distribution system, health and welfare services and planned dismantling of FCI. Adding to the these problems, the larger objective of ensuring availability of adequate food grains which remained a priority for many decades, is being relaxed due to the understanding that cereal need of Indian population is relatively declining, apparently due to higher income due to growth. This is despite the debate powerfully challenging this understanding which forms basis for a larger parallel debate over poverty ratio in India⁴.

⁴ Qadeer, Imrana and Anju P Priyadarshi(2005): *'Nutrition Policy: Shifts and Logical Fallacies'* Economic and Political Weekly, January 29, 2005, pp- 358-364.

The advantage of the 'right to food' perspective is to pull out the battle against hunger away from mere token changes in terminologies and official definitions, and to bring to it instead an element of urgency and demands for radical changes in public policy for securing individual's right to be free from hunger.

To begin with, 'right to food' starts with an understanding that the

- a) Starting point and focus of right to food is the individual and the next higher unit is the 'household'
- b) Individuals are seen themselves as capable of providing for their own food needs, given that they have an enabling environment to exercise their agency with freedom.
- c) To enable these, the state has to 'respect, protect and fulfil' the right to food entitlements of individuals. It should enable individuals and households to exercise their right to food, usually by protecting in conjunction their other socio-economic rights, such as the rights to work, education and health, and their control and access to natural resources.

In practice, however, far from 'fulfilling' the right to food of individuals and households, the state often actively militates against their access to these rights, such as when it orders state induced and promoted displacement, thereby depriving people from what they had from ages – secure livelihood and food. Then every time it fails to check 'land alienation' and livelihood failures due to liberalised domestic and international trade, fails to implement land reforms, or by promoting mechanisation of agriculture and labour displacing technologies, by illegalising and criminalising migration to cities and self help efforts of migrants to secure their own shelters and livelihoods, and in a myriad other ways, it fails in its duty to protect 'right to food' of the individual.

Therefore the rights approach clearly sees the food schemes and what have been aptly described by Imrana Qadeer (2005) as 'clinically managed' targeted programmes as a last resort to hunger and malnutrition. Food schemes cannot be sanctified as a cure for the problems of food and livelihood insecurities and deprivations arising from the state's own policies. Ideally, the debate over food security should not be used to obscure these core issues. In other words, the 'right to food' should not reduce people to passive recipients of state benevolence, but instead transform them to active agents who pursue and enjoy legal human rights in a dignified way under the just and equitable environment which the state is bound to create. In other words, it not only focuses on 'whether people receive food or not' but also on 'how people access this food in a dignified way'.

A rights-based approach attempts to achieve this by enabling people to hold their governments accountable for their right to food and work. Despite some obligation towards accountability often it may be difficult for individuals or groups to hold the government accountable for violation of their right to food. This is more because the causality may not always be obvious or it will be complex. The factors affected right to food may be a new economic policy; denial of land, forest and water rights; corruption by panchayat; caste and gender; decline in overall production; inflation or displacement. Again there are different levels of government, from the national to the regional and local levels which play different but interlinked roles in ensuring food security.

While acknowledging that ensuring the right to food entails citizens holding the state accountable for these larger failures that cause food and work denials, the importance of the state to also provide affordable and appropriate food to all those who are vulnerable should not be underrated. If children are malnourished or old people die of hunger, the state must intercede to prevent this, and it must be held strongly accountable for this. The only point that is being made is that this direct accountability for securing food to all, entails also a wider accountability of the state to ensure that its economic and social policies do not produce or reproduce conditions that will aggravate further food and work insecurities and denials, but instead actively promote these rights.

Right to Food: internationally

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. In this section, we will touch briefly on international and national charters and laws relevant to the right to food, whereas the context of India will be elaborated in the next section.

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)⁵

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...’.

This right was further reaffirmed and developed in numerous meetings and declarations of the international community, including the International Convention on Economic, Social and Cultural Rights – where art. 11.2 recognizes ‘the fundamental right of each individual to be free from hunger and malnutrition’, while art.11.1 likewise recognizes ‘the right to an adequate level of life ...regarding food, clothing and lodging...’ – and the Declaration on the Rights of the Child (art.24 and art. 27) recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. Article 27 (3) of the Convention states that, ‘States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing’.

⁵ UDHR (1948), ‘Universal Declaration of Human Rights’, <http://www.unhchr.ch/udhr/index.htm>

By ratifying these legal instruments, States recognize the obligation to respect, protect and fulfil (meaning to facilitate and - as a matter of last recourse – provide for) the progressive realisation of the rights contained therein, including the right to adequate food. The right to adequate food is realised ‘when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement’, as defined in General Comment 12, an authoritative legal interpretation of this right⁶.

Both at international and national level, the most vexed issue has remained that of the justiciability of socio-economics human rights like the right to food. The issue is whether unlike civil and political rights, sometimes called ‘hard rights’ because they are spelled out in the law or there are in place strong and effective mechanisms to assure their realisation, the right to food often remain a ‘soft right’ in the laws that are not spelled out in the law or there is no cast-iron mechanisms to assure that they are secured.

However, international institutions and law have not risen to the challenges of making socio- economic rights like rights to food justifiable, so they frequently remain simply expressions of pious intent.

Several national Governments have performed much better, bravely writing the fundamental rights to food into their national constitutions, and in a few cases further operating these in their laws. It should be noted that yet the rights to food is recognized by national constitutions even in the US, UK, several European and surprisingly even in communist nations.

The most notable example is of South Africa, where the right to food is enshrined in the Constitution and the statutory South African Human Rights Commission (SARHC) is mandated to monitor the implementation of this right. The ruling of the Constitutional Court in the case *Government of the Republic of South Africa v. Irene Grootboom and others*, has endorsed the principle – and established the important precedent – of the monitoring, on the basis of a criterion of reasonableness, of the gradual and progressive implementation (as established by the Constitution) of the right to food by the government. Likewise, in Switzerland in 1996, the Federal Court recognized the right to the minimum conditions of subsistence – food, clothing, lodging – of all individuals, even of those who are in irregular situations, without citizenship or visitors’ permits. The right to be guaranteed by the State the minimum conditions of subsistence ‘to avoid begging’ was successively reaffirmed in 1998 by the same Court and it became, to all effects, an unwritten constitutional principle, to the point of being inserted in the new Swiss Constitution of 1999⁷.

‘Rights to food’ in Indian constitution and law

⁶ General Comment 12 was issued by the UN Committee on Economic, Social and Cultural Rights, the treaty body of the International Covenant on Economic, Social and Cultural Rights (ICESCR), in response to a recommendation by the 1966 World Food Summit to clarify the content of the right to food and ways of its implementation. It defines in detail the normative content of the right to adequate food, deals with State Party obligations and lays down the general criteria for implementing this right.

⁷ FAO (1998); “The Right to Food in Theory and Practice”, FAO, Rome, 1998. Available at <http://www.fao.org/Legal/rftf/bkl.htm>

The most explicit reference to the rights 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 Principle 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 intervention and interpretation have expanded the frontiers of this rights 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 recognized by implication as a fundamental right.

However, in practice, 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 strengthened the realization of this right.

The two most significant cases in this regard are Writ Petition (civil) No. 42/97 filed before the Supreme Court on 1996 by Indian Council of Legal Aid and Advice and others and Writ Petition (Civil) No. 196 filed before the Supreme Court on 2001, by the People’s Union for Civil Liberty, Rajasthan.

In the former case, reports of starvation deaths in KBK⁸ districts of Orissa were brought to the notice of the Supreme Court of India. Admitting the petitions, the Supreme Court directed the statutory National Human Rights Commission to monitor the situation of chronic hunger prevailing in the region. Its salutary contribution through its hearings and painstaking field visits over several years has been to acknowledge that destitution and chronic distress, rather than mortality alone, are proof of starvation; and that starvation constitutes a gross denial and violation of the fundamental right to be free from hunger.

Even more significantly in the latter PUCL case, the Supreme Court through a serious of interim order, has held both the union and state government accountable for

⁸ Kalahandi, Balangir and Koraput, now subdivided into several small districts

securing food especially for vulnerable population. On July 23, 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 mal-nourishment, 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 four 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.

Chapter 2

Role of Commissioners and Advisors in the Supreme Court Case on Right to Food⁹

Introduction

In India, large-scale famines are now part of history. However, the battle against hunger has not been won. One in every two children in India remains malnourished, and two in three women are anaemic. Many families in both villages and towns continue to struggle with hunger, which is for them a way of life.

These families are essentially from the unorganised sector, such as landless workers and artisans, socially oppressed groups like dalits and adivasis, single woman headed households, persons with disabilities and old people without care-givers, migrant workers and urban street children. In many homes, and on the streets, people continue to sleep hungry, and within most families, women are the last to eat, and if food is scarce, they are likely to eat the least.

Such a situation is intolerable, because children and women even in countries poorer than India have significantly better health and nutrition than in India. India has masses of food grains, more than it can store, and even exports subsidized food, which is mostly fed to cattle overseas, while millions of its own citizens remain chronically hungry. The problem is therefore no longer of absolute food shortage, but of distribution and poor governance.

We are today confronted with an unconscionable situation of rampant hunger and recurring droughts, on the one hand, and governments that fail to prevent hunger although they have the means to do, on the other. Therefore, in the year 2001, a group of activists under the banner of the People's Union for Civil Liberties, filed a case in the Supreme Court¹⁰, demanding that the right to food should be recognized as a legal right of every person in the country, whether woman or man, girl or boy. The basic argument is that the right to food is an implication of the fundamental "right to life" enshrined in Article 21 of the Indian Constitution.

Since the hearings of this case have proceeded in recent years, the Supreme Court of India has passed a series of significant, and at times even historic interim orders, that have touched the lives of millions of indigent Indians living with desperate poverty and hunger. The most significant orders up to the time of writing are very briefly summarized in chapter 2.

Role of Commissioners and Advisors

In its deliberations, apart from the pleadings of the petitioner and replies and reports of the Union of India and several state governments, the justices of the Supreme Court have relied significantly on a series of Reports submitted by the Commissioners appointed by the Supreme Court to assist it in its deliberations. The Commissioners to the Supreme Court in turn have drawn data and learnings from the reports from various advisors it has appointed in various states.

⁹ the case PUCL vs. UoI and others, Civil Writ Petition 196 of 2001 in the Supreme Court of India

¹⁰ *ibid.*

In their reports, the Commissioners have (a) attempted firstly to monitor the implementation of various interim orders passed by the Supreme Court in the course of the hearings in the case PUCL vs. UoI and others, Civil Writ Petition 196 of 2001 (b) They have further reviewed and analysed the performance of Central and State Governments in implementing various schemes and programmes related to the food security of the people of India, particularly vulnerable people. (c) They have investigated and reported on complaints and reports of local failures in food programmes, including of starvation deaths. (d) And finally, they have, from time to time, made recommendations to both governments and the Supreme Court of India for possible steps that they may consider to defend and promote the food security of the people of India, particularly vulnerable people.

In an interim order dated 8 May 2002, the Supreme Court appointed 'Commissioners' for the purpose of monitoring the implementation of the Court's orders. The Commissioners are empowered to enquire about any violations of these orders and to demand redressal, with the full authority of the Supreme Court. They are also expected to report to the Court from time to time, and may seek interventions Government of India beyond existing orders if required.

In turn, the role of the Commissioners' Advisors stems from the following order of the court:

"...The Commissioners shall be at liberty to take the assistance of individuals and reliable organizations in the State and Union Territories. All officials are directed to fully cooperate with such persons/organizations, to bring about effective monitoring and implementation of the order of this Court."

Qualifications of Advisors

The selection of the Advisors is at the discretion of the Commissioners. They have usually consulted with local right to food activists and others, to seek out interested people of credibility, independence and aptitude, who are willing to volunteer for this work. (The work of the Commissioners and Advisors is entirely voluntary, but requires a minimum of a week's engagement every month). The Advisor should have deep interest and knowledge of issues of food security, including livelihoods of poor people and social security, research, analysis and reporting skills, and the capacity for field visits to rural and slum areas, as well as to interact with people living with food insecurity on the one hand and senior government officials on the other.

Duties of Advisors

The Advisors 'extend the reach' of the Commissioners and serve as a bridge between the Commissioners, the state governments, and various citizens' groups in their respective states. The main roles of the Advisors include sending regular updates and periodic reports to the Commissioners; conveying to them any appeal for intervention that may be made in the state; working towards a more effective monitoring and redressal system; conducting enquiries in response to complaints; organizing research; liaising with the State Governments on issues of monitoring and redressal.

The Advisors can work at three different levels; one is to liaise with the Commissioners at the Central level. Second, is working with the administration of the states and thirdly is working with organizations, societies or individuals who may come to them with complaints or whom they may wish to work with at the grassroots level. An illustrative guideline on what sort of role they may be able to play in the course of their duties at the various levels could be as follows:

a) In relation to the level of the Commissioners of the Supreme Court

- Analyse the status of implementation of Courts orders (based on state level official data as well as field level reports).
- Analyse status of implementation of schemes according to guidelines and instructions issued by the Centre (based on state/ district level official data as well as field level reports)
- Send reports of spot checks made by the advisor to villages/ blocks/ districts
- Send copies of all correspondence with the state administration
- Send action taken reports on those submitted by grassroots organizations

b) At the level of the state administration

- Policy advocacy for changes that need to be brought about to ensure that schemes work well in the state.
- To identify state specific issues that hamper proper implementation of schemes.
- Take up micro complaints received from grassroots organizations and those brought to the notice of the Advisors by other means.
- Ensure adequate redressal for complaints intimated to the state machinery on earlier occasions.
- Ensure adequate follow up on issues raised by the Commissioners
- Seek information relevant to the state.
- Ensure adequate relief at times of emergencies (natural calamities, starvation deaths etc.)
- Undertake joint enquiries/ social audits with representatives from the state administration.

c) At the field level

- Identify reputable organizations working at the grassroots who can continuously feed the advisors with ground level realities about the functioning of the schemes. The aim is to build a reputable network of partners in the state to assist the advisor.
- Organise workshops/regular meetings of the network to brief them and to plan a course of action and capacity building of these partners.
- Ensure dissemination of information about schemes and orders passed by the Court.
- Collection of field level reports from organizations mentioned above. These reports could be based on micro complaints or could be status reports in general
- Take adequate action on complaints received.
- Facilitate two way correspondence (including feedback on action taken) with organisations that have supplied the information.

- Receive and address reports of complaints already locally registered but which have not been addressed.
- Disseminate formats for receiving complaints.
- Participate in public hearings/ social audits.

Levels and modes of analysis of food schemes by Advisors

Since the most important duty of the Commissioners and Advisors is to monitor and analyse the performance of various governments in implementing the full range of food and social security schemes in the country, it is important for those who assist and advise them to understand the various modes and levels at which this analysis and monitoring can be most effectively undertaken. This is primarily what this manual seeks to undertake. It is in fact a summary of methods of analysis and monitoring of these schemes undertaken by the Commissioners and their supporters in their various reports. It is hoped that it will be useful not just to Advisors, but also to members of the campaign and indeed any informed citizen who is concerned about state performance and accountability for preventing hunger and malnutrition.

A. Ensuring compliance with orders of Supreme Court:

The most important and direct duty of the Commissioners and Advisors is to ensure that the various orders of the Supreme Court are being implemented in letter and spirit by the central and state governments. This would involve firstly the issue of supporting directives and budgetary allocations by the concerned government departments. It may also involve issues of detailing, elaboration and interpretation. For instance, the Supreme Court directed universal coverage of all eligible infants, preschool children, expectant and nursing mothers and teenaged girls with supplementary feeding by ICDS. It became necessary to clarify that universal coverage meant not just that every block would be covered by an ICDS project, nor even that every village has a centre, but that every settlement is covered. It required details of whether a survey was undertaken of settlements, and what is the time frame for universal coverage. Further, the direction that first priority would be given to dalit hamlets requires monitoring that these directives are issued and compliance ensured by state governments (incidentally, until the time of writing, almost no State Government has ensured compliance with this order).

B. Analysis and triangulation of state and district level data of food and monetary allocations and utilisations:

C. A great deal of the actual performance and coverage of the Central and State Governments in food schemes can be assessed simply by a careful analysis and triangulation of state and district level data of food and monetary allocations and utilisations. For instance, school enrolment and retention figures can give an estimate of the number of children to be covered by mid-day meals. This, together with entitlements per day per child of food grains and conversion costs can yield the allocations required for genuine full potential coverage. Contrast this with actual allocations, and one gets the percentage of children left uncovered even at the stage of allocations. Moving on to utilisation figures, one can assess the percentage of children uncovered, even if it assumed that the scheme entails no leakages or waste in implementation. Each section of this manual devoted to specific schemes will give detailed illustrations of this analysis.

D. Study and analysis of field situations of implementation: The actual situation of the implementation of the food schemes can be assessed only through sample observation of the ground realities, but once again it is useful if this is rigorous, well documented, and not just anecdotal, vague or sweeping in its observations. This micro-level information can come from a wide variety of sources. The Advisor herself can make field visits, and inspect ration shops, ICDS centres and primary schools, interview BPL and Antyodaya or NOAPS beneficiaries, and so on. NGOs and movement groups may report situations after similar checks. There may be people's audits of these schemes, benefiting from right to information legislation, as has been demonstrated effectively in Delhi by Parivartan. There may be investigations by the Advisor or others authorised by her into micro-complaints. The source of the information is not important, as long as the data is authentic and relevant. Such cases impact a smaller number of people, often only a few individuals or a single village etc. Such cases could be ends in themselves, involving relief for a single family/village, or could be 'demonstrative' cases, where the case sets important precedents or helps establish a norm. Also, micro cases (in the geographical sense) might still impact or involve a large number of people in terms of absolute quantity, such as the West Bengal Tea Garden Workers issue. These mobilize and affect large populations and yet are concentrated in a specific space-time context.

E. Identifying and documenting best practices:

The Advisor is not required only to find fault. It is equally useful and important to identify and document identified 'best practices'. For instance, for many years destitute old people without caregivers are permitted to eat mid day meals with school children. It would be useful to document the administrative arrangements, budgetary implications and impacts of the scheme on the survival and nutrition of the destitute aged. Likewise, experiments of ICDS and MDM meals prepared through SHGs of women can be studied in depth. These can be recommended to other states for emulation.

F. Identifying policy gaps and proposing policy reforms:

Finally, Commissioners and Advisors should identify gaps and failures in food and social security schemes, especially those that impact on the nutrition, health and survival of very vulnerable social groups. This would include issues like starvation and chronic hunger, gender inequities, and socially excluded groups like women headed households, persons with disabilities, street children and urban homeless groups.

Chapter 3

Important Rulings of the Supreme Court

In the various hearings of the Supreme Court, in the case of PUCL v. Union of India (case number CWP 196/2001 in the Supreme Court of India), the highest court of the land has passed a number of important orders to advance the right to food. This chapter attempts a broad overview in non-technical language of some of the most important orders of the Supreme Court, at the time of writing, for each of the major schemes related to food security.

Integrated Child Development Services

- i. The ICDS is to provide access to basic health services including immunisation, health education, pre-school education, and supplementary nutrition services to ALL children up to the age of 6 years, adolescent girls, pregnant women and nursing mothers.
- ii. AWCs are to provide supplementary nutrition to children, adolescent girls, pregnant women and nursing mothers for 300 days in a year.
- iii. Not only every village, but *every* settlement in rural areas and urban slums must be covered with anganwadi centres.
- iv. Efforts must be made to ensure that all SC/ST habitations in the country have AWCs as early as possible. Similar efforts shall also be made to cover slums.
- v. The BPL status of a family is not a criterion for accessing the ICDS.
- vi. Local women's SHGs and Mahila Mandals will be encouraged to supply cooked supplementary food distributed in anganwadi centres. They can make purchases, prepare the food locally, and supervise the distribution of the food.
- vii. All State/UT Governments shall utilise the entire State and Central allocation under ICDS/PMGY and under no circumstances, shall the same be diverted and preferably also not returned to the Centre. If returned, a detailed explanation for non-utilisation is to be filed in the Supreme Court.
- viii. All State Governments/Union Territories are to 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

Mid-Day Meals

Every Government and Government-aided primary school and all schools run by a State Government, UT Administration, or with Government money by a Local Body or Non-Government organisation, in every part of the country must provide a nutritious, clean hot cooked meal to all primary school children.

- i. In all drought-affected areas, the mid day meal is to be provided to primary school children throughout the summer vacation.
- ii. This meal is to be provided free of cost to all school Government of Indian children. Money for the meal is not to be collected from parents of children under any circumstances.
- iii. The Central Government is also to allocate funds to meet the conversion costs of food-grains into cooked mid-day meals. Provisions are also to be made for

- the construction of kitchen sheds, better infrastructure and improved facilities including facilities for drinking water.
- iv. In appointment of cooks and helpers preference is to be given to dalits, scheduled castes and scheduled tribes.
 - v. Low offtake of grains shall be monitored by the Central Government
 - vi. FCI is to ensure the provision of fair average quality grain for the scheme on time. The States/UTs are to do joint inspections of food grains. If the food grain is found, on joint inspection, not to be of fair average quality, it is to be replaced by the FCI prior to lifting.

Entitlement for Families and individuals in risk of hunger: Antyodaya Anna Yojana

Against each Antyodaya card, beneficiary household or individuals are entitled to 35kg of subsidized rice or wheat per month from the designated local ration shop. The subsidized price charged is Rs. 2/ kg for wheat and Rs. 3/ kg for rice. Under no circumstance a FPS dealer should charge any additional charges above this price.

- i. Every family or individual in the following social group should be given an Antyodaya Card:
 - a) All so-called primitive Tribal Group families;
 - b) All woman-headed households; and
 - c) All families with persons with disabilities.
 - d) All 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;
- ii. The following persons are also entitled to the Antyodaya card:
 - a) Aged, infirm, disabled, destitute men and women, pregnant and lactating women, destitute women;
 - b) Widows and other single women with no regular support;
 - c) Old persons (aged 60 or above) with no regular support and no assured means of subsistence;
- iii. BPL is not a criterion for getting an Antyodaya card, and it is illegal for the above mentioned groups or individuals to be denied AAY cards just because they are wrongly not included in the BPL list of the village or wrongly denied BPL PDS card before. This means that if an individual not having BPL-PDS card applies for AAY card, then he cannot be denied AAY card just because he/she did not possess BPL-PDS card or did not have his/her name in the BPL list. This decision can be only taken after due investigation, ascertaining the economic and social status of the individual or household.

Entitlement for rural unemployed people: Sampoorna Gramin Rozgar Yojana—National Food for Work Scheme

Agricultural wage earners, non-agricultural unskilled wage earners, marginal farmers and, in particular, SC and ST persons and women should be given priority while giving wage employment.

- i. Neither labour displacement machines nor contractors can be legally utilised in these works.
- ii. Minimum wages should be paid on a weekly basis to the beneficiaries.
- iii. Every citizen has the right to access muster rolls, and other related documents from the implementing agency at cost which is not more than that of providing copies of the documents.
- iv. Gram Sabhas can undertake a people's audit of the work undertaken and report to implementing authorities. The implementing authorities should take action on complaints that emerge in the social audits.

Entitlement for families below poverty line:

Targeted Public Distribution System

- i. The scheme should be fully implemented as per guidelines, which says that
 - 35 kg of food grain should be given to BPL card holders at subsidized price
 - A fixed address is not necessary to get a ration card. Even homeless people are entitled to ration cards.
 - People have full rights to copies of the records of any rations shop, within 15 days period after giving a written request and payment of the prescribed fee, to ensure that there is no black marketing.
 - In the event of corruption in PDS, strong criminal action should be taken under the Essential Commodities Act.
 - Eligible People who are denied the BPL/AAY card can apply to a designated authority in the state. In case of denial of the card by the designated authority people can apply to an appellate authority in the district, within 30 days of the denial order from designated authority, who shall give the decision as far as practicable within 60 days. Till the appeal is pending, the Appellate Authority may direct that the order under appeal shall not take effect. This means that an aggrieved person may be issued a temporary BPL/AAY card.
 - In case the aggrieved person feels, he can lodge an FIR against the officials denying him a card.
- ii. The monthly ration should be provided to the beneficiary in instalments.
- iii. It is the legal duty of all Fair Price Shop owners, to a) keep their shops open during the stipulated period, (b) charge only the prescribed price, (c) give the BPL cards to the card holders, and not keep these in FPS itself, (d) not make false entries in the BPL cards, (e) not store or sell the grain in open market, and (f) not hand over such ration shops to other person/organizations. The license of all shop-owners who do not comply with these provisions should be cancelled.

National Old Age Pension Scheme or State Old Age Pension Scheme

- i. The National Old Age Pension Scheme is available to all persons aged 65 years or older. The pension scheme provides financial assistance to all destitute men or women who have little or no regular means of subsistence

- from his/her sources of income or through financial support from family members or other sources.
- ii. Under the NOAPS, the Central Government provides for Rs. 75 per pensioner per month and the state may contribute over and above this amount.
 - iii. The scheme should be implemented as per state guidelines and the old age pension beneficiaries should get the benefit regularly each month before 7th of the month.

Other entitlements of aged people: Annapurna Scheme
(above 60 or 65, now depends on the state)

- i. The Annapurna Scheme aims at providing food security to those senior citizens who have remained uncovered under the Old Age Pension Scheme provided by the Government. Under the Annapurna Scheme 10 Kg of food grains per month are to be provided free of cost to the beneficiary. The beneficiary should be destitute and have no regular means of income or family source of income and should be 65 years or older. The applicant cannot already be a beneficiary of pension under an Old Age Pension Scheme of the Government.

Entitlements for BPL Pregnant women:
National Maternity Scheme

- i. All BPL pregnant women should be paid Rs. 500/- under NMBS through the Sarpanch 8 – 12 weeks prior to delivery for each of the first two births. This implies that NMBS should not be linked to any other conditions such as availing ante-natal and postnatal services or any other services related to maternal and child health.

Entitlement when primary bread winner in BPL family dies:
National Family Benefit Scheme

- i. Provides for lump sum cash assistance to families below the poverty line on the death of the primary breadwinner (member of household whose earnings contribute substantially to household income) between the age group of 18 – 65 years.
- ii. The Scheme provides for Rs. 10,000/- to be paid in cash to the family in case of the breadwinner's death. This payment is made after inquiring the surviving head of the bereaved household.
- iii. The entire sum of Rs.10,000/- has to be paid within four weeks of the breadwinner's death through the local Sarpanch.

Complaints Redressal Mechanism if you are not getting your due

It is the right of every citizen of India to gain access to justice if their right to food has been violated. If any of the above orders have been violated in any way you may seek assistance by the following:

- i. A complaint may be made to the Chief Executive Officer of the Zilla Panchayat (CEO)/collector regarding the non-compliance and the officer will have to make a written complaint in a register and hand a receipt and try to solve the problem.
- ii. The CEO/Collectors of all Districts in States will oversee the action taken by Panchayats in their area.
- iii. CEO/Collector has to make sure these orders are complied with.
- iv. If the violation of these orders continues and is not resolved then the matter would be looked by the Advisors to Supreme Court Commissioners and the Commissioners to Supreme Court.

Starvation deaths

According to the SC, if a case of starvation death is established, the chief secretary of the state shall be held responsible. It is the duty of each State/UT to prevent death due to malnutrition and starvation.

Chapter 4

Integrated Child Development Services

Introduction

The ICDS is a complex scheme both for the range of diverse and difficult objectives that the scheme seeks to achieve and the complexity and scale of its implementation.

The scheme was started in 1975 with the following objectives:

- To improve the nutritional and health status of children below the age of six years
- To lay the foundation for the proper psychological, physical and social development of the child
- To reduce the incidence of mortality, morbidity, malnutrition and school dropouts.
- To achieve effective coordination of policy and implementation among various departments to promote child development
- To enhance the capability of the mother to look after the normal health, nutritional and developmental needs of the child through proper community education.

Although the most visible and best known of the services of the ICDS is supplementary nutrition, it provides in fact a range of other services, which are arguably even more vital, and should be monitored as well.

Government Guidelines and interim orders of the Supreme Court
Guidelines issued by the Government for the ICDS, unlike several other schemes are scattered and are found in a host of department orders, circulars and notifications related to Scheme implementation.

The Supreme Court orders related to ICDS implementation have been arranged as per subject and are available in chapter 2 of this manual.

Analysing ICDS

There is a vast list of matters that need to be analysed in order to critique the ICDS. Some of these have been debated in the currently on Government of India civil writ petition in the Supreme Court (CWP 196/2001) and are supported by interim orders of the court. There are other matters that have not been brought into the purview of court orders but are nonetheless crucially important, and need to be pursued in court for effective implementation of the scheme.

In the following pages the scheme is separated into the matters dealt with by the court and a further set of issues crucial to scheme implementation but not currently supported by interim orders. For this second set of issues, substantial advocacy work is required for the achievement of scheme objectives. These are dealt with in the section on identifying policy gaps and proposing policy reforms.

Ensuring compliance with the orders of the Supreme Court

The following are the interim orders of the Supreme Court broadly categorised as per subject¹¹

Orders on coverage of beneficiaries:

Coverage of beneficiaries and the number of days for which the scheme is to be implemented were dealt with in the 28.11.2001¹² and 29.04.2004¹³ orders of the Court. Compliance with the orders of the court will require:

1. That every child, adolescent girl and pregnant woman be covered under the ICDS
2. That every child, adolescent girl and pregnant woman should get a requisite number of calories and proteins under the ICDS
3. That every malnourished child be provided with a stipulated amount of calories and proteins to combat malnutrition.
4. That there be a disbursement centre in *every* 'settlement' and that the same must function
5. That the above benefits be made available for the requisite period of *300 days* a year in all AWCs

Due to the continued neglect of SC/ST communities and slum populations despite the above orders of the Court, the Court in addition passed explicit orders to tackle social exclusion in ICDS implementation and to reiterate that BPL must not be used as an eligibility criterion for the ICDS. As per orders passed by the Court on 7 October 2004¹⁴, compliance requires:

1. That SC/ST hamlets must have AWCs
2. That slums must be provided with AWCs
3. That all children, adolescent girls and pregnant women and lactating mothers are eligible to benefit from the ICDS irrespective of whether the beneficiaries' family holds a 'BPL' card or not.

Orders on operation of sanctioned ICDS Projects:

As per its order dated 29.04.2004, the Court specified that all sanctioned AWCs shall be made fully operational by 30.06.2004.

Order on provision of supplementary nutrition:

¹¹ Orders related to financial allocations for scheme implementation are detailed in the next section on 'Analysis and triangulation of state and district level data on financial allocations and utilisation'

¹² 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.'

¹³ 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'

¹⁴ 7.10.2004 interim orders of the court: 'Efforts shall be made that all SC/ST hamlets/habitations in the country have Anganwadi Centres as early as possible... All State/Union Territories shall make earnest effort to cover the slums under ICDS.'.. 'BPL shall not be used as an eligibility criteria for ICDS.'

A significant order was passed on 7.10.2004 on the banning of contractors for the supply of supplementary nutrition. The order reads as under:

‘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.’

As per the Sixth Report of the Commissioner and correspondence from the Commissioner to several State Governments¹⁵, three issues have been emphasised in terms of this order. These are:

1. That procurement of food for SNP must not be centralised at the State level under any circumstances.
2. That to the extent possible, the procurement of food must be done at the village level to ensure that locally eaten food is used for supplementary nutrition and to prevent delays in supply of food as well as to ensure local accountability in the provision of SNP.
3. That cooked food must be provided to children at anganwadi centres in the 2 – 6 year age group.

Compliance with court orders

Compliance with orders of the Supreme Court on ICDS is far from adequate. As of June 2005, only 25per cent of 0 – 6 year old children, 0.3per cent adolescent girls and about 21per cent of pregnant women and nursing mothers have been brought within the ambit of the scheme¹⁶. Even within this group regarded as beneficiaries, services extended are intermittently provided, with highly irregular supply of supplementary nutrition, little or no immunisation, pre school education of children or nutrition related counselling or education.

Several government orders that violate directions given by the Supreme Court continue to remain “valid”, where no efforts have been made to amend orders or statements that conflict with the orders of the Supreme Court. Guidelines for the ICDS for instance continue to state that the ICDS is to be targeted towards “families of landless agricultural labourers, marginal farmers, scheduled castes and scheduled tribe communities and other poor sections of the community”. As is reflected in affidavits of State/UT Governments filed in the Supreme Court, subsequent to 1997 when BPL lists were developed, these guidelines have been interpreted to mean that the ICDS is to be targeted towards BPL families alone, which is contrary to the 7 October 2004 order of the court, where the Court states that ‘BPL’ status shall not be used as an eligibility criteria for identification of beneficiaries under the ICDS. The interpretation of State/UT Governments has serious consequences on the access of potential beneficiaries to the scheme given that the BPL lists themselves are extremely flawed.

¹⁵ Detailed letters were written to Rajasthan and UP since these States in the past had a single State level contract for the supply of supplementary nutrition materials for the ICDS.

¹⁶ As per the June 30, 2005 status report of the ICDS issued by the Department of Women and Child Development, Government of India.

Further, circulars of the Government of India dated 26 November 1975, 29 December 1975, 30 November 1984 and 26 May 1978 state that supplementary nutrition is to be targeted only towards “severely malnourished children”. This nature of emphasis has implied that in actual implementation children with grade 1 and 2 malnutrition tend to be entirely neglected. Children with grade 3 and 4 malnutrition, in their turn, are hugely under-reported as is well known and thus required attention fails to be given to malnourished children.

In addition, circulars dated 26.11.75, 29.12.75 and 30.11.84 also state that, “attempts should ... be made to secure community’s contribution for supplementary nutrition in kind or cash so that State expenditure on this item can be reduced”. It is clear that these guidelines are contrary to the orders of the Court dated 28 November 2001 and 29 April 2004. However, no subsequent department circulars have been issued to state that guidelines in earlier circulars stand cancelled.

Anganwadis also continue to have a limit on the number of beneficiaries who can be accommodated for the provision of services. As per a government circular dated 21 February 2002¹⁷, each anganwadi is to cover 40 beneficiaries in the 0 – 3 year age group, 40 in the 3 – 6 year age group and 20 pregnant women and nursing mothers in non tribal areas. In tribal areas, the beneficiaries covered under the above categories are to be 42, 42 and 25 respectively. Not only does such a limit – issued *after* the 28 November 2001 order of the court – go against Supreme Court orders, it also is fundamentally flawed in terms of calculation. Children in the 0-6 year old age group for instance are approximately 15% of the population of India as per the 2001 census. The number of children in a population of 1000 therefore will be 150, on an average. The proportion of the 0-6 year old population is as high as 19.59 per cent of the total population in Bihar. The total number of 0-6 year old children in a population of 1000 in Bihar, will therefore be as high as 196.

In comparison, each anganwadi is stipulated to cover only 80 children. In Bihar for instance, an anganwadi that allows inclusion of only 80 children, will leave out 60 per cent of the eligible population of 0-6 year olds.

There is a similar problem in the number of pregnant women and nursing mothers that the anganwadis can cover as per funds provided to them. The number of pregnant women and nursing mothers in a population of 1000 is estimated to be 40¹⁸ as per guidelines of the ICDS itself. In comparison, provision is only made to accommodate 20 women at each anganwadi centre.

Further several sanctioned ICDS projects remain out of operation. The number of unoperated ICDS projects stood at 9% of the total sanctioned projects as per the 30 June 2005 status report of the ICDS. The Government of India sanctioned an additional 467 ICDS Projects and 1.88 lakh anganwadi centres in the 2005 – 2006 financial year. Based on a likely time frame required for selection of anganwadi

¹⁷ No. 12-15/ 2001-CD I, issued by the MoHRD dated 21 February 2002 and addressed to all secretaries in charge of ICDS

¹⁸ 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 per cent of the population.

workers and helpers and the selection of the location of the anganwadis etc., these additional anganwadis are likely to be operationalised only by August –September 2007. The operationalisation of these specific Projects has not been dealt with by any interim orders so far. However, a letter has been written to the Cabinet Secretary¹⁹ expressing concern regarding the anticipated delays and requesting that administrative procedures be undertaken simultaneously rather than sequentially for the opening of the additional projects.

As regards implementation of the scheme in SC/ST hamlets and slum areas, emphasised by the Supreme Court in its 7 October 2004 order, no specific survey of SC/ST hamlets or slums has been undertaken by the Government of India in the States and UTs. Neither has any specific circular or department order been passed to ensure that anganwadi centres must cover SC/ST hamlets and slums.

Further, and very importantly, the Government of India has continued to resist full implementation of these orders of the court. The Planning Commission in the mid term review of the tenth five year plan has assumed that with “universalisation” of the scheme, *half* the eligible population will be attending anganwadi centres of the ICDS²⁰. The Government of India has also not agreed with the estimated requirement for 14 lakh anganwadi centres that has been forwarded to the Supreme Court in the Commissioner’s Fifth Report. The Department of Women and Child Development has also stated this in affidavits to the Supreme Court.

The order passed on 7th October 2004 related to the banning of contractors is significant and has the potential to make sweeping changes in the provision of supplementary nutrition services. Subsequent to this order, letters have been written to several State Governments stating that State level contracts for implementation of the supplementary nutrition programme (SNP) must be discontinued and that local food models for the provision of supplementary nutrition must be adopted. The State of Rajasthan has stated to the Commissioner in subsequent correspondence that steps are being taken towards the implementation of local food models and towards the involvement of self help groups in SNP provision. States like Delhi have also, subsequent to this order taken significant steps towards involvement of local communities in the procurement and supply of supplementary nutrition and to break the hold of contractors in this matter. Although this order has been passed, it is important that sustained advocacy be initiated in field areas for its implementation and for the development of efficient and effective models for the procurement and supply of supplementary nutrition materials.

¹⁹ A letter dated 9 June 2005 was written to the to the Cabinet Secretary stating that administrative procedures for the operationalisation of the additional projects should be undertaken simultaneously rather than sequentially in order to prevent unnecessary delays in the operationalisation of the new projects.

²⁰ Mid term review of the Tenth Five Year Plan, Annexure 4.1 at pp 185.

Ensuring ICDS Universalisation

Matters we need to look at

To monitor universalisation we need to ensure that all 0-6 year old children / adolescent girls / pregnant women and nursing mothers are able to access services under the ICDS. However, universalisation itself is a 'complex' matter. Issues related to universalisation need to be scrutinised at several levels -

→ At the macro level, we need to look at the norms for opening anganwadi centres prescribed by the Department of Women and Child Development, Government of India. In the 2005-06 financial year, the Government of India has made an attempt to alter the norm for opening of anganwadi centres from the earlier norm where one AWC was opened per 1000 population in urban and rural projects and one AWC was opened per 700 population in tribal projects. As per the proposed norms¹ the Government of India has stated, AWCs "should be so located that the beneficiaries do not have to walk more than **one km**". This holds for all ICDS Projects, be they in rural, urban or tribal regions. Further, proposed population norms **for rural projects** are the following -

- 500 - 1500 population - 1 AWC
- 150 - 500 population - 1 mini AWC

Proposed norms for **tribal projects** are –

- 300 - 1500 population - 1 AWC
- 150 - 300 population - 1 mini AWC (for a habitation with less than 150 population, specific proposal should be submitted by the State Governments for consideration by Government of India)

Proposed norms for **urban projects** are –

- 500-1500 population – 1 AWC

It is important to look at the manner in which these norms are interpreted by the State Governments. Advisors must ensure that AWCs are accessible to the target population in all parts of the State.

- It might be the case that ICDS services are universalised on 'paper' but not on the ground. We must ensure therefore that all *sanctioned* ICDS Projects are *fully operational*.
- To assess flaws in geographical coverage of the scheme we also must check whether -
- a. ICDS is accessed by **all** settlements within villages where ICDS has otherwise reached
 - b. Whether there are any 'non ICDS villages' in the State
 - c. Whether there are any 'non ICDS blocks' in the State
- Point 'a' above is significant and needs to be carefully scrutinised. Advisors will need to look at the manner in which the location of the AWC is decided in any village. There is a high likelihood that the location of the anganwadi will have been decided to favour the dominant community in the village. If such instances of exclusion from the ICDS are found these must be noted and checked.
- Specific efforts must be made to ensure that all SC/ST hamlets and all slums have anganwadi centres as per the 7 October 2004 order of the Supreme Court. Advisors will understand that this is crucial and that this matter cannot be over emphasised. The implementation of this order will require close scrutiny of several guidelines for the operationalisation of the ICDS that have an impact on access of SC/ST communities to the service, such as location of the AWC, appointment of AWWs, etc.

Analysis and triangulation of state and district level data on financial allocations and utilisation

Financial Allocations for the ICDS

Financial allocations for the ICDS are met in the following manner:

1. Allocations towards infrastructure are made by the Central Government by way of the 'ICDS General' fund.
2. Allocations towards supplementary nutrition are shared by the Central Government and the respective State/UT Governments. As per guidelines issued by the DoWCD in the 2005 –2006 financial year, the Central and State Governments are to share the allocations towards supplementary nutrition on a 'fifty fifty' basis.

Orders of the Supreme Court that deal with the allocation and utilisation of finances are as follows:

Order on funding and contributions by the Central and State Governments respectively

“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.”²¹

Order on sanctioning of allocated funds by the Central Govt. and the State Governments

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.²²

Order on utilisation of funds

“All the State Governments/Union Territories shall utilise the entire State and Central allocation under ICDS/PMGY and under no circumstances, (shall) the same ... 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.”

²¹ order dated 7 October 2004

²² Order dated 7th October, 2004

To assess compliance with orders pertaining to financial allocation, sanction and utilisation, important questions that are thrown up for analysis vis-à-vis court orders therefore are:

In terms of **allocation** of funds...

1. What is the per beneficiary per day norm on the basis of which the State Governments are making allocations for the ICDS?
2. Is the State Government allocation in keeping with the revised financial norms issued by the DoWCD, Government of India in December 2004¹?
3. What is the per beneficiary per day allocation made by the Central Government? Does it match the allocation made by the State Government?
4. What is the allocation of the Central Government towards the 'ICDS General' fund?
5. Whether any funds allocated for the ICDS are being diverted for other use

In terms of **sanction of allocated funds**...

1. Whether allocated funds are being sanctioned in time and periodically.
2. Whether there has been any disruption in the feeding of children (or any other component of the ICDS) due to delays in sanctioning of allocated funds

In terms of **utilisation** of funds...

1. Whether funds for supplementary nutrition are utilised on a regular basis during the course of the financial year rather than being spent only at the close of the financial year.
2. Whether the funds allocated by the Central and the State Governments are being utilized fully.
3. Whether any funds are being returned by the states to the Centre? In the event that full utilisation of funds is not taking place, what is the explanation for non utilisation of funds stated by State Governments and whether this has been filed in Court by the State Government

The norms for per beneficiary per day allocations for supplementary nutrition, issued by the DoWCD are stated in the table below.

Table 1: Norms for per beneficiary per day allocation of funds under State/UT Plans		
Beneficiary	Old Rates*	New Rates**
Children (6-72 months)	Re.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, Government of India in 1991		
** Rates set by the DoWCD, Government of India in December 2004		

It is important to note that adequacy of fund allocations for supplementary nutrition should be assessed against prescribed norms of the DoWCD, Government of India. However, these norms are regarded as recommendatory rather than mandatory by the State Governments and allocations tend to be far lower than they should be as per norms.

Until recently, State Plan funds were expected to be the primary funds for supplementary nutrition. The pattern has, however changed in the recent past²³. It is important to note that as per norms applicable from the 2005-06 financial year, the Central Government will make an allocation towards supplementary nutrition that equals the allocation made by the State Government. Thus if a particular State Government makes an allocation of 30 paise per beneficiary per day, it will be matched by the Central Government. As per this example, the total per beneficiary per day allocation will be 60 paise. On the other hand, in a State that makes an allocation of Re.1/- per beneficiary per day the Central Government will make an equal contribution of Re1/-, taking the per beneficiary per day amount to Rs.2/-.

Thus, since the quantum of the Central Government allocation is based on the State Government allocation, it is particularly important to be vigilant about per beneficiary per day allocations made by the State Government.

The per beneficiary per day expenditure by the State Government can be assessed by using the following formula:

Per beneficiary per day allocation = total funds allocated population x 300 x Rs.2.30

Here, to assess total funds required for SNP, an average of the three prescribed norms, i.e. Rs.2.30/- is being used²⁴.

²³ Ref media reports dated 6 October 2005 at <http://www.chennaionline.com/colnews/newsitem.asp?NEWSID=%7B2F81CF60-A8DD-4391-BDF8-EA8BEA6BA5D5%7D&CATEGORYNAME=National> and <http://news.webindia123.com/news/showdetails.asp?id=130764&cat=India>

²⁴ It may be clarified that a more accurate figure will be a *weighted* average of the per beneficiary per day norm. The Rs.2.30 figure can therefore be replaced by the following formula (using norms given in Table 1), where,

- a = population of malnourished children in any given area
- b = population of 0 – 6 year old children
- c = population of adolescent girls aged 11 to 18 years
- d = population of pregnant women and nursing mothers,

the weighted average will be

$$= \frac{2.7a + 2(b-a) + 2.3c + 2.3d}{a + (b - a) + c + d}$$

Estimates of 'a', 'b', 'c' and 'd' -

Government data for 'a' is typically inaccurate but may be used. Alternatively, the figure for 0-6 year old children may be multiplied by a percentage figure for malnourished children, which can be accessed from any reliable and well reputed study.

The figure for 'b' is calculated under the Census of India. The data is available for India as a whole and is also disaggregated for all States/Uts. The following link may be used for this http://www.censusindia.net/t_00_004.html

An assessment of total funds required can be arrived at by using the following formula:

Total population in the 3 categories x Rs.2.30 x 300 days

This figure can be compared with the allocation made. This will indicate the adequacy of funds or the lack thereof.

Figures for the total number of eligible beneficiaries can be assessed from census data. Data for the 0 – 6 year old population and for adolescent girls in the 11 – 18 year age group can be gathered by using data indicating the age wise distribution of the population. As mentioned earlier, the number of pregnant and nursing mothers is estimated to be 4per cent of the population at any point in time²⁵.

The expenditure of funds reported should also be compared with the allocation made towards SNP at the beginning of the year to assess whether allocated funds have been utilised in full or whether funds have been forfeited. It is also crucial to assess whether fund utilisation has been consistently spread over the financial year while looking at whether the scheme has been implemented efficiently.

Matters to be observed in field visits

The following is a list of questions that can be investigated in the field²⁶

Access to the scheme

- Does the community know of the ‘anganwadi’/ ICDS programme?
- Do children/adolescent girls/pregnant women and nursing mothers go to the anganwadi centre?
- Is there a significant number of potential beneficiaries who do not go to the AWC? Who are they and what is the reason for this?
- What is the frequency with which the community goes to the anganwadi centre?
- If beneficiaries do not go to the centres regularly, why is this happening? Is the reason for not Government of Indiang, the absence of the anganwadi worker or the distance to the centre?
- How far is the anganwadi centre from the settlement/hamlet?
- In which hamlet is the anganwadi centre located?
 - Is it the upper caste hamlet or the scheduled caste / scheduled tribe hamlet?

The figure for ‘c’ will have to be calculated using Census data.

The figure for ‘d’ is estimated to be 4per cent of the total population in any given area at any point in time, as per an order pertaining to the ICDS issued by the Department of Women and Child Development, Government of India.

²⁵ 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 4per cent of the population.

²⁶ Questionnaires developed for the ICSSR ICDS study conducted under the ‘Right to Food Project’ have been referred for the purpose of developing this list

- Is the scheduled caste hamlet tagged with the AWC only in name?
- Is there any social discrimination that is faced by SC/ ST beneficiaries at the AWC? Is this for the reason that the AWW /AWH is of a different caste/community?
- Is it the case that the upper caste/dominant community is usurping the benefits of the ICDS?
- Are the AWW/AWH supervised by a Supervisor and a CDPO?
- How often do the supervisor and CDPO visit the AWC, if at all?
- What are the measures taken by the CDPO/Supervisors to tackle social exclusion?

Services

- If the community does know of the service and does avail of it, which benefits do they avail of regularly?
- Supplementary nutrition/ immunisation²⁷/ pre school education/ nutrition education/all?
- For how many hours does the anganwadi centre remain open?
- How frequently does it open?

Supplementary nutrition

- Does the AWC have adequate supplies for provision of supplementary nutrition to beneficiaries at the centre?
- Are there adequate supplies for the THR
- Who supplies food to the anganwadi centre?
- What is the administrative arrangement for the implementation of the supplementary nutrition programme?
- Is food supplied by a Mahila Mandal or self help group?
- Is it the case that food is very irregularly supplied? If yes, what are the possible causes for this?
- Is the food edible?
- How frequently is the food given to the beneficiaries?

Nutrition Health Education

- Are NHE services provided at the AWC?
- How frequently does the AWW undertake NHE?
- Do the AWW/AWH undertake home visits for NHE?
- What is the advice given by AWWs during home visits to a) expectant mothers; and b) nursing mothers? (Please make a short list of basic messages and tasks)

Growth monitoring

- Are children weighed regularly?
- Are growth charts maintained?

²⁷ Please check whether immunisation marks visible on the upper arms of young children

- Does the growth chart register compare accurately with the list of children in the various grades of malnutrition?
- Is regular growth monitoring done for pregnant women and nursing mothers?

Health services

Are the following services provided at the AWC?

- Health check ups (both ante natal and post natal)
- Provision of iron/ vitamin/ folic acid tablets
- Treatment of diarrhoea
- Provision of de-worming tablets
- Detection of disability

Referral Services

- Are any referral services provided at the anganwadi centre?
- Where are patients referred?
- Are referral slips/cards provided to the beneficiary?

Immunisation

- What are the diseases against which beneficiaries have been immunised?
- Does the ANM visit the AWC regularly for this?

Pre school education

- Is the AWC equipped with materials for pre school education?
- How regularly do the AWW/AWH hold pre school education sessions?
- Are these participatory and do they engage the children?

Infrastructure

- Is adequate space available in the AWC to house beneficiaries and for PSE and other activities to be conducted?
- Does the indoor space in the AWC have adequate ventilation?
- Is there any outdoor space?
- Does the AWC space have a boundary wall?
- Is there a separate storeroom and cooking shed?
- Are there containers for storing supplies?
- Does the AWC have an easily accessible source of potable water?
- Does the AWC have electricity?
- Is there access to a phone line?
- Does the AWC have toilet facilities?
- Is the AWC structure in good shape? Or does it need repairs? When was the last time it was repaired? Is the ceiling water proof?

Inventories

Does the AWC have the following?

- Weighing scale
- Pre school education kits
- Teaching aids
- Play material
- Nutrition Health Education messages
- Medical supplies (including simple medicines like paracetamol, ORS solution, deworming tablets, iron tablets etc.)
- Does the AWC have supplies for supplementary nutrition?

Training

- Has the staff been trained?
- Have the AWW/AWH got any refresher training?

Supervision

- How frequently does the supervisor visit the AWC
- What is the extent of monitoring done by the supervisor?
- Does the supervisor have to monitor more than one ICDS Project?
- How often does the CDPO visit the centre?
- Do the supervisor/CDPO interact with the beneficiaries when they come to monitor scheme implementation at the centre?

Matters not dealt with by the court and which require policy changes

As mentioned earlier in the text of this document, there are several issues in ICDS implementation, which have not been brought under the ambit of civil writ petition 196/2001 currently pending in the Supreme Court. These issues are nonetheless crucial to scheme implementation and need focused advocacy efforts if the stated objectives of the scheme are to be achieved.

Some of these matters are briefly listed below

Misplaced focus of the scheme

The ICDS is the only scheme of the Government of India to tackle child malnutrition on a wide scale and to provide for crucial growth related needs of children in the 0 – 6 year age group. However child malnutrition is precisely what the scheme has not been able to effectively curtail. Although the last three decades have seen a reduction in severe grades of diseases like chronic energy deficiency, kwashiorkar and marasmus a third of Indian children continue to weigh less than 2.5 kgs at birth, half our pre-school children continue to suffer from mild to moderate under nutrition and more than two third women suffer from anaemia²⁸. There has thus been a very small change in the status of child nutrition with the coming of the ICDS²⁹. A major reason for this

²⁸ Presentation by Dr. Shanti Ghosh at the ICDS Consultation organised by CARE India, March 23 – 24, 2005, New Delhi.

²⁹ In a massive evaluation by the National Institute of Public Cooperation and Child Development, New Delhi, in 1992, of 28000 households in 100 blocks, it was found that the percentage of moderately

is that the focus of the ICDS has not been the six month old to two year old child, when the child is most vulnerable to malnutrition but rather the 2 – 6 year old child by which time a crucial period has already been lost in the child's life cycle³⁰ from the perspective of tackling malnutrition.

The neglect of the 2 – 6 year old child has been widely commented on by experts. It can be traced to a few crucial areas of neglect such as poor attention being accorded to community awareness building and nutrition health education. This is part of the vicious cycle triggered by poor prioritisation in scheme implementation by the Department of Women and Child Development itself. Anganwadi workers are hugely bogged down with the maintenance of elaborate records that are not always useful to the achievement of Scheme objectives. Unfortunately home visits by anganwadi workers to beneficiary homes are not equally emphasised. Home visits with a view to imparting nutrition related information and to monitor mother and child health is in fact an intervention that can dramatically impact child and maternal health.

Another significant problem is that implementation of the scheme is too focused on grade three and four malnutrition and neglects to check grade one and two malnutrition that afflict large numbers of children. Moreover, because attention of policy makers is so focused on the grade 3 and 4 malnutrition alone, ironically, cases of grade three and four malnutrition tend to be hugely under reported and cases of grade one and two malnutrition which are vastly higher in number tend to remain neglected.

Other than the above problems with focus, the ICDS also completely ignores groups of children such as physically and mentally disabled children with no priority accorded to their inclusion and no skills imparted to ICDS personnel to ensure inclusion either.

Issues related to access to the scheme

Although the Supreme Court in its 28.11.2001 order has stated that a disbursement centre must be present in all settlements, this continues to be far from adequately implemented in the field. However, in terms of policy matters, there is an urgent need for population norms of the ICDS to be revised to increase accessibility of ICDS to communities. Population norms so far have stood at one AWC per 1000 population in rural and urban projects and one AWC per 700 population in tribal projects. These norms have proved inadequate to ensure accessibility of the scheme. The possibility of opening 'mini anganwadis' does exist on paper, however, these have scarcely been opened in the States at all. Further norms for opening of mini anganwadis are even more problematic than those for 'main AWCs'. For instance as per norms, 10 mini anganwadi are supposed to be opened in lieu of 1 AWC, and it is envisaged that funds for running one AWC will be adequate for 10 mini anganwadi centres. However, while an AWC is supposed to cater to a total of 100 beneficiaries, it is envisaged that

malnourished children is the 0 to 3 years age-group in ICDS and non-ICDS blocks respectively was 22.4 and 23.7, and in the 3 to 6 years age-group, the difference was 21.3 and 24.7 respectively. Such a narrow difference indicated very limited impact of ICDS services on young child's malnutrition. - National Institute of Public cooperation and child development, (1992): National Evaluation of Integrated Child Development Services, NIPCCD, New Delhi, quoted in Harsh Mander, 2005, *Promises to keep: ICDS at Crossroads*, unpublished.

³⁰ Op. cit. at footnote 17

each mini anganwadi will cater to 20 beneficiaries each. Thus each set of 10 mini anganwadis will be expected to cater to 200 beneficiaries with funds intended for a 100 beneficiaries in the normal course. For the mini anganwadi concept to be effective therefore, an overhaul of current mini anganwadi norms will be required.

Quality issues

Except in States like Tamil Nadu, ICDS services tend to be provided very irregularly. The reason for this can be traced to administrative problems like erratic supply of supplementary nutrition, lack of stocks for immunisation and poor coordination between the departments of women and child welfare and departments of health in respective States. However, poor emphasis on supervision of anganwadi workers can be regarded as equally important a reason.

Further, with regard to the services themselves, supplementary nutrition tends to be poor in terms of content as well as its diversification. The nature and content of take home rations too, needs specific attention. It is important for instance that THRs not be of a nature that will be of interest to adults which will prevent young children from consuming this food. It might instead be consumed by adults or other children in the family.

Appointments of personnel including CDPOs, Supervisors, anganwadi workers and helpers

Vast numbers of supervisory posts are vacant in several states. This results in existing appointees being given ‘additional charge’ of ICDS Projects other than the ones they are in fact posted to. With inadequate infrastructure available and a paucity of support staff, this leads to an absolute neglect of supervision.

Although there are far fewer vacancies in anganwadi worker and helper posts, AWW/AWHs tend to be poorly trained and are not given the requisite skills to carry forward the mandate of a scheme as complicated as the ICDS. AWWs & AWHs are also not provided with the necessary skills to deal with neglected categories of children such as disabled children. Poor priority to the crucial mandate of the scheme is also reflected in the fact that anganwadi workers tend to be given too many non – ICDS jobs which cuts into time available for an already heavy workload. Other problems faced by AWWs and AWHs include poor remuneration, irregular payment of wages and rampant corruption in appointments.

Resources—infrastructure and inventories

Poor priority given to the rights of the child at the national level is also reflected in matters such as the poor availability of resources, infrastructure and inventories³¹, which tend to be inadequate due to a purported lack of funds. In addition to the unavailability of adequate space for anganwadis, adequate facilities for drinking water etc, there is also a lack of facilities like vehicles, which is often cited as a hurdle in supervision by CDPOs and supervisors.

³¹ listed above with “matters to be observed during field visits”

Structure and nature of implementation

The ICDS suffers from a neglect of community processes and an absence of or no community participation or ownership of the programme. The programme tends to be perceived merely as a government programme and the community tends not to feel empowered enough to demand implementation of services. Indeed, community ownership is often so poor that the community might not even be aware of the services that it is entitled to.

Coordination between departments

Coordination between the health and women and child welfare departments was an original objective of the project. However this remains neglected and ill achieved three decades after the scheme was initially conceived. ANMs often do not attend to AWCs. Immunisation records are poor. This is also contributed to by the poor availability of stocks of medicines and vaccines.

Identifying and documenting best practices

It might be the case that the above services are particularly well implemented in an AWC / ICDS Project.

Positive examples related to ICDS implementation are available from various parts of the country. In Tamil Nadu for example, anganwadi workers are well trained. Children at the anganwadi start the day with a song and physical exercises. This is followed by play way teaching in which children sit in groups, and do exercises that are creatively conceived in order so that the children learn simple things like recognising numbers, colours, animals and flowers³² while interacting with each other.

Best practices may also be observed in efforts made by NGOs to make the ICDS effective. In Koriya district in Chattisgarh for instance, the Adivasi Adhikar Samiti mobilised a group of community volunteers called '*mitanins*' to create awareness about the ICDS. The *mitanins* themselves were initially trained in issues related to child nutrition and health. The volunteers then conducted family counselling sessions on infant and child health. Over the years, the *mitanins* have undertaken varied work to keep the district administration on its feet in implementing the ICDS, by writing letters to Collectors, organising public hearings on the status of implementation of the ICDS etc³³.

Efforts to mobilise community involvement have also been made by the M. V. Foundation in Ranga Reddy district, Andhra Pradesh, where with the engagement of the beneficiary community, the anganwadi worker, the ANM, the school headmaster and gram panchayat members, monthly meetings are held to review the condition of children. These efforts were initiated since the status of child health in the area was poor and infant deaths were common. The deaths of children under three years of age moreover were usually ignored without much being done to prevent them. The need was therefore felt to undertake special efforts to implement the ICDS. The monthly

³² Based on text written by S.Vivek for the 'ICDS Primer', Right to Food Campaign, *forthcoming*

³³ Based on text written by Samir Garg for the ICDS Primer, *op. cit.*

meetings created community awareness about the ICDS. Anganwadi workers who were irregular in attending to anganwadi centres now were warned that they must attend to the centres regularly. With these efforts, several anganwadis have started opening on a regular basis and children's health has become a public issue³⁴.

In monitoring the implementation of the ICDS, work such as cited above may be observed. It is important that positive initiatives and best practices be recorded to allow for their replication in other parts of the country.

³⁴ Based on text written by Dipa Sinha for the ICDS Primer op. cit.

Chapter 5

The Mid Day Meal Scheme

The National Programme of Nutritional Support to Primary Education, popularly known as the Mid Day Meal Scheme was launched on August 15, 1995 with the following objectives:

- 1) To boost universalization of primary education by increasing enrolment, retention and attendance of children attending primary school and
- 2) To improve (the) nutritional status of students of primary classes³⁵

Other than the ICDS, the mid day meal scheme is the only other scheme, which targets the nutritional needs of children. Although the scheme is targeted only towards school Government of Indian children, it is nonetheless important and has the advantage of promoting enrolment and preventing children from dropping out of school.

Government Guidelines and Supreme Court Orders in CWP 196/2001:
The Mid Day Meal Scheme comes under the purview of the Department of Elementary Education and Literacy, under the Ministry of Human Resource Development, Government of India. The scheme is implemented by State Governments. As per directions from the Government of India, State Governments have been directed to identify an appropriate nodal department for the implementation of the MDMS. The departments for the implementation of the MDMS thus differ across States. For instance, the mid day meal is implemented by the Department of Women and Child Development of the Government of Orissa, the Panchayat and Rural Development Department of the Government of Madhya Pradesh and by the Mid Day Meal Department of the Government of Tamil Nadu.

The guidelines of the Mid Day Meal Scheme as they stood in 1995 when the scheme was launched and the revised guidelines of the scheme issued in December 2004 are available on the following web page: <http://education.nic.in/mdm/mdm.asp>

Crucial orders of the Supreme Court have been listed in chapter two of this manual and are also discussed here. To understand implications of the court orders, the next section deals with an analysis of Court orders in the currently on Government of Indiand civil writ petition. Matters that are crucial to scheme implementation but not so far dealt with by the Court are dealt with in the last section.

Ensuring Compliance with Supreme Court Orders

Orders on coverage of the scheme

In monitoring implementation, the most crucial question is whether the cooked mid day meal is being implemented at all in a State.

As per orders of the Supreme Court, the cooked mid day meal was to be provided to children not later than January 2005³⁶.

³⁵ Department of Elementary Education and Literacy, Annual Report, 2004-05

³⁶ Order dated October 17, 2004

To monitor whether cooked food is being provided to school children in Government run and Government aided schools as well as EGS & AIE schools, three points of enquiry will be both crucial and helpful. These are:

- (a) To check whether appropriate orders have been issued towards starting MDMS by the State Government³⁷;
- (b) To investigate the steps taken by the State/UT Governments, including allocations and reviews to ensure compliance;
- (c) To undertake a quick survey of a few districts to assess whether scheme implementation has in fact been put in place³⁸. In any quick survey the investigating team may ask students and parents whether the cooked MDM is being provided regularly and whether adequate quantities of food are served to children at the time of serving the food.

Further, it is inadequate if the cooked meal is provided intermittently. As per Supreme Court orders it must be implemented for at least 200 days in the year³⁹.

Order on Scheme implementation in the summer vacation

An order dated April 20, 2004 specified that “in drought affected areas the mid day meal is to be provided even during the summer vacations”.

Vulnerability to food insecurity is acute in periods of drought and implementation of the MDM in drought affected areas is mandatory during the summer vacation as per Supreme Court orders as well as the December 2004 guidelines for the scheme issued by the Central Government.

However, implementation of the MDM has been poor in the 2005 summer vacation as was stated by State/UT Governments in correspondence with the Commissioner. Part of the reason for this is that in many States, areas suffering from drought are officially declared ‘drought affected’ only after the summer vacation months are over. To ensure implementation of the scheme during the summer vacation months, States should declare areas drought affected at least two months before the summer vacation begins. In a majority of States, administrative steps have not been taken to ensure that this be done.

As per the VI Report submitted to the Supreme Court, the Commissioner has recommended the following points in order to enforce compliance with this order of the Court. It will be crucial for advisors as well as campaign groups to be vigilant in this regard.

³⁷ Here it is important to note that departments responsible for MDM implementation differ across States. For instance, the MDM is implemented by the Women and Child Development Department in Orissa, the Panchayati Raj Department in Rajasthan, the Education Department in Tripura and the Mid Day Meal Department in Tamil Nadu.

³⁸ An indicative survey was conducted by Bihar Advisor Pushpendra Kumar in January 2005 and can be viewed at the following web page: <http://www.righttofoodindia.org/data/bihar-mdm-survey2005.doc>

³⁹ order dated November 28, 2001

The recommendations are:

1. The midday meal scheme must necessarily be implemented during the summer vacation in the 200 poorest districts of the country and in all Blocks and Districts listed as drought prone with the Government of India.
2. That apart from the above mandatory implementation of the mid day meal scheme in the summer vacation, States may declare an area to be drought prone for the purpose of implementation of the MDM in the summer vacation in a particular year.
3. States shall, not later than the month of March, send to the Centre, a request for central assistance for the drought prone districts specified in points 1 and 2 above.
4. That the implementation of the scheme must necessarily be brought into force in the summer vacation of the year 2006.

Orders on Infrastructure for the MDM

The Supreme Court passed two orders on April 20, 2004 with regard to infrastructure for the implementation of the MDMS. The orders direct the Central Government to “make provisions for the construction of kitchen sheds” and that attempts shall be made (to ensure) improved facilities including safe drinking water for the mid day meal scheme.

The Central Government guidelines issued in December 2004 give details of the schemes under which infrastructure is to be developed by the States/UTs. These Central Government schemes are:

1. for the construction of kitchen sheds
 - a. In rural areas: funds are available under Sampoorna Gramin Rozgar Yojana (SGRY)
 - b. In urban areas: funds are available under National Slum Development Programme (NSDP) and Urban Wage Employment Programme (UWEP) component of Swarna Jayanti Shahri Rozgar Yojana (SJSRY)
2. for the creation of drinking water facility, funds are available under
 - a. Sarva Shiksha Abhiyan (SSA)
 - b. Accelerative Drinking Water Supply Programme (ARWSP) and Swajaldhara programme of the Department of Drinking Water Supply, Government of India
3. for the purchase of utensils – funds are available under SSA for annual school grant of Rs.2000/-

Despite court directions regarding the provision of infrastructure facilities, the status of infrastructure development remains poor, as has been reported in the VI report of the Commissioner. In Andhra Pradesh for instance, only 26per cent schools have a separate kitchen, 44per cent schools have a separate water supply and 10per cent schools have cooking utensils.

As per correspondence of States with the Commissioner, certain States such as Nagaland have stated that they “do not require” kitchen shed facilities since meals are cooked by Village Education Committees (VECs) rather than a cook and helper specially appointed for the purpose of cooking the mid day meal scheme.

This pattern for implementation may be encouraged in areas where VECs are effective.

In assessing scheme implementation it will be crucial to establish that one or the other system is in operation. To establish the mode of preparation of the cooked meal the following can be done

1. Check with the State Government about what logistical arrangements have been made for the implementation of the cooked meal, i.e. whether the meal is to be cooked by a self-help group/ a village education committee or at the school premises itself by a specially appointed team of a cook and helper.
2. Establish through field surveys whether stated logistical arrangements are in place for the implementation of the scheme.

Order on personnel appointments for MDM implementation

In an order dated 20 April 2004, the Supreme Court explicitly stated that “preference shall be given to dalits, scheduled castes and scheduled tribes in appointments to posts of cooks and helpers”.

However, this order has not been adequately implemented. Karnataka in fact is the only State where explicit rules have been framed by the Government for the appointment of dalit/SC/ST cooks and helpers. Pointed efforts need to be made to ask State Governments to issue appropriate instructions in this regard. It is important to note that this order of the Supreme Court must be implemented even in the event that meals are cooked by self help groups or village education committees. State Governments must be asked to ensure that self help groups and committees appointed to cook the meal include dalit/SC/ST persons.

Orders regarding the quality of and utilisation of food grain allocated by the Centre

The Supreme Court has directed that food grain allocated for the MDM must necessarily be of “fair average quality”. Further State/UT Governments and the FCI are directed to do joint inspections of food grains. If the food grain is found, on joint inspection, not to be of fair average quality, it is to be replaced by the FCI prior to lifting⁴⁰. The Central Government has also been directed to monitor the offtake of food grain by the State/UT Governments⁴¹.

Food grain allocation and off take can be checked by looking at the food grain bulletin published by the Department of Food and Public Distribution under the Ministry of Consumer Affairs and Public Distribution, Government of India⁴². The percentage offtake of grain may be assessed by comparing the offtake figure with the food grain allocation figure stated in the monthly food grain bulletin. Except in states such as Chattisgarh where food grain is locally procured for scheme implementation, low offtake of allocated food grain is a matter that the State/UT Government may be questioned about.

It is crucial to note however that good offtake of allocated food grain does not in itself imply effective implementation of the scheme. As is well known, grain sourced from

⁴⁰ Order dated 28 November 2001

⁴¹ order dated 20 April 2004

⁴² The following site may be checked: http://fcamin.nic.in/civil_ind.htm

the FCI could just as easily be reaching corrupt channels rather than the children who the scheme is meant for. The assessment of the initial questions regarding the actual provision of the cooked meal in schools therefore is crucial and must be analysed independent of the assessment of food grain offtake from the FCI.

Analysis of data on financial allocations and utilisation

Regarding financial allocations for the mid day meal scheme, the Supreme Court has passed the following orders

1. That conversion costs for the provision of the cooked meal shall under no circumstances be recovered from the children or their parents⁴³.
2. That the Central Government shall allocate funds to meet conversion costs (for converting food grains into cooked mid day meals)⁴⁴

The Department of Elementary Education and Literacy revised guidelines for MDM implementation subsequent to this order. As per the Guidelines of the Mid Day Meal Scheme issued in December 2004, Central Government support for MDM implementation is to be as follows:

Average monetary value of central assistance for the provision of a cooked meal		
S.No.	Item	Central assistance, per child per 'school day' (in Rs.)
1.	Average (economic) cost of food grains [weighted average of wheat and rice being supplied]	1.11
2.	Average transport subsidy	0.08
3.	Assistance for cooking cost	1.00
4.	Assistance for management, monitoring and evaluation	0.02
	Total	2.21
Source: Revised guidelines for the NP-NSPE, DoEEL, MoHRD, December 2004		

Allocations towards cooking costs

Central Government allocations towards cooking costs must be equal to the number of children enrolled multiplied by 200 days of implementation. This calculation will give the amount required for scheme implementation during all times of the year except the summer vacation. The following formula may be used for the calculating funds required under the MDMS.

Number of students enrolled x 200 days per year

Matters not dealt with under court orders

(but which are important for monitoring scheme implementation)

As is the case for all schemes being dealt with by the court, not all issues crucial in terms of scheme implementation are supported by interim orders. The following is an

⁴³ Order dated 20 April 2004

⁴⁴ Op. cit.

indicative list of these crucial issues that need to be pursued during field visits and in other advocacy efforts.

Out of school children

A singularly important question that the current mid day meal scheme fails to address is that of extending the scheme to children who remain out of school. It is only when the scheme reaches all those who rightfully deserve to access it, that a scheme can in fact be regarded as successful.

A question of analysis therefore is whether or not children, especially girl children go to school regularly and are benefiting from the MDM regularly.

In analysing scheme implementation and the spread of education in a State/UT, the 'gross enrolment ratio' calculated by the Central Government may be used as tool for analysis. The Gross Enrolment Ratio is the ratio of children enrolled in school to the total number of children in that particular age group. It has consistently been the case in India that the GER for classes VI to VIII is sharply lower than that for classes I to V, which is also reflected in the 2004-05 Annual Report of the Department of Elementary Education and Literacy, Government of India⁴⁵. The sharp drop in the GER, is however not true for certain States like Tamil Nadu, where the MDM is implemented in an exemplary manner as has been widely reported. The bridging of the gap between the GER for classes I-V and that for classes VI-VIII may therefore be used as indicator of the effectiveness of implementation of primary school education itself and also, albeit circuitously, of the mid day meal scheme.

Social equality in scheme implementation

Further to ensuring that primary school education is accessed by all, goals of social change are also envisaged with the effective implementation of the MDM. The MDM can play a crucial role in breaking down caste and other social barriers. Looking at whether the MDM is being implemented in a socially egalitarian manner with children of all castes and communities sitting together while eating the meal, must therefore be a central point of enquiry in critiquing the MDM.

Variety in the food provided

An important matter in scheme implementation is that the food provided to children must be varied in content. If it is the case that children regard the meal as unpalatable it is very likely that the food will be wasted thus defeating the purpose of the scheme itself. Although there are no court orders stating that the meal provided must be diverse in content and be palatable, this must be investigated during actual field investigations.

Scheme implementation during natural disasters

So far State/UT Governments are only obliged to implement the MDMS during the summer vacation in drought affected areas. However, the scheme might be equally required in the summer vacation in any other areas suffering from a livelihood crisis,

⁴⁵ Annexure Statement 3 at pp.257

such as areas suffering from seasonal floods. This issue has been so far neglected but this can change with effective advocacy.

Identifying and Documenting best practices

Monitoring scheme implementation is crucial also for ensuring that the best possible practices are adopted in scheme implementation. The following are indicative examples of best practices that may be used for advocacy efforts in the field:

Framing of government rules

Over and above the guidelines issued by the Central Government progressive rules have been framed by certain State Governments for scheme implementation. The Government of Karnataka for instance has framed rules to ensure appointment of dalits/SC/ST persons as cooks and helpers for meal preparation.

Administrative instructions

Some State Governments have been pro active in adopting administrative procedure changes for the effective implementation of the scheme, such as the declaration of areas as drought affected well before the summer vacation to allow MDM implementation in the summer vacation. This was done by the Governments of Andhra Pradesh, Chattisgarh and Karnataka.

In reporting best practices, it will be important to note that budgetary implications, if any as well as implications of the best practices for beneficiaries and their families should also be noted. It is important to note that the effective recording of best practices allows for replication of these practices in areas, which have hitherto seen poor implementation, and is therefore very important.

Chapter 6

Sampoorna Grammen Rozgar Yajona

Introduction

Sampoorna Grammen Rozgar Yajona was launched by Government of India, all over the country in 2001 with (a) primary objective to provide additional wage employment in all rural areas and thereby provide food security and improve nutritional levels and (b) with secondary objective to create durable community, social and economic assets and engage in infrastructure development in rural areas.

Though 'right to work' under article 42 of Constitution of India is a state subject, traditionally any major wage employment scheme, apart from Maharashtra EGS, has been mainly initiated by Government of India in rural areas through Centrally sponsored schemes of Ministry of Rural development. The role of Government of India, in all these schemes including SGRY has been in:

- Determination of Central allocation and the state share in it.
- Providing guidelines for wage standards, selection of beneficiaries, selection of work and monitoring and accountability.
- Monitoring the implementation of the guidelines

Under SGRY Government of India allocates resources based on plan objectives and specifies the criteria for distributing the total allocation at two levels

a) State Level- Based on proportion of the rural poor

b) District Level- based on proportion of rural SC/ST population and productivity of agriculture labours⁴⁶.

The main roles designated to the state government are:

- Sharing 25 percent of the resources (only cash part) by Government of India, which is a precondition for further central allocation.
- Ensuring proper system for disbursement of finance from districts to implementing agencies, through state nodal department.
- Monitoring the scheme through its officers at district, block and village levels.

The actual implementation of the scheme – selecting beneficiaries and work etc. – is done by panchayats at district, block/intermediary and village level (in 20:30:50 ratio). In fact the actual fund release from Government of India through DRDAs goes to these panchayats directly. The panchayats in turn have to implement the scheme as per the guidelines drawn by Government of India and various GOs passed by the state nodal department.

Ensuring compliance with orders of Supreme Court

Sampoorna Grammen Rozgar Yojana and other employment schemes first came under purview of the court orders four years back on 17th September, 2001 order,

⁴⁶ Inverse of per capita production of the agricultural workers in that District

whereby the court directed the state governments and Government of India to submit the status of its implementation.

Subsequently after perusal of the Commissioners' report, petition and interim applications, the Court's intervention approach was five fold⁴⁷:

- 1) It firstly, reiterated the broad objectives of the scheme mentioned in the guidelines, with an emphasis that the scheme shall focus towards agricultural wage earners, non agricultural unskilled wage earners, marginal farmers and, in particular women, SC and ST persons and to give priority to them in employment.
- 2) Observing the extent of denial of entitlements to the beneficiaries, it firmly reiterated the entitlements of beneficiaries as minimum wages, which needs to be paid to them within a week:
- 3) Further Government of India into the deeper reasons for the denial of entitlements to the labours it passed directions to correct the following observed lapses,
 - a) low allocation and untimely release of resources by Government of India,
 - b) Low and untimely utilization by states and
 - c) Use of labour displacing machine and contractors.
- 4) Government of India by the spirit of the scheme guidelines and with the understanding that this vast scheme can be implemented successfully only through grassroots participation in planning, implementation and monitoring, it directed that the
 - a) Gram Panchayats shall frame, approve and sanction employment generation proposals for creation of useful community assets.
 - b) The Gram Sabhas are empowered to monitor, conduct social audit of the scheme and to report lapses to the authorities, who shall investigate and taken appropriate action.
 - c) To facilitate the monitoring and social audit, access to all public documents including muster rolls should be given to individuals and gram sabhas.
 - d) The charge of providing such documents to the individuals should not be more than the costs of providing copies of the documents.
- 5) Apart from dealing with larger issues of implementation, the court at request of Commissioners also took a specific issue of non-payment of wage in limbi village of Barwani district, and passed order to pay the wages which were denied to the workers.

Analysis and triangulation of state and district level data of food and monetary allocations and utilizations

The macro analysis of the scheme would include (a) analyzing the monthly progress reports of districts and states, submission of which itself is a criterion for further allocation and release of resources by Government of India. It would be very useful for the advisor to get an electronic copy of progress report every month from the state

⁴⁷ See appendix 2 for the five-fold classification of the orders in the text as they were passed

government for monitoring purpose; and (b) Analysis of relevant Government orders and other instructions issued by state government.

Analyzing the Monthly Progress Reports of Districts and States

The main focal area of analysis in this scheme would be to pin down the states and districts which:

get untimely and less than adequate allocation.

under-utilise the allocation

utilise it in end of the year or when at a times when it is not required

spends more on material cost rather than wage cost

value food grains at higher than BPL issue price

spend less than required funds on vulnerable social categories.

Adequacy and timeliness of the allocation through Monthly Progress Reports

Here adequacy can mean
adequacy in terms of fulfilment of the plan objectives,
adequacy in terms of norms set by the Government of India for determining relative share of a particular state and
actual vis-à-vis the estimated requirement of wage employment in the states

Adequacy in terms of fulfilment of the plan objectives

One way of determining the adequacy of allocation is physical target, set for 10th Plan, of generating 100 crore person days annually under SGRY. The states share in this targeted number can be found with the proportion of rural poor in the state vis-à-vis total rural poor in India. For instance Bihar had 16.24 per cent of rural poor in India, which means that 16.24 crore person days were annually planned for the state. However the actual allocation in the state had the potential to only generate 7.46 crore person days in 2004-05⁴⁸.

Adequacy in terms of norms set by the Government of India for determining relative share of a particular state

As per the scheme guidelines, the State's/UT's share in the total allocation will be based on the proportion of the total rural poor in a State to the total rural poor in the country. For instance, Bihar should get 16.24 per cent of the allocation as it has 16.24 per cent rural poor in the state. However in 2004-05, it got only 10.36 per cent of the total allocation.

Actual vis-à-vis the estimated requirement of wage employment in the states

A crude estimation of requirement of wage employment can be done by multiplying 2001 rural population figures with (a) latest rural poverty ratio; (b) percentage of rural adults in total rural population in 2001 and (c) 100 days of employment for each person. Once the required person days in the state is calculated then we can compute the gap by comparing it with actual person days generated or possible person days with the allocated resources. By doing this exercise for all states/UTs in India, we find that in year 2004-05, the employment generation under SGRY was only sufficient to provide 100 days of employment for 12.5 per cent of the 6.45 crore rural adult poor.

Similarly by multiplying the total resource allocation in the state with (a) proportion of rural SC/ST population in a district to the total SC/ST population in the State and (b) inverse of per capita production of the agricultural workers in that district, we can find the desired allocation for a particular district. Any divergence between the required allocation and actual allocation may indicate that political considerations have overplayed the scheme norms.

⁴⁸ Here the potential person days is based on average of past three years experience by calculating the number of person days possible per 100 rupees.

Analysing timeliness of the allocation through Monthly Progress Reports

Similarly a constant check on the time when the allocation is disbursed to districts and then to panchayats, through constant monitoring of monthly progress report, may help to ensure that resources are disbursed to implementing agencies in periods when wage employment are needed most.

A note on problem in valuation of food grains Analysis based on Monthly Progress Reports

The term 'resource' is used in above sections, consists of both funds and food grains. A payment of a minimum of kgs of food gains is mandatory in the scheme⁴⁹. Valuation of food grains plays an important role in determining the value and interpretation of total resource. For instance, calculation of value of food grains based on economic price, would give a higher figure than calculation of total resources based on BPL issue price. Usually the Government of India and states would value and report an inflated resource allocation based on Economic price of the food grains, at least in their budget documents. Here our calculation of total resources based on BPL issue price, would be useful in differentiating between what is claimed to be allocated and what is actually allocated.

Care must be taken to probe the monthly reports and investigate the reasons for low allocation, in order to pin down the defaulting agency. There are number of criteria, such as timely release of state share, adequate expenditure on SC/ST and submission of the utilization certificate etc. in the scheme guidelines which the districts and state should fulfil in order to get the full allocation from the Government of India.

If the low allocation in the beginning of the year or low and delayed disbursement during the year is due to non-fulfilment of the criteria then the state and the districts are responsible for it. In case, even after fulfilment of the criteria, the allocated is not adequate then Government of India should be held responsible.

Analysis of the under-utilization and untimely utilization of the allocation by districts and states based on Monthly Progress Reports

Under-utilization of the funds and food grains allocated by the Government of India, is the best available macro indicator of non-performance. This simply means that resources are not the problem, but there is a lack of administrative and political will to even utilize the available resources.

Another indicator of worst performance is the use of resources at the fag end of year, just before it getting lapsed. The rush of resources at the end of the year is a bad financial indicator, which means that bulk funds are utilized in haste and unplanned manner, mostly through contractors and machines, in order to compete the work quickly.

⁴⁹ Also payment of 25per cent of wage in cash is also mandatory.

Constant monitoring of the monthly report would be useful to draw attention to the state government, the extent of unutilized resources and the need to use them in seasons and time when wage employment is required most.

More expenditure on material cost rather than wage cost: Based on Monthly Progress Reports

It is not necessary that the funds utilized by the state governments are used mainly for creating the wage employment. There are chances that the funds are used mostly in creating capital intensive assets. To find the extent to which funds were utilised in capital, we require a wage: material ratio. Though ideally it should form part of monthly progress report, it is never stated explicitly there. However there is an indirect way of computing this.

First the total wage expenditure can be computed as minimum wages paid for each person day reported in the progress report and the expenditure beyond this wage expenditure can be taken as material cost. Through this method we can keep a watch on the permissible wage: cost ratio in the employment schemes.

Analysing valuation of food grains based on Monthly Progress Reports

The scheme guideline gives the freedom to the states to value the food grains (wages) anywhere between BPL and APL price. However as a minimum of 5 Kg or more food grains are given as wages to workers, in all cases where the food grains are valued above BPL issue price, the real value of the wages would get seriously eroded and therefore our stand could be that this is the violation of the court order on payment of minimum wages.

Coverage of vulnerable social categories based on Monthly Progress Reports

The court order to focus SGRY and give priority to women, SC/ST, agricultural wage earners, non-agricultural unskilled wage earners and marginal farmers, does not specify the any mandatory provision in terms of percentage coverage. However the scheme guidelines has made certain reservation for some of these vulnerable groups, which could be constantly monitored by the advisor, through the progress report:

It reserves 22.5per cent of the allocation at district and intermediate panchayats for individual/group beneficiary schemes of BPL SC/ST families.

In case of village panchayats a minimum of 50per cent of the resources is earmarked for the creation of need based village infrastructure in SC/ST habitations/wards.

Further the guidelines says that efforts would be made to provide 30per cent of employment opportunities for women under the Programme.

Analysis of Government orders and other instructions issued by state government, showing compliance with the court orders

The State GOs can be used to study that how the state governments acted upon the court's orders to give priority to weaker section; to ban the use of labour displacing

machine and contractors; to pay minimum wages within a week; and to utilize the funds in time. It will be useful to check that whether:

- a) Have the state issued any GOs on these court orders?
- b) Have they merely reiterated the court order or have they gone into specifics of those? For instance
 - (i) have they further tried to narrow down on who are the specific weaker section mentioned in court order, in terms of community and caste groups? Or on how to identify these groups? Have they directed the panchayats to select particular kind of work suiting the need of the specific weaker section; e.g. Work for women?
 - (ii) have they specified that which machines are considered as the labour displacing? or have they specified any strict penalty for using labour displacing machines or contractor?
 - (iii) Have they reduced the cost of providing the copies of the documents such as muster rolls? Have they set clear-cut procedures to access them?
 - (iv) Have they issued instructions on how to encourage social audit and how to facilitate it?

Selection of work

The tendency to use funds meant for wage employment in capital intensive development works and infrastructure creation, is dominant with administration and elite groups in the panchayats.

The easiest way to achieve this interest is to issue a state GOs from the nodal department directing panchayats to undertake the specific works. Such GOs may some times suggest capital-intensive works and also seriously erode the autonomy of the panchayats to choose the work

Therefore it will be useful and important to analyze the GOs and check that:

- a) whether they direct panchayats to undertake certain capital intensive work in large scale, which may be the political priority at highest levels in the state.
- b) Whether the indicated works in GOs, a mere reiteration of Government of India's guidelines or does it suggest some works which is outside the scope of SGRY guidelines.
- c) Even if the works mentioned in GOs are within central guidelines, do they allow panchayats to choose from within the work mentioned in GOs or there is strict GO specifying certain kinds of work, which may seriously erode the autonomy of panchayats to choose the work

Inter-district allocation of funds

Study of state GOs specifying inter- district allocation of funds and food grains will reveal that if any district's entitlement has been denied due to political reasons or arbitrary allocation.

Accountability system

Given the politics involved in wage employment schemes, there would be numerous complaints of irregularities resulting in enquiries. Normally such enquiries would result in specific recommendations, especially on accountability, which may find way as state GOs. It would be useful to analyse that how the states through new GOs have

experimented on setting system of accountability, and their experience with the different systems.

Study and analysis of field situations of implementation

Apart from analysing macro information at state level the advisors could use the following checklist for monitoring the compliance of the court order as well as the performance of the scheme in the work sites, during their field visits. However facilitating social audit will be the most preferred way for microanalysis

1. Whether the beneficiaries were paid minimum wages for 8 hrs of work, with value of food grains calculated at BPL issue price.
2. Whether the beneficiaries were paid the wages within a week's time? If not how long did it take?
3. Whether the eligible women /SC/ST or any other beneficiary were denied work? If so the reason
4. Whether the eligible women /SC/ST were paid discriminatory wages? If so the reason
5. Whether any labour- displacing machine or contractor was used in the work?
6. Whether Social Audit of the SGRY work is conducted.
7. Are they aware of any complaint register maintained in office of District Collector for complaints made on SGRY works?
9. Whether they face difficulties in obtaining copies of muster rolls? If so why?
10. Whether any work was executed in SC/ST settlements? If no there is reason to probe in detail.
11. Whether the beneficiaries got the work in periods when they needed the work?

Through examining the muster rolls

- a) Whether muster roll is maintained in panchayat office or work site.
- b) Are there any problems with the muster rolls

Some Examples of problems in Muster Roll:

- a) Fake entries – Like names of dead person, People in jail, People who have migrated out of the village, people engaged in service outside the village included.
- b) Forged signatures.(with muster number
- c) Entries of tractor owner as laborer in the same muster
- d) All machinery used in works not recorded in muster roll.
- e) Double entries of laborers working on tractor as daily wage labour.

Identifying policy gaps and proposing policy reforms

While analysing the performance of the State Governments, one come across areas where there is urgent need to improve the scheme design or the implementation practice. The challenge is finding a better way to implement the scheme and to document some time-tested solutions to challenging problems.

Urban Wage employment

The severity of urban poverty and unemployment warrants the wage employment in urban areas too. Though Government of India has not yet taken any initiative in this front, it would be useful to document any such scheme by state governments or development organizations and derive learning from them.

Selection of work to meet need of special groups such as women and artisans

The major concern in the present SGRY and similar wage employment scheme is that it does not envisage employment except in public construction works. This excludes vulnerable categories who may not be able to participate in these works, but remain highly food insecure, such as persons with disabilities, old and infirm people, pregnant and older women, artisans etc. Willingness to do hard manual work as a test of poverty fails miserably when one looks the connection between nutritional status and poverty which would effect the ability to do such work. Besides the cultural insensitivity in expecting the groups such as women and artisan groups to do such hard manual work, has to be progressively done away with. The range of possible works in the social and service sector, planned at the level of the gram sabha for providing wage employment to these excluded groups should be documented.

Execution of work

Another important implementation practice that needs to be documented well, is how the actual work is undertaken when contractors are not used. Documentation of experiences of work committees or any other successful implementing method would be extremely useful.

Piece wage rate system

The problems involved in payment of wages through piece wage rate system needs to be documented well. Piece wage paid based on “state standard scheduled rates”, which are actually not meant for wage employment scheme, turns out to be a reason for exploitation of beneficiaries and guise for the contractor to make undue profits. An alternative to this present exploitative system is to look for improvement in state standard scheduled rates, as done in Andhra Pradesh. Best practices in this issue would be extremely useful in understanding and suggesting a wage payment system which is not prone to exploitation. Ideally piece work should be such that an average person earns minimum wages with 7 hours of work. This computation should be done separately for men and women (as has been done recently in AP).

Provision For Crèches For Working Mothers

The provision for crèches for working mothers on site, through mandatory in the scheme is rarely followed. Various modes through which it has been or can be enforced can be documented and advocated.

Social audit

The term social audit may be applied to assessment by people, either concurrently or after the construction, of the probity and appropriateness of all expenditures and purchases in these works, including on wages, transportation and materials. The necessary legal outcomes of social audits needs to be clarified more specifically than is done at present in the rules, which state merely that state governments will take necessary steps on the social audits. Social audit could be treated in the same way as preliminary enquiries in departmental proceedings, or in other words would in themselves establish a prima facie case of guilt or malfeasance, requiring thereafter

detailed enquires followed by penal action. Each gram sabha must be informed about the outcomes of the detailed enquires, the action taken, and the reasons if the enquiries do not concur with the findings of the social audit.

Chapter 7

Targeted Public Distribution System

Introduction

Under TPDS, as far as responsibilities are concerned, there is clearly demarcated role for Government of India and State Governments, whereby Government of India determines the total number of households in each state who are eligible to get the subsidized food grains at BPL and AAY rates and allocates 35 Kg food grain per month to each BPL/AAY household and the state government put in place the implementation system to distribute the food grains.

While designing the implementation system, the state governments have to strictly follow broad guidelines given by Government of India through the PDS control order 2001 and PDS control order amendment⁵⁰. The State Government may further have their own State PDS Control order and state guidelines, which elaborates the state specific implementation system created to distribute the food grains. For a simpler version of the guidelines one could refer to the TPDS citizens charter in different states, which is supposed to give in simple language all that the government promises to provide under the scheme. The citizens charter are available in websites in states of Karnataka, Tamil Nadu, Madhya Pradesh and Himachal Pradesh. In those states where the citizens charters are not uploaded in website, the advisors may request a copy of the charter from the state government and also advocate the State Government to display the charter in the website.

Once a clear understanding of the broad responsibilities of the State Government is arrived at, one could start with the analysis of the performance of the State Governments in complying with court orders and implementing the scheme in general.

Ensuring compliance with orders of Supreme Court

Out of nearly 35 Court interim orders pronounced by the Supreme Court of India, in last 5 years, at least 8 court orders have made explicit mention of the Targeted Public Distribution System. In fact the first order of this court on a scheme was on PDS, directing the States to see that all the PDS shops, if closed, are re-opened and made to start functioning⁵¹. Subsequently we see four kinds of court order related to TPDS:

On identification of PDS and AAY beneficiaries

Delay in identification

Taking note of delayed identification of beneficiaries by the states despite allocation of food grains and cards by Government of India, on 5 occasions⁵² the court directed the states to complete the identification of AAY beneficiaries. The direction to complete identification of BPL beneficiaries is found in order dated 28th November, 2001.

⁵⁰ http://fcamin.nic.in/civil_ind.htm

⁵¹ on 23 July 2001

⁵² In order dated , 3rd September, 2001; 17th September, 2001; 28th November, 2001; 20th April, 2004; and 17th October, 2004; the court

Problem of mis-identification

The BPL/AAY identification problem in PDS is discussed in the 8th May 2002 court order and through this order the court directed the states to frame clear guidelines for proper identification of BPL families. The court retreated the order one year later on 2 May 2003 and asked the states to issue immediate directions to evolve a system whereby eligible BPL families, which may not be on BPL list, are included. However due to lack of even bare minimum response from the Government of India and State government, the court, directed not to remove a person from BPL list in 5 May 2003 order until further notice. In light of new AAY identification, the court further directed on 20th April, 2004 that the Government of India shall issue guidelines to dispense with the existing condition of possession of a BPL card for inclusion in AAY category.

Coverage of Vulnerable Categories

The court also directed the Government of India and States 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.

It further asked to accelerate the issue of AAY cards to PTGs through 20 April 2004 and 17 October 2004 orders.

Accountability of Fair Price Shops

On reports of severe corruption in TPDS, the Supreme Court tried to enforce accountability in the system through Fair Price shops, who play an important role in PDS corruption. On 2nd May 2003, It directed the states to cancel the fair price shop licenses if they:

- (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/organizations

Food grain entitlement

In order dated 28 November 2001, the court directed the states to distribute 25 Kg. food grains to BPL cardholders. For Antyodaya card holders, in 17 October 2004, the court directed that they should be supplied the rice and grain as per their entitlement; (i.e. Rs. 3/- kg of rice and Rs. 2/- kg of wheat and a total of 35kg per month). It further stated that the AAY card holders should not be made to pay, directly or indirectly, any amount other than what they are liable to pay for the supply taken.

For Antyodaya beneficiaries who may be unable to lift grain because of penury, in order dated 28th November 2001, the court asked the Government of India and States to consider giving them free quota of food grains. Further to enable poor household to purchase their full monthly quota, the Court directed the states to;

- Permit the BPL and AAY household to buy the ration in instalments (2 May, 2003 order).
- Ensure that the ration shops remain open throughout the month, during fixed hours, the details of which will be displayed on the notice board. (8th May, 2002 order)
- Give wide publicity so as to make BPL families aware of their entitlement of food-grains. (2 May, 2003 order)

Scheme Guidelines

The Court order dated 17 September 2001, states that “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”. Which in other words mean that the state governments should follow the steps laid in guidelines laid by the Government of India, apart from the specific orders from the Supreme Court. Therefore, the important provisions in the scheme guideline of TPDS are also covered in a way by the Supreme Court order and can be enforced by any court of law.

Analysis and triangulation of state and district level data of food and monetary allocations and utilizations

This would involve analyzing the performance of the scheme and compliance of Supreme Court orders at the state level. Basically the advisor has to do three level of analysis at this stage.

- a) Studying the adequacy of the food grains allocations by Government of India to the state and level of actual utilization of food grains by the State Government.
- b) Analyzing whether the state government is passing on the entitlements to card holders as conferred by the Government of India.
- c) Analysis of Government orders and other instructions issued by State Government, showing compliance with the court orders.

Studying the adequacy of the food grains allocations by Government of India to the state and level of actual utilization of food grains by the State Government

The Government of India has restricted the allocation of subsidized food grain to a specific number of BPL/AAY cards in each State/UT. This information on 'Total Card Quota' (TCQ) (see appendix 1- equation 1) can be found from a monthly publication of Department of food and public distribution, Government of India entitled 'Monthly food grain bulletin' under section M, in statement 54 and 54a. The total AAY/ BPL card quota is calculated based on 1993-94 poverty percentage multiplied with the projected household population for year 2000. Within this card quota, a specified number of cards, as announced by Government of India, are AAY cards and the rest is BPL card. This data is also available in website of Department of food and public distribution, Government of India at http://fcamin.nic.in/civil_ind.htm

As Government of India claims that it allocates 35 Kg food grains to each BPL/AAY cardholder, based on this total number of AAY/BPL cards, the first level of analysis would involve calculating the 'Total Food grain requirement' (TFR) (see appendix 1 - equation 2) in the state annually and checking whether the food grains allocated by Government of India is sufficient to meet this requirement (see 'Allocation Gap' (AG) in appendix 1 - equation 3). After undergoing this exercise the next task is to look at the actual off take of food grains by the state, which would be low in many states reflecting the poor implementation system (see 'Food Grain Denial' (FGD) in appendix 1 - equation 4). Both these information will be useful to put pressure on the Government of India or the State Government to allocate or to utilise the earmarked food grains. The information on annual and monthly food grain allocation by Government of India and off take by the State Government for last three years and the current year is found in the 'Monthly food grain bulletin' under section F (statement 21 to 35).

Analysing whether the State Government is passing on the entitlements to card holders as conferred by the Government of India
Quantity of food grains

Apart from checking the actual food grain off take by the State Governments, the other task would be to check that whether the state government makes enough provisions in the guidelines for distributing 35 kg food grains to the cardholders at prescribed rates? One could be cautious of the following ways in which the state government may deny the food grain entitlement to the cardholders.

- a) The State Government may not be able to restrict the BPL/AAY cards within ceiling limit prescribed by Government of India and have issued more number of BPL/AAY cards. However they may not have allocated food grains to cover the households additionally identified by them. Therefore each card-holding household gets less than prescribed 35 Kg grain (see 'Food Grain Entitlement Per Card Holder' (FPC) in appendix 1 - equation (5))
- b) The State Government could have specified less than 35 kg food grains for the households in the guidelines. It would be a useful exercise to check whether the food grain entitlement as given in the state guidelines for a household with

4 members or more is less than 35 kgs for BPL cards⁵³ or whether the food grain entitlement for any household or individual is less than 35 kg?

- c) The main reason for distributing less than 35 kg food grains may be due to the wrong identification of beneficiaries. The presence of bogus cards is an indicator to this. If the total number of AAY/ BPL cards in the state is more than the number of households as per census records then it means that many BPL/AAY cards exists for non existing households.

To estimate the number of 'bogus cards', one first needs to estimate the household population in the state. The best source for finding the household population for the current year, say 2005, is to look for the projected population for the current year by the RGI, Census. After we decide on the population of the state, to arrive at total households in the state, we have to divide the total population with the average household size for the state⁵⁴. The difference between the total BPL/AAY cards in the state and total households in the state is the bogus card (see 'Bogus Cards' (BC) in appendix 1 - equation (6)).

Price of food grains

Apart from analysing the food grains entitlement of the households in the state, it would be necessary to find out the price which the BPL/AAY card holders have to pay in the state. As discussed before it is the role of the state governments to create the implementation system to distribute food grains at a subsidised price to the card holders and bear it's cost. However most of the State Governments pass on the following implementation costs to the BPL/AAY cardholders:

- a) Margin to FPS dealer
- b) Transport cost from district FCI godowns to FPS, (a) when state government does not bear any transport charge or bears partial transport cost; (b) when additional transport charges is incurred; and (c) when lifting is done from distant godown.
- c) Taxes and levies such as trade or sales tax, surcharge and market tax etc , which go back to state government's coffers.
- d) Printing of ration cards
- e) State administrative or overhead costs
- f) Cost of bags and stitches

The advisors may find out the price that an AAY cardholder and BPL card holder is required to pay and check whether it is more than the price given in table 1. In case

⁵³ This is clear violation to the court order dated 28th November, 2001 directing the State Governments to distribute 25 kg. grain per family per month, which was based on commitment made by Government of India in then TPDS guidelines. Recently, in guidelines, the Government of India has raised household entitlement to 35 Kg per household and thereby the state governments should ensure that 35 Kg food grain is distributed to each household.

⁵⁴ One should be careful in estimating the total number of household and thereby possible total number of ration cards, as sometimes the rations cards may be more than estimated households because of underreporting in the census and as many of the joint families who reported as households in census survey might have reported as divided nuclear families to get separate ration cards while applying for cards. There is lot of incentive to do so as the food grain entitlement for a family of 4 and for a family with more than 4 members (even if it is 10) is same in most of the states.

the price of food grains is more then it would be useful to understand the kind of cost that the states transfer to card holders.

Table 7.1

FPS level price for BPL and AAY food grains

	BPL (Rs./Kg)	AAY (Rs./Kg)
Wheat	4.15 + 0.50	2.00
Rice	5.65 + 0.50	3.00

As studies point out that high FPS level price is an important reason for inability of the card holders to lift the food grains, it would be necessary to check any overcharging by the state.

As there is a direct court order prohibiting charging more than prescribed price for AAY food grains, it would be easy to check overcharging in case of AAY. However in case of BPL food grains, even the central guidelines only suggests a norm of allowing 50 paise margin for each Kilogram of rice and wheat, which needs to be followed by states as far as possible. Therefore most of the states pass on more than 50 paise to the cardholders and strictly speaking one cannot enforce Central Issue price on the BPL cards. However efforts should be directed towards documenting the overcharging from the BPL cardholders and its impact on off-take and nutritional status of the household, so as to get a direct court order banning overcharging.

In states where the cardholders are not overcharged, the advisors need to be more careful in watching that how the implementation costs like transport cost and FPS margin is taken care. There are strong possibilities that nor the states pass on these costs to the cardholders neither does it bears these costs and thereby leaves the system unviable for honest operation resulting in leakages.

The basic point here is that the state should not pass on the implementation cost to cardholders and it should bear it with its own budget. Best way to make this happen is to suggest a cost norm which the State Government should bear as implementation cost. Therefore our efforts should be directed towards improving our understanding on the required cost norm that could be recommended to the court to enforce on the state or Government of India.

Analysis of Government orders and other instructions issued by state government, showing compliance with the court orders

Key order passed by the Supreme Court

As discusses in the section 1, there are some key orders passed by the Supreme Court on accountability of FPS, on speeding up identification of AAY/BPL beneficiaries and on not permitting usage of BPL criteria for identifying AAY beneficiaries. The advisors need to check constantly that whether these orders and any new orders passed by court are translated into GOs or clear-cut instruction by the states government? In case any instruction is issued by State Government, the next step is to monitor the compliance of these instructions.

Check List

- Whether the time period for completing the identification mentioned in the court order is specified in the state government instructions?
- Whether there are any instructions by the State Government which prohibits use of BPL criteria for identifying the AAY beneficiaries? In case the State Governments have issued such instructions, have they specified the alternative identification method for AAY applications.
- Have the state government issued instruction directing to cover all the groups mentioned in 2nd May 2003 under AAY category?
- Whether the state government has issued any instructions on 2nd May 2003 order, for strengthening the monitoring system and systemizing cancellation and suspension of the defaulting FPS.
- How many fair price shops were visited by the monitoring officials and how many of them were cancelled or suspended by the officials⁵⁵?
- Whether the officially fixed quantity for AAY food grains is 35 Kg and the price Rs. 2 for per kg of Wheat and Rs. 3 Per kg of rice.
- Whether the State Government have issued instructions to distribute food grains in instalments? If so, has it taken the necessary steps like changing the ration cards to facilitate purchase of food grains in the instalment

Supreme Court order to follow the scheme guidelines

As discussed in the section 1.14, we can also interpret the court order dated 17 September 2001 as a direction to the states to strictly follow the scheme guideline of TPDS issued by Government of India.

In this section it is attempted to map the role of state government as perceived by the Government of India through guidelines and develop a checklist of the tasks to be performed by the state government in fulfilling these roles. The advisors could streamline the roles of state government by evaluating the state guideline based on the listed tasks that the states have to undertake to fulfil their roles.

S.no	Role of State Government	Necessary task to be performed
1	Identification of families living below the poverty line:	Arriving at a Method of identification of BPL/AAY households
		Specifying periodicity and time frame for identifying BPL/AAY list and reviewing the list
		Assigning responsibility and roles for identifying and reviewing the list.
2	Developing Procedures for issuing and cancelling Ration card to the identified people:-	Specifying requirements for applying for ration cards, mainly proof of residence
		Making provisions for ensuring inclusion of special categories like women headed households, homeless people, forest dwellers, slum dwellers, urban encroachers and migrant workers
		Provision for removing gender bias in issuing rations cards.
		Time frame and appeal mechanism for issuing ration cards

⁵⁵ The monthly reports which have to be sent from each districts to Government of India, contains the report of the number of fair price shops visited by the officials at block and district level. It also contains the data the number of FPS suspended or cancelled.

S.no	Role of State Government	Necessary task to be performed
		Validity period of the ration cards
		What should the ration card contain for ensuring transparent implementation
		Procedure for replacing lost ration cards
3	Procedures and Provisions for Lifting, Storage, Transportation and distribution:-	Time frame for lifting the allocation made by the Government of India.
		Systems for ensuring quality checks
4	<u>Procedures and periodicity for allotment and lifting of food grains at panchayat or Fair price shop level.</u>	Assigning responsibilities at different levels
		Prescribing formats of sale register, stock register and ration card register for facilitating transparency and facilitating monitoring.
5	Establishing a network of distribution channel through Fair price shops	Specifying the required number of FPS to effectively distribute the food grains. Specifying a distance norm.
		Specifying desirable location of fair price shops
		Deciding on who will run the FPS, co-operatives, private individuals, agencies or self help groups.
		Specifying special norms for preventing exclusion of Dalit and Tribal population. For eg. Location of fair price shops and reservation of FPS level staffs.
		Procedures and norms for allocating Fair price shops
6	Creating entitlements at Fair Price Shops:	Specifying working hours.
		Number of instalment for purchase of food grains
		Formats for registers to ensure transparency and facilitate monitoring
		Other measure for ensuring transparency in the operation for fair price shops, like display of sample grain and boards stating stock position and price
		Provisions made for Social audits and right to information
7	Creating a monitoring system	Specifying the norm for number of inspections by block and district level officials
		Specifying the form of inspection.
		Designating authorities, who should be responsible for the monitoring
		Specifying the constitution, roles and powers of Vigilance committees at State, District and FPS level
		Arriving at the training norm and schedule for the Vigilance committee

S.no	Role of State Government	Necessary task to be performed
8	Creating accountability systems for ensuring compliance of the above	Specify each type of complaint arising from different violations and developing clear cut procedures on how to resolve the complaints
		Procedures for registering and maintaining the complaints on these violations
		Designating authorities, who should be responsible for receiving and taking action on complaints and specifying their role and powers
		Specifying the constitution, role and powers of the appellant authority at district and state level, whom the aggrieved person can approach for appeal against the decision of designated authority.
		Specifying the accountability of FPS and officials towards Gram Sabha and vigilance committees.
		Specifying the course of action to be taken by the designated authority, appellant authority and Gram Sabhas and vigilance committees with a mandatory time frame.
		Clearly specifying penalties for different types of offences leaving little room for discretion.
		Specifying the type of complaints where filing FIR against the erring FPS dealer or official is mandatory.
		Provisions for appealing against the wrong identification or denial of BPL/AAY cards by the people, round the year, without any restriction of time frame for making such appeal.
		Provisions to record adverse remarks against officers for failure to perform their duty along with clear cut penalty which may include with holding of promotion, salary cuts or termination of service.
		Specifying powers of the appellant authority to give directions and take action against erring FCI and railways officials.

Study and analysis of field situations of implementation

Apart from analysing macro information at state level the advisors could use the following checklist for monitoring the compliance of the court order as well as the performance of the scheme at the Fair Price Shop level, during their field visits.

1. Does the FPS shops open throughout the month at prescribed time?
2. *Does the ration shop has the board with the details of the stocks and the price list for APL, BPL and AAY foodgrains.*
3. Are the rations given to cardholders regularly?
4. To check whether there is black marketing of subsidized foodgrain, collect a sample of ration cards, especially from socially vulnerable categories. Confirm from them if the entries are accurate. Then please take a copy of the distribution register, and check randomly the entries of foodgrain claimed to be distributed from those who are claimed to be recipients. Please check against entries also in their ration cards, and see if these tally. This is best done in a social audit public hearing format, but can also be undertaken more informally in smaller groups as well.

5. In the social audit or small group discussions, try to get a feedback on the levels of satisfaction of various residents, especially from deprived groups, and their feedback on the various issues raised below.
6. Are the rations given in instalments?
7. Whether the per month ration is less than 35 kg?
8. How is the quality of food grains?
9. Are the rates charged higher than prescribed rates?
10. Is false entry made in ration cards?
11. Are the ration cards kept in the ration shops?
12. Is the daily sales registers fudged?
13. Whether details of stocks, cardholders, food grain entitlement and time of functioning displayed before FPS?
14. Does the panchayat/ Block/ district level office have a complaint register?
15. Is it easily accessible to the public?
16. Do the people know about that register?
17. If a person is illiterate, do the officials render all help in putting the grievance of that person in writing in that register
18. Is action taken on grievances according to the above instructions?
19. Is the complaint register supervised regularly for compliance?
20. What action is prescribed and whether that action is taken against officials who do not redress grievances according to instructions?

Identifying policy gaps and proposing policy reforms

An attempt is made below to map the major policy gaps in the existing system and through out some policy questions for debate and also propose some policy reforms.

Allocation based on poverty line that is highly contentious

The present allocation method based on highly contentious poverty lines have resulted in inadequate quota of food grains in many states and have resulted in exclusion of many eligible households. Therefore there is an urgent need to keep amend this allocation criteria.

Need for improving the identification methods and processes

Apart from low allocation of food grains by Government of India, the other reason for exclusion of poor households is the mis-identification by the states. The identification is so problematic that out of every 20 cards identified by the states, there are 5 cards for which no households actually exists.

In light of such grave misidentification if at all targeting in PDS has to continue then the methodology for identifying the poor households has to change drastically (See box 1). Therefore there is an urgent need for suggestions on improving the identification process. Broadly any identification process should have following features.

1. The identification surveys should be done exclusively for identifying households with food vulnerabilities for TPDS, at least one in five years.

2. The identification should be a mix of centrally designed surveys and decentralized identification (as is at present in some states to some extent).
3. However the power to veto or final decision should unambiguously lie with Gram Sabhas.
4. Any identification survey should be in line with the resources and time taken in population census operation. Despite need of special interrogation skills, adequate time and intense involvement earlier two BPL surveys were conducted over a period of 2 months in most states, which explain the extent of mis-identification.
5. The methodology followed in such identification surveys should have verifiable criteria.

Box 1: Identification of BPL Households

In order to identify the households eligible for BPL cards many states have used the BPL 1997 census list, which is based on the census survey conducted by MoRD in rural areas. However in many states the BPL household identification is a continuous process, where it almost took 5 years to complete the identification of BPL families and still 5 States and 4 Union territories among these states, are yet to identify 8.7 Lakh BPL/AAY households. It seems that in these states, neither the BPL cards were issued based on BPL census list prepared by Ministry of rural development nor they were based on door-to-door survey, but they were issued based on applications received from people and through arbitrary method of identification designed by the designated authorities.

Whatever be the method used by the State Governments, the identification of BPL households is flawed and requires fresh thinking. The Supreme Court has already taken note of the flawed identification of the BPL households for issuing ration cards and through order dated 20 April 2004, has directed that *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.* This order was passed with the realization that the then existing list of the identified BPL household, excluded a number of destitute people and usage of the same flawed list for identifying the new AAY households would prove disastrous. The Government of India and states has also, rightly not appealed against this order, and have issued guidelines to implement this order.

The court has further indicated the need to improve the identification system through order dated 2 May 2003, which observes that *“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 food-grains to those, who are on the list and hold the requisite cards”*

Despite this, neither Government of India nor State Governments have issued any comprehensive guidelines for issuing new BPL ration cards and as result the situation of misidentification is so grave that, for every 20 cards identified by the states, there are 5 cards for which no households actually exists

6. As far as possible there should be exercise comparing two or three different surveys results in the Gram Sabha meetings in order to facilitate selection by the Gram Sabha.
7. The requirement for yearly revision of cards should be strictly followed and the government should clearly specify in the guidelines the method of revision and designate an official responsible for this. The result of any yearly revision should be finalized in the Gram Sabhas.
8. While undertaking identification surveys, yearly revision of cards and while finalizing the list in the Gram Sabhas, strict guidelines should be framed to not exclude any person from the vulnerable social categories of people discusses in the above section, who face risk of exclusion both in identification process and in process of grievance redressal.

Need to cover the most vulnerable categories, which are most often excluded

However with any number of changes in the methodology for identifying poor, one cannot hope to arrive at a foolproof method of identification. Neither can one hope to suddenly have a pro-poor honest implementation by State Governments and Panchayats who are basically involved in identifying poor people. The most affected segment due to this inevitable misidentification is some of the vulnerable categories that are powerless to voice their concern during the process of identification.

The experience of AAY could be used here to ensure that these vulnerable sections of people who are most deserving are not excluded. After the court order dated 2nd May 2003, directing to extend AAY to specific vulnerable groups, the progress especially in issuing AAY cards to all the PTG families quite positive. The otherwise excluded groups have got required attention and errors in identification do not affects them. Similar attention is needed to address the exclusion of groups who are most vulnerable and marginalized and are the first to be excluded from the BPL/ AAY coverage, as these groups severely lack bargaining power to get themselves included.

Therefore a policy recommendation is to universalise the coverage of AAY/BPL cards to specific groups under Targeted Public Distribution system. The following groups, who are poor and at risk of exclusion given the extent of misidentification, should get universal coverage under AAY/BPL. Preferable these groups should be universally covered under AAY which was announced in 2005 –2006 budget.

- a) All Primitive Tribal Groups
- b) All families with persons with 40 per cent disabilities (including psychiatric) or more
- c) All urban homeless families and individuals
- d) All people living with stigmatised ailments like leprosy patients, persons with mental illness, and HIV AIDS, and debilitating ailments like TB.
- e) All Mushahar, Chenchus and other SC/ST groups identified by states as extremely vulnerable groups.
- f) All migrant labour who engage in manual work, often in semi-bonded conditions.
- g) All the persons who are released from beggar homes and mental hospitals.
- h) All aged people who live separately and who opt for it
- i) All single women, widows, separated women and women headed families who opt for it

Universal entitlements to these categories should mean that it is the responsibility of State Governments and Government of India to ensure that all people who fall in the above categories possess BPL/AAY ration cards, whether they fulfil the documentary proof requirement or not. The Government of India and States should ensure that they provide them with ration cards through suitable amendments in the scheme

In other word it should be the responsibility of the State Governments to proactively identify all of these categories and cover them all with the AAY/BPL cards.

Leakages and non-viability of the implementation system

Number of studies has shown severe diversion of food grains under TPDS.

Traditionally, these large-scale studies show leakages ranging from 30 per cent to 40per cent⁵⁶, which is again confirmed by a recent study of Planning commission⁵⁷ showing a leakage of 36.38per cent of the food grain during 2003 – 04.

These leakages are mainly due to:

a) Unviable implementation structure placed by states whereby the FPS dealer margin and transport margin are set at very low level, making fair operation very difficult. To put it precisely, most of the fair price shops and transport agencies legitimately could not earn poverty line income.

Therefore the basic prerequisite for starting dialogs on PDS reforms is to place in a implementation system where honest operation is feasible. To enforce this we need to do the following:

- a) Arrive at a cost norm which should be reasonable to cover all implementation costs that the states have to incur.
- b) Make this cost norm mandatory.
- c) Not transfer this cost to card holders
- d) Sensibly revisit the resource sharing roles of Central government and State Government. Especially in case of poor states (see box 2).

⁵⁶ Deepak Ahluwalia (1993), Kirit Parikh (1994) and Tata Consultancy Services (1998) reveal that leakages and diversions were substantial in the universal PDS, too. Ahluwalia arrived at a leakage estimate of about 36.9per cent for rice and 37.8per cent wheat, while the TCS estimates were 31per cent for rice and 36per cent for wheat.

⁵⁷ 'Performance Evaluation of Targeted Public Distribution System (TPDS)': March 2005, Programme Evaluation Organisation, Planning Commission, Government of India. The study covered 60 districts, 88 blocks, 16 towns, 176 village Panchayats, 240 fair price shops and 3600 households spread over 18 States

Box: Need to redefine the Centre- State resource responsibility in TPDS

Given the wide disparity in the poverty and food security status in different states, which also reflects the disparity in resource availability among the states, the prime role of the Government of India, is to ensure food availability for the poor irrespective of the state they belong to. To ensure this, Government of India, at present allocates the food grains at subsidies price, which is a major cost in the scheme. However the resource requirements for ground level implementation of the scheme is left to states which is in highly neglected state. The neglect is more in poor states, evidently due to poor resource strength, resulting in denial of food needs for poor households in poor states.

One simple solution to address this denial is, Government of India bears all resources requirements for the implementation of the scheme. However, if participation of states is required for sharing resources, then serious thinking needs to be done to evolve a different sharing mechanism between state and central government.

The state governments could contribute a certain part of the total resource requirement of the scheme (cost including that of food grains, FPS commission, Transport commission and printing of ration cards etc) and the role based resource contribution, whether states take care of implementation costs, could be done away with.

This would be similar to other schemes like SGRY, where the State Governments contribute the matching share. The only difference in TPDS would be that the state government would need to reimburse a part of central issue price of the food grain which is allocated to the state.

The state matching share percentage could in turn depend on the poverty and food security status of the states. The Government of India could then concentrate in improving the implementation system by providing adequate budgetary support to important implementation functions like transport cost reimbursement and FPS commission.

Identifying and documenting best practices:

While analysing the performance of the State Governments, one would come across areas where there is urgent need to improve the scheme design or the implementation practice. This challenge of finding a better way of identification, reaching excluded groups, distribution and transportation of food grains, a more transparent and accountable system etc may be constantly encountered. Similarly one would come across some time-tested solutions to challenging problems. Constant sharing among advisors and activists about such challenges and solutions would be a useful exercise where a state can learn much from another state.

Some of the best practices and challenges are listed below to start and facilitate such exchange

Identification of beneficiaries in Andhra Pradesh and Tamil Nadu

In Andhra Pradesh no single method was used to identify the BPL household. Multiple quantitative surveys results conducted by Government of India and Multilateral bodies were compared and finalised with the result of Participatory Poverty Assessment (PPA) – a participatory approach involving Gram Sabha in identifying and finalising the BPL list. This approach is claimed to be successful in reducing misidentification considerably. In a recent meeting in MoRD, Government of India, where the result of the micro studies conducted in selected districts by Government of India, in all states to ascertain the results of BPL 2002 census results, were discussed, it was found that in Andhra Pradesh the misidentification was significantly less than most of the states.

In Tamil Nadu an option card system is introduced where households who do not require rice would get additional quantities of sugar or kerosene⁵⁸. This system helps the state to prevent diversion of food grains from the FPS and saves food grains for the households who deserve it most.

Increased food grain entitlement in Andhra Pradesh, Tamil Nadu, Karnataka and Gujarat

Though Government of India has allocated only 141.75 lakh ration cards to the states of Andhra Pradesh, Tamil nadu, Karnataka and Gujarat, due to political commitment these states have issued additional 225.22 Lakh cards and have allocated food grains for these cards.

Food grains in installement

In state of Kerela food grains are issued every week to the card holders as against once or twice in a month in most states. Not only cardholders but also FPS get weekly instalments from Taluka Supply Officer. This provision of weekly instalment has helped the poor households to lift their full quota and also allows FPS dealers some flexibility of arranging the money for lifting a month's quota in four equal instalments.

Transport cost and FPS margin

Options for door delivery in Andhra Pradesh, Haryana and Karnataka (rural) and distance norm between FPS and nearest godown in Bihar helps a lot in saving transport cost, which as a result is not passed on the FPS dealer thereby not affecting him adversely.

In Tamil Nadu the cash credit facility is extended to FPS from District Central Co-operative Banks through the lead societies.

⁵⁸ The sugar option cardholders would be entitled to 3 Kgs of sugar in addition to their regular quota for foreGovernment of Indiang their rice quota and kerosene option cardholders would get 5 litres of additional kerosene in lieu of rice.

Panchayat level godowns in Orissa

Panchayat level godowns in Orissa has helped in reducing temporary shortage of food grains and helped preventing damage of food grains.

Transparency

Practice of affixing the photo of the head of the family on the ration card in Tamil Nadu has helped weeding the bogus cards. This practice is also adopted by Uttar Pradesh, Himachal Pradesh and West Bengal

Gender equity

In Andhra Pradesh the BPL/AAY cards are being issued only in the name of the female member of the household and in Chattisgarh cards are issued jointly in the name of both the eldest male and female members of the family. In case of women who separated from her husband or is deserted by him, she would automatically be entitled for a separate card in her name.

Private ownership of FPS

In both Tamil Nadu and Chattisgarh the FPS dealers ship is not given to private parties.

FPS distance norm in Tamil Nadu

In Tamil Nadu no family cardholder should travel more than 2 kms to reach FPS.

Surveillance of Trucks transporting foodgrains from FCI

To curb the leakages of foodgrains from FCI godown to FPS, in Chattisgarh, is successfully experimenting with a system of monitoring the movement of trucks carrying PDS foodgrains using Global Positioning System. Now the diversion of foodgrains could be monitored from a computer in the control room.

Chapter 8

National Social Assistance Program & Annapurna

Introduction

National Social Assistance Programme (NSAP) was initiated in August 1995 and since then has undergone many changes in its design. The present structure of NSAP includes National Old Age Pension Scheme (NOAPS) and National Family Benefit Scheme (NFBS), which are implemented along with the Annapurna Scheme. This is a very critical programme as most of the starvation deaths are either of infants or aged people from very poor families or without care givers. It is, therefore, extremely important to ensure an efficient and fair implementation of these schemes—to ensure a dignified survival for the aged destitute in their later days.

The programme initially 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 in the financial year 2002-03 NSAP and Annapurna were transferred to the State / UT plans. The Central Government continues to extend financial assistance under the head 'Additional Central Assistance' (ACA) to the states for the implementation of the schemes.

NSAP is a twin programme comprising of NOAPS, which is a monthly pension scheme for the aged destitute, and NFBS, which is a one-time relief to the family that has lost its primary earner. Annapurna provides food grains on a monthly basis to the aged poor to ensure their food security. It is objectively meant for “those senior citizens who though eligible have remained uncovered under the National Old Age Pension Scheme”.

The schemes continue to exist in an ambiguous realm – with no latest guidelines available after the transfer of the schemes, and absence of clear-cut accountability and responsibility. The operative background for the programme stems from the Supreme Court order dated 27th April 2004. As per the order, “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 Annapurna, 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.” Therefore, the Central and State Governments are liable to provide old age and family benefits to the number of beneficiaries quoted in the central guidelines as the numerical ceiling under each of the three schemes – NOAPS, NFBS and Annapurna.

It is to be noted that implementation of the schemes does not imply that all the aged destitute in each village will be getting old age benefits or free food grains under Annapurna and similarly for the family benefit. NSAP and Annapurna do not aim at universal coverage. The Central and State Governments use the numerical ceilings calculated on the basis of the population projections as on 01.07.1998 and the poverty

ratios for 1993-94. The formulas used for arriving at various targets for different schemes for each state are:

For NOAPS:

Population * Poverty Ratio * Proportion of 65+ age group in total population * 0.5

For Annapurna:

Population * Poverty Ratio * Proportion of 65+ age group in total population * 0.5 * 20 %

For NFBS:

Population * Poverty Ratio * Proportion of 18-64 age group in total population * Age specific mortality in 18-64 age group

At the outset, numerical ceilings should not be the criterion given the acute vulnerability of the aged and destitute population. The calculation of numerical ceilings in the guidelines, as is currently followed, is a serious issue of contention especially under NOAPS and Annapurna for it assumes that “50per cent of the population below the poverty line in the age group 65+ will qualify for old age pensions under the destitution criteria laid down.” The 50per cent figure is given arbitrarily without explaining the basis for such assumption!

The present state of definition and implementation of NSAP and Annapurna, the only social security programmes for the aged destitute and bereaved families, is very unclear and it is essential to mobilize struggle from all quarters to make it a very effective programme in terms of bringing relief to the people in need. It is important to have clear-cut and concrete guidelines fixing complete accountability and responsibility with either the Central Government or the State Governments. Many other and equally vital issues such as universal coverage, size of benefits etc. need to be widely discussed in order to concretise the schemes.

Given below is a scheme wise discussion incorporating a suggestive methodology for the assessment of the schemes.

National Old Age Pension Scheme (NOAPS)

NOAPS entitles aged people above 65 years of age a monthly pension. The age criterion can differ from state to state and some good states give pension to 60 years old and above. The Central Government provides Rs. 75/- per pensioner per month and the State Government should ideally make a contribution so as to raise the amount to at least subsistence and significant amount of pension.

The first and foremost thing to check is whether NOAPS is implemented in your state. It can be checked at the administrative level by getting in touch with the District or Block administration. What is more important is to check the implementation and its extent at the village level. Each pensioner is issued a pension card wherein entries are made each time the money is given. A small group discussion and a cross checking with the cards will reveal the extent of coverage and at the same time the regularity in payment. In some states, where there is a separate social security programme for the aged, there will be a mix of NOAPS cards and state social security cards.

The scheme is fraught with many problems – emerging both due to micro and macro level inefficiencies. In addition to this, there are some policy gaps that need to be addressed to enhance the efficiency of the programme.

Frequently encountered problems:

- a. **Low coverage of eligible populations:** The coverage is not universal and the old age pension benefits are not given to all the aged destitute in the country. The numerical ceilings used by the government are obsolete. Another level of this problem is that even the said targets are not covered under the scheme. The actual coverage turns out to be lesser than even the number of people calculated using the formulas and assumptions discussed above. Though there are some bright instances lately, such as the Andhra Pradesh government has universalised old age pension in the state following the commissioners' recommendations.
- b. **Low allocations by the Central/State Governments:** The monetary allocations made by the government machinery do not suffice the total requirement for extending the old age benefits. There is no clear understanding on any mandatory contributions to be made by the State Governments.
- c. **Low pension rates in many states:** In many states the pension is grossly inadequate for even barest survival. The average old age pension in the country works out precisely to be Rs.142 a month per pensioner.⁵⁹ As many as 18 out of 35 States/UTs are paying pension at a rate equal to or less than Rs.100 a month. As per the data available, 10 States/UTs are making no contribution to the pensions under NOAPS.
- d. **Rates not changed for many years, unlinked to inflation:** When the pension scheme was started in August 1995, the Central Government committed an assistance of Rs.75 per pensioner per month. Ten years later in 2005, the Centre's commitment stays just as much! Also, there are no guidelines binding the state to make contributions towards old age pension. This has led to wide variations in the amounts of pension given in different states. It is disappointing though that the amount of pension across states is skewed more towards the lower end. In eight states, even today the amount of pension given is Rs.75, whereas only four states of Delhi, Haryana, Maharashtra and Sikkim are paying pension at Rs.250 per month or more.
- e. **Corruption and lack of transparency:** Corruption can manifest in the form of forged thumbprints of the beneficiaries, lesser money given than the amount of pension and so on. The situation is all the more worsened because there is no concrete monitoring mechanism in place for the scheme. Delay in the release of money from the state / district level is also a downright result of lack of transparency.
- f. **Cumbersome procedures in selection:** The procedure for filing in the application is tedious. Given that the target beneficiaries of the scheme - aged people above 65 and not conversant with reading and writing, there is an urgent need to make the procedures simple.
- g. **Delays, sometimes inordinate, and leakages in disbursement:** This is fatal to a programme so critically linked to bare survival. The payments made are not monthly – sometimes the gap stretching up to 12 months

⁵⁹ As per the financial year 2004-05, as given in the Sixth Report of the Commissioners

also. There are plausible leakages and pilferages also. The lists are not verified and updated regularly.

- h. **Problematic disbursement procedures:** The distribution method followed varies from place to place and there is yet no consensus on the best practice. This is important since the programme is meant for the aged people and therefore their convenience in accessing the benefits should be the prime concern.
- i. **Identification problems of destitute rural as well as urban poor aged people:** There are cases of misidentification. In most cases, the process of identification is very erratic. Verification of existing lists is not carried out at regular intervals. This leads to denial of benefits to the deserving poor and causes pilferage of resources into wrong hands.
- j. **Dilemma of family care:** As per the guidelines, “the applicant must be a destitute in the sense of having little or no regular means of subsistence from her/his own sources of income or through financial support from family members or other sources.” This is contestable since in essence it is creating disincentives for family care of aged family members.

The following matrix seeks to take a quick look at the genesis of the various problems – whether it is micro or macro and identifies the policy gaps and issues that need to be addressed.

<i>Problems Encountered</i>	<i>Micro Level</i>	<i>Macro Level</i>	<i>Policy Gaps</i>
<i>Limited coverage</i>		✓	✓
<i>Limited allocation</i>		✓	
<i>Low pension rates</i>		✓	✓
<i>Pension rates not pegged to inflation</i>			✓
<i>Lack of transparency</i>	✓	✓	✓
<i>Cumbersome procedures</i>	✓	✓	✓
<i>Delays & leakages in disbursement</i>	✓	✓	
<i>Problematic disbursement procedures for the beneficiaries</i>	✓	✓	✓
<i>Identification problems</i>	✓	✓	✓
<i>Dilemma of family care</i>			✓

These problems can be analysed at five different levels. Each level of analysis requires intensive fieldwork, in-depth understanding and research. The following framework, suggested in the introduction, is a point-by-point analysis and therefore very useful as a reference strategy.

Ensuring compliance with orders of Supreme Court

The Supreme Court orders vis-à-vis the schemes facilitate effective and better implementation.

NOAPS

The SC directed the State Governments/Union Territories to make payments promptly by the 7th of each month.⁶⁰ Old Age pension is seen as a monthly sustenance for the aged poor with no income security, land or savings otherwise. It is, therefore, essential to ensure that the payment is timely and regular.

A series of steps can be undertaken to check the implementation of the above order:

- To study and analyse the allocation cycle of the Central Government and the utilization patterns of the State Governments.
- Regular field visits - helpful to understand the disbursement cycles
- To liaise and tie up with the locally proactive people and committed NGOs. This is essential since regular monitoring is important for the schemes to fetch the desired benefits.
- To meet the block level officers to understand any administrative hiccups

There are many issues where SC intervention is required but this vital order can be used to ensure that delays in distribution are averted.

Analysis and triangulation of state and district level data of food and monetary allocations and utilizations

This is a very important step to ensure that the entire money allocated for the old age scheme is utilised for the purpose of paying pensions only. It is worth making the effort to check with the relevant department how much money was allocated by the Central Government, how much of it was released and how much was finally utilised. If the money allocated and released does not match with the money utilised, it is essential to investigate regarding the money left unutilised or if it was utilised for some other purpose.

As has been discussed above, the Central Government is committed to provide Rs.75 per pensioner per month under the NOAPS. The State Governments may contribute over and above that. Given the present structure of the scheme, where a numerical ceiling is followed and the coverage is not universal, *the Central Government must contribute at least Rs. 75 * 12 * numerical ceiling of the given state per annum*. As the analysis in the past shows, it is very likely that there is a short fall in monetary allocation made by the centre to cover the said targets. Very often the problem is worsened due to under utilization by the state governments. To assess any lack of funding, it is firstly imperative to look at the allocations made by the Central Government and then match it with the utilization figures as furnished by the State Government. This utilization figure must be then divided by the benefits entitled to arrive at the number of beneficiaries supportable. This will show the actual gap in coverage.

This kind of an analysis needs to be carried out at the state level. The allocation and utilization data can be obtained from the relevant departments. If the State Government is making no contribution, the formula is very simple i.e. *Annual Utilization / 900 = Number of beneficiaries supported*. If the State is allocating money

⁶⁰ Order dated 28th November 2001

out of the state plan towards old age pension scheme, the total utilization figure may be divided by the annual pension benefit entitled in the particular state.

For instance, as is reported in the Sixth Report of the Commissioners, for the state of Bihar for the year 2004 – 2005, there is no contribution made by the State Government as per their correspondence with the Commissioners. The simple analysis has disclosed wider gaps in coverage under the NOAPS than stated.

State	Utilization out of ACA (in Rs. Lakhs)	Utilization out of the state fund(in Rs.lakhs)	Numerical Ceiling	No. of beneficiaries reported ⁶¹	No. of beneficiaries supportable ⁶²
Bihar	3070.12		1107700	493696	255843

The allocation and utilization figures are available at the state level. The figures are available at the district as well as block level also but the district wise and block wise break up of the numerical ceilings may not be readily available.

This analysis will bring to the fore limited coverage and limited allocation. As per the analysis in the Sixth Report of the Commissioners, in the 22 states for which data was available, the actual coverage was less by 24per cent than the stated coverage – this when the state old age pension was also taken into account to work out the total coverage.

The old age pension is a very critical scheme and ensuring a dignified existence to the aged impoverished should be the priority issue. In the analysis, one should also closely look at the number of beneficiaries that need to be covered if the coverage is universal. For this, the population figures from the latest census (2001) should be used. The above 65 population in each state should be multiplied with the respective poverty ratio of 1993–1994 for that state to arrive at the figure for universal coverage.

Study and analysis of field situations of implementation

It is important to bear the following things in mind on the field in relation to the NOAPS:

- Total number of aged people in the village
- Number of pensioners in the village
- Number of women pensioners
- Financial status of the pensioners
- Regularity in the distribution of pension
- Informal interviews with the pensioners to understand the disbursement procedure
- Whether the disbursement procedure causes any inconvenience to the aged pensioners
- Number of old people in the village who are not on the pension lists and reasons for that

⁶¹ As reported by the states.

⁶² Calculated using the formula: Annual Utilization Figure / Annual pension rate of the state. For Example, in case of Bihar 307012000/1200 = 255843 number of pensioners that are supportable.

- Number of people who ever applied for the pension but their names have yet not been included in the list
- Social Audit – discussed below
- To enquire about the frequency of visits of the Sarpanch and the Block Officer

To make the procedure more scientific and reliable, a formal social audit for each scheme is very helpful. For this, it is recommended to obtain the village wise lists of pensioners from the block office. A group discussion with a mix of people from the village will reveal the authenticity of the lists. For instance, in case of NOAPS it is possible that the lists are not updated at all and continue to show the names of the people who passed away months or years back. This will throw up cases of corruption and mis-utilisation of funds.

Interventions required at the field level:

One must coordinate with the local NGO in each block and efforts must be made to ensure that there is representation of some informed citizens on the day of pension distribution – whether it is done in a camp or at the block office or from house to house in a village – to ensure a fair disbursement.

The procedures to apply for old age or family benefits are fairly complicated. For instance, to get approval under the pension scheme in Bihar, the following procedure is followed:

- The potential beneficiaries of the scheme have to get approval from the Aam Sabha of the Block Panchayat or Panchayat Samiti which is convened at the block level.
- The potential beneficiary after this has to get approval from the Zilla Parishad, convened at the district level.
- Following the above procedure, the District Development Commissioner or equivalent official can authorise and approve the eligibility of a particular beneficiary for the scheme.

If possible, workshops must be arranged on a frequent basis to acquaint villagers with the schemes and the ways to apply for the benefit under each of the schemes.

Identifying policy gaps and proposing policy reforms

This is a very crucial stage of analysis and requires some vigorous effort and contribution by the locally proactive people. The old age pension scheme indeed needs field attention and in depth analysis to cover the policy gaps. It is still not clear how the old age pension scheme is implemented in each state. Our experience in Bihar and Jharkhand threw up some very appalling facts. The pensioners have to travel to the block office to collect their pension. Given the poor state of public transportation in most of the rural areas in effect means that the old people need to walk to the block office or to the pension camps. The block office in almost all cases is very far – sometimes as far as 10 kms. In the most horrific cases, as for instance in Bodh Gaya block in Bihar, two old people collapsed and died on their way back from the block office after receiving their pension amounts.

It is also worth its while to spend time on the field to generate evidence for critiquing the design of the scheme and suggesting revisions and policy changes. The entitlement under NOAPS is in essence a token benefit and does not even fulfil the subsistence requirement of the people. This is policy gap as well as policy blindness.

Such policy issues need to be identified and dealt with. Some consolidated and coordinated field work and analysis is required for the proper scheme design and implementation.

Policy Issues at a Glance:

- Limited coverage
- Low pension rates
- Quantum of benefits not linked to inflation in the economy
- No regular verification of beneficiaries under NOAPS
- Dilemma of family care
- Lack of understanding on disbursement methods and procedures
- Lack of political will and commitment to extend complete social security to the people in need

Identifying and documenting best practices

This is again very vital to our efforts to implement the scheme effectively. As has been discussed, there are some very significant policy gaps in the implementation of the old age and family benefit schemes. In the light of all this and in our pursuit to find the best possible mechanism to ensure proper implementation, it is very essential to study the better practices. It would be worth the effort to spot places where lists are updated at regular intervals and how it is done, where pension distribution causes the least inconvenience to the pension beneficiaries, where possibility of pilferage of resources is the least, to identify experiences and case studies of intervention by NGOs and informed citizens. For instance, in Tamil Nadu the old age pensioners have been covered under the Midday Meal scheme January 1983 onwards. This feeding of aged destitute is an innovative step that has strengthened the social security provided to the people in need. To spot such practices and innovate a programme further, it requires a very careful and critical analysis keeping in mind the following framework:

- Administrative instructions of the scheme
- Budgetary implications
- Implementation details including the problems it can lead to
- Views of the beneficiaries
- Views of other stakeholders: in the example given it would include the school teacher etc
- What should be replicated and what should be changed, and why?

The notion of finding best practices and innovations in the programme is important so as to get the schemes into the corridors of policy debates by active campaigning and to struggle for a foolproof mechanism to give people complete social security in their later days.

Annapurna Scheme

Annapurna is a grain based social security scheme given to people who are eligible for old age pension, but are not receiving it. Under the Annapurna scheme, the beneficiary is entitled 10 kgs of grains free of cost every month. This is also fraught with similar problems as NOAPS, and needs to be actively monitored and debated.

The analysis of the Annapurna scheme has to be largely based on the lines of NOAPS. The only order under Annapurna says, 'The States/ Union Territories are directed to identify the beneficiaries and distribute the grain latest by 1st January, 2002.', which by all standards is not complied with.

Some specific details:

The following things must be consciously looked at while studying Annapurna on the field:

- Number of Annapurna cardholders
- Location of the ration shop
- Distance of the FPS from the village
- Whether the ration is given free or at BPL rates or at APL rates
- Financial status of the beneficiaries

- Regularity of distribution of grains

For assessing the performance of the Annapurna scheme, food grain data can be obtained from the Food Grain bulletin which gives monthly cumulative off take figures of grains under separate schemes for each state separately. The Food Grains bulletin is prepared by the Ministry of Consumer Affairs and Public Distribution and the data is available on their website also. Here, the offtake and utilization figures need to be divided by 10 kgs * number of months the grain is so far given in the year – that is the annual entitlement of grains to each beneficiary – which will give the number of people actually getting the benefits in each state. The actual allocation and utilization figures can be obtained from the State Government also. The two sets of data can be cross-checked.

In field visits, please enquire whether there are any difficulties encountered in receiving the foodgrains regularly every month; are there delays, bottlenecks, red-tape, leakages? Also, do they value this foodgrain for their social and nutritional security, or would they prefer cash pensions? Any suggestions that they may have for improvement?

Chapter 9

National Family Benefit Scheme

Under the family benefit scheme, a one-time relief payment of Rs. 10,000/- is made to the family in the event that the primary bread earner of the family passes away. The implementation of NFBS is very rudimentary and the coverage is even more scant. To just put this into perspective, as is given in the Sixth Report of the Commissioners, in the year 2004 – 2005, the coverage was only 35.8% combined for the 22 states taken into consideration. For the state of Orissa, which ranks third on the poverty ratio as well as specific age mortality list, the coverage in the said year is only 0.34%.

Frequently encountered problems

- a. **Scant implementation:** As is discussed above, the number of families that get the benefit is very few. A part of the problem is due to non-existent guidelines.
- b. **Lack of clarity on the size of benefit:** For instance, the Government of Andhra Pradesh gives Rs.5000/ as the relief money under the family benefit scheme, which is in conflict with the SC order.
- c. **Inadequate allocation:** The money allocated by the Centre falls short of the money required to cover the numerical targets each year.
- d. **Tedious procedures:** The procedures are fairly elaborate. In a village in Chatra, Jharkhand, we were told the forms can be obtained from the block office against a minimal charge. The block office was as far as 10 kms, making it virtually impossible for the indigent families there to make use of the scheme.
- e. **Corruption, leakages and virtually no monitoring mechanism in place:** Corruption and leakages are only intensified due to lack of monitoring and accountability.
- f. **Delays in payment:** The delays in payment are severe, even with the scant coverage under the programme. As per the affidavit filed by the state of Chhattisgarh, till October 2004, around 4089 applications of family benefit were pending due to non-availability of funds from GOVERNMENT OF INDIA.

Problems Encountered	Micro Level	Macro Level	Policy Gaps
Scant Implementation		✓	✓
Lack of clarity on the size of benefits		✓	
Inadequate allocation		✓	
Tedious procedures	✓	✓	✓
Corruption, leakages & virtually no monitoring mechanism in place	✓	✓	✓
Delays in payment		✓	

The five level analysis as laid out in the previous section must be used for studying this scheme also.

Ensuring Compliance with SC orders

“We direct the State Governments/Union Territories to implement the National Family Benefit Scheme and pay a BPL family Rs. 10,000/- within four weeks through a local Sarpanch, whenever the primary bread winner of the family dies.”⁶³

Same exercise needs to be carried out as under NOAPS and Annapurna – involving regular field visits, correspondence with the block administration, grass root monitoring with the help of NGOs. This kind of correspondence and networking is especially important for this scheme given the problem of bare implementation.

Analysis and triangulation of state and district level data of monetary allocations and utilizations

This scheme is starkly neglected and all those states that have filed their affidavits in the Court in the year 2004 – 2005 have stated severe lack of funds from the Centre as the main reason for not being able to implement the scheme or implementing it just frugally. It is important to understand precisely the shortage in allocation and further if there is any inefficiency in utilization.

To carry out the annual state level analysis, utilization figures for each state need to be divided by 10,000. This will give the extent of coverage. In the latest information from the GoAndhra Pradesh, the quantum of benefits given under NFBS is Rs.5000/- and the aforementioned calculation also reveals the same.

States	Numerical Ceiling	Number of Actual Beneficiaries	Percentage coverage
Andhra Pradesh	28800	36752 ⁶⁴	127.61

In the visit of the Commissioner’s representatives to the Samastipur District of Bihar, it was told that 19.65 lakhs have been allocated for the last financial year. Only 180 beneficiaries can be given the full payment in the period with this amount of money. There are 1850 pending applications, which have accumulated over the last 4/5 years. Given this, it becomes very important and meaningful to juxtapose any statistical analysis with field visit observations.

Study and analysis of field situations of implementation

The following is an indicative list of points to bear in mind for NFBS:

- ✓ Families in the village that lost their earning member recently
- ✓ Whether an application was filed
- ✓ Whether the benefit was given within four weeks of the death
- ✓ Cause of the death – under both accidental and non accidental deaths the quantum of benefit is the same i.e. Rs.10,000/
- ✓ Whether the family got the full amount of Rs.10,000/ or was there any pilferage – and if so what and how

⁶³ Order dated 28th November 2001

⁶⁴ This is to indicate that the utilization figure for AP is 1837.58, which can support the quoted number only if the family benefit given is Rs.5000 per beneficiary.

- ✓ It is likely that in case of a starvation death, the benefit is given since there is mass and media mileage attached – to especially look for low profile cases
- ✓ Social Audit
- ✓ To enquire about the frequency of the visits of the Sarpanch and Block Officer

Identifying policy gaps and proposing policy reforms

For our lack of attention, there is only one Court order for the scheme by far. One issue under NFBS is whether to retain numerical ceilings or make this into a universal scheme. Given such poor implementation, the lack of monitoring becomes an even more vital issue.

Identifying and documenting best practices

For the same reason as above, if there are any better practices followed in its implementation, they need to be identified and brought to the notice of all. It is important to spot cases of intervention at individual level for obtaining the benefit of the scheme. This scheme involves form filling procedures and therefore participation of the aware and informed citizens is paramount. The same framework, as suggested in the section on NOAPS above, can be taken into consideration in order to suggest scheme innovations.

Chapter 10

National Maternity Benefit Scheme

Introduction

National Maternity Benefit Scheme (NMBS) came into effect as a component of Nation Social Assistance programme (NSAP) on 15th August, 1995. The scheme provides Rs.500 assistance to BPL pregnant women, 8 – 12 weeks prior to delivery, for each of the first two births.

In 2001, under PUCL vs UOI Civil writ petition 196 of 2001, this scheme was one among the schemes taken by the Supreme Court, whereby implying that the ‘maternity relief’ in form of cash assistance worth Rs. 500/-, also has a food security component in it.

After 5 years of its inception, in the years 2001-2002 this scheme was transferred from Department of Rural Development to Department of Family Welfare, Ministry of health and family welfare. Even after the transfer the guidelines of the schemes continued to remain same till dateⁱ.

Ensuring compliance with orders of Supreme Court

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 Sarpanch, all BPL pregnant women 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.

Analysis and triangulation of state and district level data of food and monetary allocations and utilizations

Analysing the adequacy of the allocation

The enquiry will start here with a two basic question:

Is the allocation adequate to cover all BPL pregnant women for each of the first two births?

Do the State Government utilize the entire allocation?

To analyse the adequacy of the allocation, we first need to estimate the total number of BPL pregnant women aged 19 years or above who give first two births. The Government of India has itself estimated this figure for each state and also gives a method to estimate this (see appendix 3).

The Government of India uses the following formula; = population*poverty ratio*CBR*proportion of first two births in total live births.; and estimates that annually 53 lakh pregnant women would be eligible for the benefit. (for state wise figure see appendix 3).

As the amount of benefit is uniform with Rs. 500, multiplying 53 lakhs or any other figure arrived at after updating the data used in this formula with Rs. 500 will give the

required allocation by Government of India. Doing this the Government of India arrives at a figure of Rs. 28762 to cover all eligible women.

Comparing the actual allocation in the state with the required allocation would give a good picture of compliance with Court order for universal coverage of the scheme.

Examining government orders

The Supreme Court in its order dated 27 April 2004, directed the states not change NMBS and other schemes without prior permission of the Court. After transfer of the scheme to Ministry of Health and Family Welfare, the Government of India through, IA 37 of 2004, sought permission of the Supreme Court to modify the National Maternity Benefit Scheme (NMBS) and to introduce a new scheme namely Janani Suraksha Yojana (JSY). The Supreme Court in turn through Court order dated 09 May 2005, asked the Commissioner to examine the matter in depth and file a report.

Commissioner also conveyed his views on the new scheme to the Government of India and pointed out that the objectives of JSY is laudable in itself, however from the point of view of food security to BPL pregnant women, the new scheme clearly discriminates and excludes many BPL pregnant women based on geographical area, institutional deliveries and birth of girl child, though the food requirement of BPL pregnant women is same everywhere.

It was estimated that if the new scheme was introduced on average nearly 67.5% of the presently eligible beneficiaries would not get any direct cash assistance and many of the beneficiaries would get less Rs. 500/- as cash assistance.

After a series of meeting between commissioners and the Government of India, it was agreed by Government of India that the government would proceed with JSY after ensuring that the direct cash entitlement of Rs. 500/- that is provided currently under NMBS would not be modified by reducing, abridging or qualifying in any way and the new objectives related to maternal health issues and institutional delivery under JSY would be addressed with cash assistance over and above Rs. 500/- which may be used as incentive money. The Commissioner has requested Government of India to place the new scheme before the Supreme Court for permission after making the changes as per the agreement.

However it seems that though the states were intimated about the plan to start the new scheme after transfer of the scheme to department of health and family welfare in each state, they are not aware of the Supreme Court Order banning change in any scheme without prior permission and the recent developments after agreement with the commissioner.

Therefore it would be useful to check that

Whether there is any instruction by the State Government informing that the NMBS has to be implemented without incorporating any of the objectives or incentive schemes before prior permission from the court.

Whether there is any instruction issued directing the implementing agency to use any criteria for selecting the beneficiary, other than the requirement that she has to be below poverty line and should give first two births.

Other than this it is necessary to check the following in the government order or instructions:

- Is it specified to disburse the benefits 8 to 12 weeks prior to delivery?
- Is Sarpanch the responsible person to disburse the cash assistance?
- Is there a government order on 'ceiling/quota for each district'?

Study and analysis of field situations of implementation

The advisors during their field visit may use the following checklist:

1. Are there women who are 'deserving/eligible get the benefit' of NMBS?
2. Do all beneficiaries get Rs. 500/-?
3. Did they get it 8 to 12 weeks prior to delivery?
4. Did the beneficiaries complain that they had to pay bribes to receive the benefit?
5. Is the time taken to sanction of the benefit after submitting the Application too long?
6. Is the village Panchayat in the state is involved in identifying and recommending the beneficiaries?
7. Does the Sarpanch disburse the cash assistance to beneficiaries.
8. If yes, Have those people who have been recommended by the Panchayat (if the Panchayat is involved) received the benefit?

Implementation Issues

Ineffective fund disbursement system

As per the information available with the Government of India on April 2005, for the year 2003-04, only two districts (one in Jharkhand and one in D&N) were able to submit their UC and AR to the GOVERNMENT OF INDIA. All other districts have either submitted incorrect UCs or ARs or not submitted them at all. This would mean that no new release was made during year 2004-05 and 2005-06 to all other districts and the districts are now running the scheme with unutilized balance of previous years⁶⁵.

Apart from slackness on the part of State Government, the present system of fund disbursement to the districts seems to be affecting the utilization capacity of the state adversely. Typically in the scheme implemented by Ministry of Rural Development the funds are transferred directly to the districts, whereas the utilization certifications have to be collected by the state nodal agency and sent to Government of India for release of next instalment. After transfer of NMBS to department of family welfare, from MoRD, this procedure was followed by the Department of Family Welfare. This is unlike the usual schemes implemented by the union and state department of family welfare, like RCH, in which the funds are directly transferred to the state nodal agency, which disburses the funds to districts that monitor the scheme. The series of triangular correspondence between state nodal agency, districts and Central Government has resulted in confusion leading to eventual stoppage of the release to the districts. The state of Chattisgarh, Meghalaya and Haryana in their communication to the Commissioner has attributed this as a main reason behind their low performance.

⁶⁵ Have to check with the ministry.

Therefore there needs to be some serious thinking on the method of disbursement of the funds to the districts.

Clumsy procedure for disbursement of funds to the beneficiaries

With involvement of other institutions, substituting or complimenting Gram Panchayat, such as Primary Health Centers, Anganwadi Centers (to certify pregnancy and first two birth criteria) and block and revenue officials (to certify BPL status) it becomes procedurally difficult for the BPL pregnant women to get cash assistance.

For instance, typically a BPL pregnant women has to travel to a Revenue officer to get BPL certification, she then has to counter attest the form by the ANM certifying two live births, besides she has to provide attested proof of her age and then a final approval by the medical officer. In some states, which have other objectives as well in NMBS, BPL pregnant women would further require certification of sterilization and immunizing her child fully (which would take at least six weeks after child birth).

The cost, time and stress involved in dealing with multiple officials placed in different places far from the village, given the levels of corruption and redtape in the system, will more than discourage BPL pregnant women to actively apply for the scheme.

In the Order dated 27th April, 2004, the Supreme Court while restricting the UOI and states to change any schemes, particularly NMBS, without its permission also observed that the procedures of the schemes have to be simplified.

“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.”

Ideally, in rural areas, the scheme should be such that the Sarpanch or Gram Sabhas identify the eligible BPL pregnant women and forward it to the local nodal institution for processing. From this stage, it should be the responsibility of the respective institutions to use its machinery to scrutinize the eligibility conditions such as BPL status, pregnancy, first two births, age etc and to report back to Panchayat and disburse the money to them in time bound manner and resolve with the Panchayat any dispute that arises over eligibility. Therefore the multiple criteria, if it were essential for right identification, would not be a burden on BPL pregnant women.

Involvement of Sarpanch and Panchayat

The other important reason for poor performance of the scheme is non-compliance of Supreme Court order dated 28 November 2001 for disbursing the cash assistance through Sarpanch and also non-compliance with scheme guidelines, which envisaged the requirement of close co-ordination with Panchayat institutions for better identification and disbursement of benefits. Available information from the State of Tamil Nadu, Uttar Pradesh, Bihar, Pondichery and A&N shows that the PRI functionaries have no role to play in identification of beneficiaries and disbursement of assistance. The practice of ignoring the Panchayat in NMBS implementation not only undermines the role of elected representatives but also increases the difficulty in implementation, as the reach and quality of health infrastructure cannot substitute the

Panchayat institutions in many places. Therefore the role of Panchayat in NMBS should not be ignored.

BPL certification

Another problem faced in the study is the problem of identifying the BPL households. Due to the flawed BPL list many people are getting excluded from the scheme. Though many states have designated officials who would certify poverty based on criteria which differ from state to state, the need is to understand and stream line these criteria appears very urgent and important.

Identifying policy gaps and proposing policy reforms

Assistance under NMBS gives complete freedom to the beneficiary to use it in a way as desired by her. Progressively such cash assistance should be adequate enough for a BPL pregnant women to forgo the wage earnings during critical months of her pregnancy whereby she can rest and regain the strength physically and mentally. The cash assistance could be very useful to increase the nutritional consumption during her pregnancy period by enabling consumption of nutritional items such as milk, ghee, egg, fruits, vegetables and honey etc, which may not be available from subsistence production.

Low Cash Assistance

However in practice, the assistance is too low to enable consumption of even a few of the nutritional items mentioned above. The low assistance also can explain the low awareness and inactive participation in the scheme. In the year 1995, Rs. 300/- was fixed as the cash entitlement under NMBS by Government of India, which was raised to Rs. 500/- in year 1998. Not only is the cash assistance too low but also there has been no increase in the rate of cash assistance since 1998, neither there seems to be any attempts either by Government of India or State Governments. What has happened is the erosion of the basket of food that could have purchased with Rs. 500/- in year 1998, when we account for inflation.

A simple calculation based on increase in the basic salary of the lowest paid employee in the Central Government after 5th Pay commission shows that the NMBS cash assistance should have increased to Rs. 1600/- by now⁶⁶ to account for the inflationary pressure.

At present 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.

Right to Maternity benefit and right convergence of scheme

Whether cash assistance is low or high, the right of women to rest and get adequate nutrition during pregnancy is further restricted due to two reasons:

⁶⁶ The basic pay was revised from Rs.750 to Rs. 2400 for the lowest paid employee of the Central Government. This amounted to 220 times increase for a period of 10 years. Rs. 1600 was arrived at as 220 times of Rs. 500.

- a) Intra-family inequality and exploitation of women.
- b) Tendency of the Government to link NMBS to issues such as family planning
- a) The intra- family gender inequality leads to situations where the women may be denied of benefits of the cash assistance inside family. In other words the cash assistance may not be used to the advantage of beneficiary or her nutritional needs. However the alternative form of assistance in form of direct feeding also has its own limitations. Firstly through direct feeding there is a danger of restricting maternity entitlement merely to food component. Secondly the danger of implementation difficulties due to factors ranging from caste to corruption, which increases when we move away from cash transfer system further discourages the option to shift to direct feeding. However ways could be explored to converge the scheme with other schemes such as ICDS and National Nutrition Mission, whereby the assistance may be used to encourage the direct feeding through other schemes.
- b) Instead of positively converging the schemes to benefit women to prevent leakage of her entitlement inside family, the government has only shown keen interest in the possibility of converging the scheme to achieve other objectives such as family planning and institutional deliveries. This would severely restrict the existing right of the women to maternity benefit, which cannot be qualified in any circumstances. So there is need to carefully watch whether the convergence of this scheme results in any qualification and hence reduction of entitlement or not.

Chapter 11

Starvation

Introduction

Starvation is primarily a condition of 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 may also be termed as situations of starvation.

As stated by Mr. Chaman Lal, Special Rapporteur of the National Human Rights Commission (NHRC), “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”.

Factors causing starvation are many and varied. Some of them include (i) livelihood crises, (ii) repeated crop failures, (iii) failure of resettlement policies and procedures (iv) landlessness, (v) small and fragmented land holdings, (vi) prolonged malnutrition, (vii) deterioration of health due to diseases, (viii) decline in income levels, (ix) high levels of deprivation, (x) insufficient relief measures, (xi) increased indebtedness, (xii) large scale migration for work.

A sudden increase in food prices, a drop in income levels of labourers (agricultural or otherwise) or other such policies may breed conditions of starvation and create hunger for millions. However, it should be kept in mind that conditions and causes of starvation will be unique and distinct in different regions. It is important for the investigator/activist to identify the causes of distress and make recommendations accordingly.

Starvation can occur even when food is available in large amounts. Despite physical availability of food, people may lose their capacity to produce, purchase, exchange or receive food leading to hunger. Starvation is a situation of gross denial and violation of rights of an individual. According to Article 25 (1) of the Universal Declaration of Human Rights, 1948, “everyone has the right to a standard of living adequate for the health and well-being of himself and his family”.

Extending the definition of starvation

The Right to Food does not only mean prevention of starvation. It also implies that the food being provided should have adequate nutritional content. Food security implies that each individual should be able to access adequate food at all times. And the food should be culturally acceptable to him.

With regard to nutritional statistics, a body needs 850 calories everyday to function properly. Though the requirement of food differs on the basis of age group, gender, type of work done etc. but estimate overall figure stands at 850 calories a day. Anything under 850 calories intake will be partial starvation. Sample dietary histories to assess daily calorie intake might be a method to assess poor nutrition levels and thus under nutrition and starvation. Consumption of inedible items such as mango

kernels, and other so-called 'traditional foods' indicate that conditions of starvation prevail.

Media's assistance shall be taken in cases where conditions of starvation and hunger are found to prevail. The local media should be made aware of the poor situations that exist in the region. The media can highlight issues such as (i) prevalent hunger (ii) status of implementation of food schemes, (ii) the state of primary health care. Large issues such as livelihood crisis, corruption etc may also be covered by the media.

Ensuring compliance with Supreme Court orders

According to the Supreme Court ruling dated October 29, 2002, 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.

Study and analysis of field situations of implementation

While analysing deaths due to starvation, the investigator should abstain from conducting a conventional enquiry of the kind that is common in the aftermath of media complaints of starvation deaths. In simple words, the victim's family should not be fired a series of humiliating questions soon after the death has taken place, as 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. The objective is not to conduct a post-mortem into the death but only to understand the existing conditions of hunger and starvation.

Instead, on receiving reports of people living or dying of starvation, the overall field situation in the family and community may be analysed, by a process described sometimes as verbal autopsy. Within this, discussions are carried out with the family of the victim 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. Verbal autopsy may be conducted in two phases. In phase one, discussions are held with the family of the victim and some neighbourhood families. These neighbourhood families participate in the discussion only after consultation with the affected family.

During discussions, the victim's family 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 to probe death and its causes but only to understand the poverty and destitution faced by the people. Attempt shall also be made to understand the root cause of poverty such as livelihood crisis, heavy debt, crop failures etc.

In the second phase of verbal autopsy, discussions can be carried out with the other members of the tribe, caste, class, gender or age group to which the affected people belong. During these discussions, questions are posed about the food and livelihood

conditions and deprivations of the communities, their access to food and work, and periods of hunger. Broader questions regarding the schemes, such as (i) is there an operational anganwadi centre running in the village, (ii) is the nearby government school providing midday meals to the children, (iii) does the ration shop provide foodgrains in the right quantity 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 studies should be sensitive to these as well.

Identifying policy gaps and challenges

It is the duty of the state to provide relief in case of conditions of starvation or long term unaddressed under nutrition. In its current form, relief is in the nature of charity. Such an ideology cannot bring about long term and permanent change in 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. This is so because the system on entitlements or rights will work according to a legal framework.

The way forward

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 both at the short term and the long term.

The first mandatory relief is for the affected family. If the death is of a bread winner (including a single mother, or one spouse from an aged abandoned couple, or the care giver of a person with disabilities) the nutritional and social vulnerability of the survivors may be very intense. The Advisor or the person investigating starvation is morally bound to understand and document their most pressing needs, of food, education, shelter and livelihood, possibly also protection such as if there are only child survivors. It is a paramount duty of the Advisor to coordinate with government, local panchayats, local governments and the state government, to ensure that all necessary relief is extended to the family.

The starvation is unlikely to be a freak accident or an aberration. Instead it should be understood as a symptom and a warning signal of the vulnerability of a particular community or socio-economic group. The Advisor must clearly identify the group and the nature and reasons for the food crisis, as well as introduce appropriate timely relief and rehabilitation measures. Some of the short term measures may include (i) primary health care, (ii) social security benefit, (iii) emergency feeding centres for people who

are starving, (iv) wage employment programmes, (v) poverty alleviation programmes and (vi) strengthening of land legislations. However, there are no fixed set of steps that need to be taken, they may vary from region to region keeping the mind the requirements of the area. More importantly, the measures should be prioritized in adherence to severity and requirement of the area.

A system of fixing accountability has to be devised in case of occurrence of a starvation death. Starvation must be deemed an injury and the state be liable to pay the penalty.

To the extent possible, the activist or the NGO should avoid adopting an adversarial attitude towards the administration set-up of the region/area. Without compromising on its principles, the activists should advocate for the entitlements of the public. Mobilization of people and making them aware of their entitlements is also a crucial task of the activists.

There is a need to document a hunger death but the prime focus should be on diagnosis of a starving population and demanding relief from the state as an entitlement and not accept the relief as charity.

There is a need to evolve a systematic approach to assess distress in rural communities i.e. at the micro level. The parameters that need to be studied include weather signals, crop, movement of population and cattle, contraction of credit and nutritional status of children.

Let us remember that distress is chronic in nature and deepens with time.

Appendix 1

Key Macro indicators—TPDS

A) 'Total Card Quota'

$$TCQ = (TP / AHS) * PR \quad (1)$$

Here,

TCQ is the total card quota in the state or in other words it is the total number of AAY/BPL cards which the state can issue as prescribed by Government of India
TP is the Total population in the state in year 2000 as projected by RGI census based on 1991 census results.

AHS is the Average household size in the state based on 1991 census result

PR is the poverty ratio of the state as given by 1993-94 Lakadwalla Committee

B) 'Total Food grain requirement' (TFR)

$$TFR = (TCQ * 35 \text{ Kg}) * 12 \text{ months} \quad (2)$$

Where,

TFR is the total food grain requirement of the state in kilograms in a given year.

TCQ is the total card quota as calculated in equation 1.

35 kg is the per month food grain entitlement of a BPL/AAY card holder.

C) 'Allocation Gap' (AG)

$$AG = TFR - TA \quad (3)$$

Where,

AG is the allocation gap, ie the quantity of food grains denied by Government of India to state in a particular year

TFR is the total yearly food grain requirement as computed in equation (2)

TA is the total food grain allocated by Government of India to state in a particular year

D) 'Food Grain Denial' (FGD)

$$FD = TA - TO \quad (4)$$

FD is the food grain denial to the BPL/AAY card holders by the state,

TA is the total annual BPL/AAY food grain allocation by the Government of India to the state

TO is the total annual BPL/AAY food grain offtake by the state

E) Food Grain Entitlement Per Card Holder' (FPC)

$$FPC = 35 \text{ kg} - ((TC / TO) / 12 \text{ months}), \quad (5)$$

Where,

FPC is the per month food grain entitlement per card holder in the state,
35 kg is the actual monthly food grain entitlement per card
TC is the total number of AAY/ BPL cards identified by the state
TO is the total annual foodgrain offtake by the state in Kilograms
F) 'Bogus Cards' (BC)

$BC \text{ in } 2005 = TRC \text{ in } 2005 - (HP \text{ in } 2005 / AHS \text{ based on } 2000 \text{ census}) (6)$

Here,

BC is Bogus cards in the state

TRC is Total ration cards in the state

HP is Household population in the state

AHS is Average household size in the state based on 2000 census result.

Appendix 2

Classification of Supreme Court order on employment scheme

Sampoorna Grammen Rozgar Yajona and other employment schemes first came under purview of the court orders four years back on 17TH September, 2001 order, whereby the court directed the state governments and Government of India to submit the status of it's implementation.

Subsequently after perusal of the Commissioners' report, petition and Interim applications, the court's intervention approach was five fold:

1) Reiterating the broad objectives of the scheme mentioned in the guidelines, with an emphasis to weaker sections

- 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. (8th May, 2002)

2) Reiterating the entitlements of beneficiaries in the Court orders:

- The State Governments/Union Territories are directed to pay minimum wages to the workers under the scheme (20th April, 2004).
- The respondents shall make the wage payment on a weekly basis. (8th May, 2002)

3) Through passing directions to correct the observed lapses which lead to situation of denial of entitlements

- Shall stop use of labour displacement machines (20th April, 2004).
- The respondents shall prohibit the use of contractors in the SGRY programme. (8th May, 2002)
- 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. (8th May, 2002)

The allocation of funds and food-grains shall be timely made by the Central Government to the State Governments. 20th April, 2004

The State Governments are directed to utilise the entire allocation, as aforesaid, so that the allotted funds and food-grains neither lapse nor result in reduction in subsequent years. 20th April, 2004

4) Reiterating the scheme guidelines on grass roots participation, ownership and accountability of the scheme through panchayats and gram shabas, as court orders.

- 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. (8th May, 2002)

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. 20th April, 2004

- The Gram Sabhas are entitled to conduct a social audit into all Food/Employment schemes and to report all instances to misuse of funds to the respective implementing authorities, who shall on receipt of such complaints, investigate and taken appropriate action in accordance with law. (8th May, 2002)
- 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. (8th May, 2002)

Other issues:

In case, some of the State Governments, as a result of financial constraints, wish to pay 100per cent wages in shape of food-grains and not partly food-grains 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 100per cent wages in the shape of food-grains.

5) Through intervention in specific issues:

We direct State of Madhya Pradesh to release to Jagrat Adivasi Dalit Sanghtana the aforesaid amount, for the Sanghtana in turn to pay the same to the concerned labourers on obtaining receipts from them. 17TH OCTOBER, 2004

Appendix 3

Total eligible beneficiaries and necessary resource under NMBS
(As calculated by Government of India)

State	Numerical Ceiling^^	QFE^^ (Rs in lakhs)
Andhra Pradesh	284900	1425
Arunachal Pradesh	11500	58
Assam	177900	890
Bihar	862300	4312
Chattisgarh		0
Goa	5700	29
Gujarat	172500	863
Haryana	87500	438
Himachal Pradesh	47500	238
Jammu & Kashmir	63800	319
Jharkhand		0
Karnataka	270600	1353
Kerala	116800	584
Madhya Pradesh	597700	2989
Maharashtra	509200	2546
Manipur	20700	104
Meghalaya	22400	112
Mizoram	6300	32
Nagaland	16300	82
Orissa	289700	1449
Punjab	45900	230
Rajasthan	258000	1290
Sikkim	6000	30
Tamil Nadu	318900	1595
Tripura	35800	179
Uttaranchal		0
Uttar Pradesh	1133300	5667
West Bengal	391200	1956
Total (States)	5361200	28762

¹ Appendix II of the letter from Health and Family welfare secretary to Commissioners of Supreme Court date 10.12.2004.