

THIRD REPORT OF THE COMMISSIONER

TO THE SUPREME COURT

The commissioner to the Supreme Court of India in "PUCL Vs UoI and Others" submitted his third report on May 1, 2003 to the court. The following is the original text of the report.

Writ Petition (Civil) 196 of 2001 (PUCL vs Union of India & Others)

Third Report of the Commissioner

The Right to Food, Two Years On

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Commissioner of the Supreme Court

1 May, 2003

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1. INTRODUCTION

Two years have passed since Writ Petition (Civil) 196 of 2001 was submitted by the People's Union for Civil Liberties (Rajasthan). This is a good time to review the situation and take stock of what has been achieved in addressing the core issues raised in the petition, particularly the need for swift action to prevent hunger and starvation.

I submit this review with a sense of urgency. The experience so far indicates that the intervention of the court in this matter is potentially effective. Some useful orders have been passed, and some positive steps have been taken by the respondents. For instance, many state governments have introduced cooked mid-day meals in primary schools, or are in the process of doing so. Grain offtake under the public distribution system and related schemes has substantially increased. And the central government has recently announced a major increase in the coverage of Antyodaya Anna Yojana, a programme of food-based social security for the destitute. Yet, these initiatives have only made a small impact in the massive problem of chronic hunger. Today, India remains one of the most undernourished countries in the world, with about half of all children suffering from undernutrition. The situation is all the more intolerable as it is happening in the shadow of gigantic food stocks. There is a catastrophic failure to protect the fundamental right to life, enshrined in Article 21 of the Constitution.

Behind this failure is an overarching lack of state commitment to the prevention of hunger and starvation. The elimination of chronic hunger does not get anything like the priority it deserves in policy planning and budget allocations. One symptom of this is the routine violation of Supreme Court's orders by the respondent governments. The fact that many state governments are yet to introduce cooked mid-day meals in primary schools, almost a year after the deadline set by the court has lapsed, is an example. In this context, it may be appropriate to refer to Article 47 of the Constitution (Directive Principles), which urges the state to "*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*". This has simply not happened.

This situation calls both for further directions from the court, and for stronger mechanisms to monitor and enforce the implementation of the court's orders. As

mentioned earlier, experience shows that the intervention of the court can make a difference. However, the implementation of court orders has varied a great deal between different states. In the worst cases (e.g. Bihar and Uttar Pradesh), there has been virtually no response from the concerned governments. Thus, stronger accountability mechanisms are required. I shall end this report with a few suggestions to this effect, but the matter is likely to require further, sustained attention from the court in the months to come.

With these general remarks, I proceed to review the implementation of earlier orders. This review builds not only on secondary data and extensive correspondence with high-level officials of the respondent governments, but also on first-hand experience of the situation in a number of states. During the past twelve months, I have been privileged to make extended field visits to several states, and to discuss the issues with a wide range of government officials, citizens' organisations, and concerned people. The more I learn, the more concerned I feel about the food situation in India. This report is an attempt to share some of these concerns, and to present some constructive recommendations.

2. A BRIEF "HISTORY" OF THE CASE

Writ Petition (Civil) 196 of 2001 was submitted in April 2001 by the People's Union for Civil Liberties (Rajasthan). The petition essentially demands that the country's gigantic food stocks should be used without delay to prevent starvation and hunger. In the petition and subsequent deliberations, the petitioner has argued that the best means of preventing hunger is a combination of (a) employment guarantee for the able-bodied, and (b) social security arrangements for the destitute. The petition also draws attention to the crisis of livelihood in drought-affected areas and asks for a massive expansion of relief measures in these areas.

In their initial response to this petition, the state governments submitted detailed affidavits spelling out the steps they had taken to prevent starvation.[1] Most of these initial submissions focused on various *food-related schemes* aimed at providing food security to the citizens, such as the targeted public distribution system (TPDS), the Integrated Child Development Scheme (ICDS), and the Antyodaya Anna Yojana (AAY). The petitioner, however, pointed out that many of these schemes are poorly implemented, sometimes even non-functional. Following on this, the Hon'ble Supreme Court passed a

significant interim order on 28 November 2001, aimed at a fuller implementation of these food-related schemes. The order effectively has three components. First, the order effectively converts the benefits of eight food-related schemes (see below, section 3) into legal entitlements. Second, the order directs all state governments to introduce cooked mid-day meals in all government and government-assisted primary schools within six months. Third, the order includes further direction to ensure the wide dissemination of information relating to the schemes in question.

Since then, the attention of the court has concentrated largely on issues relating to the implementation of the interim order of 28 November, 2001. It is important to note, however, that the food-related schemes covered by this order have intrinsic limitations, and that much bolder intervention is required to deal with the problem of endemic hunger in India. It is in this spirit that the original petition had made a case for the introduction of an all-India “employment guarantee scheme”, and for permanent social security arrangements for destitute households. The court should not lose sight of these fundamental pleas, even as it gets involved in issues relating to the implementation of the interim order of 28 November, 2001.

On 8 May, 2002, the Supreme Court passed an order containing directions on better implementation of the Sampoorna Grameen Rozgar Yojana (SGRY), and also empowering gram panchayats and gram sabhas to take active part in this process as well as in the monitoring of food-related schemes. This order also nominated Mr. S.R. Sankaran and myself as Commissioners of the court, for the purpose of monitoring the court orders and seeking redressal where appropriate. Mr. Sankaran, unfortunately, was unable to accept this invitation; I shall come back, further on, to the need for a second Commissioner, as the task assigned to me is too vast to be effectively discharged by a single person.

On 29 October, 2002, an order was passed which clarified that the chief secretaries were responsible for implementing the orders of the court, and that they would be held responsible in particular for any confirmed starvation deaths within their respective states.

Apart from the petition, both the petitioner and the respondents have filed a number of Interim Applications. I have dealt with many of the issues that have been raised in various applications, but have gone into any application in detail.

The preceding summary is not a comprehensive account of the case. I have focused on the essential milestones, as a prelude to the evaluation below. Before concluding this summary, I wish to reiterate the need for the court to give adequate consideration, without delay, to the fundamental pleas contained in the original petition. The interim orders passed so far have considerable value in helping to expand and improve existing food security schemes. Ultimately, however, much more is required to address the massive problem of chronic hunger in India with adequate breadth. This is where some of the prayers contained in the original petition, particularly those relating to guaranteed employment and social security, come into play.

3. STATUS OF FOOD-RELATED SCHEMES

I proceed with a review of the food-related schemes covered by the interim order of 28 November, 2001. It may be recalled that the order covered eight specific schemes, namely: Mid-Day Meal Scheme (MDMS); the Targeted Public Distribution System (TPDS); Antyodaya Anna Yojana (AAY); Annapurna; Integrated Child Development Scheme (ICDS); National Old Age Pension Scheme (NOAPS); National Family Benefit Scheme (NFBS); National Maternity Benefit Scheme (NMBS).

Before examining specific schemes, it may be useful to recall some general features of food security policy in India. The table below presents recent figures on foodgrain offtake and the “food subsidy”:

Table 1: Offtake of foodgrain from central pool (in million tonnes)

	1996-97	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03*
Offtake through ration shops	19.66	16.98	18.69	16.97	11.67	12.14	11.09
Offtake through other beneficiary schemes	NA	2.08	1.36	1.53	3.23	8.86	9.87
Sub-total	19.66	19.06	20.05	18.5	14.9	21	20.96
Open market sale		0.06	0.68	4.55	1.49	5.6	4.16
Exports		0	0	0	1.49	4.7	9.68
Total		19.12	20.73	23.05	18.21	31.3	34.8
Food subsidy (Rs crore)	6066	7900	9100	9434	12060	17612	24000

*** Up to December 2002.**

It may be observed that much of the recent reduction in stocks is due to a surge in exports (at about the BPL price), leading to an accusation that the Government of India is feeding the poor (if not the cattle) of other countries, instead of feeding the poor at home. It is also worth noting that India's food system operates with a huge subsidy from the exchequer (close to Rs 30,000 for the current year, according to recent estimates). This subsidy is achieving very little, as thing stand, in terms of providing food security to the underprivileged, and there is an urgent to ensure that it is better used.

3.1. Mid-day Meals

As stated earlier, the court has directed all state governments to introduce cooked mid-day meals in all government and government-assisted primary schools within six months of 28 November, 2001. The importance of this direction cannot be overstated. Indeed, earlier experience (notably in Tamil Nadu) demonstrates that nutritious mid-day meals at school can be a highly effective way of protecting children from hunger. Mid-day meals

also boost school attendance, especially among girls. Further, mid-day meals are not very expensive.

As far as the implementation of the court order is concerned, there are both positive and negative aspects to report. On the positive side, cooked mid-day meals are firmly on their way to being introduced throughout the country. As per recent submissions of the relevant governments, mid-day meals being implemented fully in Andhra Pradesh, Gujarat, Kerala, Rajasthan, Tamil Nadu, and in substantial parts of other states including Karnataka, Madhya Pradesh, Maharashtra and West Bengal. It is being partially implemented in Chattisgarh, Delhi, Orissa, and Punjab, but not implemented at all in Assam, Bihar, Jharkhand, Uttar Pradesh and Haryana.

Early evaluations of these programmes point to significant achievements, including substantial increases in school attendance as well as protecting children from extreme hunger in drought-affected areas. Having said this, there are also serious concerns, including the following:

1. Most states missed the six-month deadline for introducing mid-day meals.
2. Several states (notably Bihar, Jharkhand, and Uttar Pradesh) are yet to introduce mid-day meals.
3. In many of the complying states, the quality of the mid-day meal programme leaves much to be desired. Examples of qualitative lapses include: (a) low nutritious content of the mid-day meal; (b) the same menu being served day after day; (c) lack of basic facilities such as cooking sheds and storage space; (d) misappropriation of food or funds by vested interests. These are just a few examples.

I also wish to draw the attention of the court to the following:

1. The potential for using mid-day meals as a means of protecting children from undernutrition is vastly underutilized. Earlier experience shows that substantial results can be obtained, at relatively low cost, by combining nutritious mid-day meals with supplementary health and nutrition services such as deworming, health check-ups, vitamin supplementation, etc. This has been done to some extent in the more “active” states, such as Tamil Nadu and Kerala. There is a case for going much further in that direction.
2. There is also a strong case for the continued provision of cooked mid-day meals during the school vacations, especially in drought-affected areas where the school meal is often the only square meal in the day for deprived children. Rajasthan has made a provision in its annual budget for the extension of mid-day meals in summer this year. It should be noted here that Tamil Nadu provides food on all days through the year.
3. There is enormous scope for qualitative improvements in the design and implementation of mid-day meal programmes.

Box 1: POOR COVERAGE OF MID-DAY MEALS, THE CASE OF MAHARASHTRA

A survey of 91 villages in Maharashtra indicated that even in tribal talukas, cooked meals are being given in less than one third of the villages. The state government’s own figures, dated 2.1.03, show that there were 9733 schools in the tribal areas, out of which cooked meals were being given only in 4041 schools. The worst picture is in the poorest district of Nandurbar where out of 1324 tribal schools only 70 schools were giving cooked food. Yeotmal had 564 tribal schools but only 15 supplied cooked food. In a recent submission, the government of Maharashtra has clarified that they have reports that food is being served in 17887 schools in Tribal, Rural and Urban areas. It is anyhow not clear as to how many schools are covered in the Tribal areas.

Source: Survey conducted by Anna Adhikar Abhiyan

I shall continue reporting on the status of mid-day meals from time to time. Considering both the strong potential of this scheme, and the limitations of present arrangements, it is essential for the court to keep a close watch on the progress of mid-day meals, and to deal firmly with any violations of its order. The first priority is to deal with states that are yet to initiate mid-day meals, almost 12 months after the deadline stipulated in the court order of 28 November, 2001. I urge the court to consider ways of holding these states (especially the hunger-ridden states of Bihar, Jharkhand and Uttar Pradesh) accountable to this inexcusable lapse.

3.2. Targeted Public Distribution System

Turning to the targeted public distribution system (TPDS), there are many serious concerns. It may be recalled that the court has repeatedly directed state governments to ensure that households below the poverty line (so-called “BPL households”) obtain their due entitlements from the public distribution system. As things stand, BPL households are entitled to 35 kgs of grain per month at subsidized prices. This represents about half of the grain requirement of an average household, and it is potentially a significant step towards food security. However, these entitlements have been undermined in four different ways.

First, the “BPL list” (the list of households considered to be below the poverty line) is highly unreliable. The selection procedure is defective, and often misused. As a result, many poor households do not have a BPL card.

Second, offtake levels are low. Only half of the grain allocated by the central government for the PDS is actually lifted from the FCI godowns. In the most hunger-prone states, where the need for a well-functioning PDS is particularly acute, offtake performance is

extremely low, e.g. 29% in Jharkhand, 26% in Orissa, 23% in Uttar Pradesh, 15% in Bihar, 14% in Chattisgarh.^{1[2]} The causes of low offtake call for urgent investigation and action.

Third, a substantial part of the food lifted from FCI godown is appropriated by vested interests and never reaches the intended households. According to recent estimates published in the report of the High-Level Committee on Long Term Grain Policy (also known as the “Abhijit Sen Committee”), all-India “leakages” from the public distribution system in 1999-2000 were around 20% for rice and 48% for wheat and. The estimated leakages are as high as 60% for rice and 71% for wheat in Bihar, 45% for rice and 59% for wheat in Uttar Pradesh, and 47% for rice and 61% for wheat in Madhya Pradesh.^{2[3]}

Finally, issue prices have been raised to the extent that in many areas grain prices at PDS shops are not much below the corresponding market prices, even for BPL households. This means that while the quantities released may look large, the actual subsidy enjoyed by the consumer is quite small.

In short, the public distribution system is in a dismal condition, to the extent that it has ceased to mean much to the poor in large parts of the country (though there are important exceptions to this general pattern, notably in the southern states). To illustrate, in a recent field visit to Orissa I found that (a) PDS shops opened only on one or two days in a month; (b) people were refused grain if they came the following month to lift the backlog; (c) many poor families in the border villages of Keonjhar were denied facilities of BPL rations; (d) in one tribal village, none of the families had received any grain after 2000.

The failures of the PDS cannot be addressed through minor reforms combined with “business as usual”. It calls for radical reform, based on in-depth examination of the prevailing defects of the system. This is primarily a matter of policy, but some aspects of the present failure of the public distribution system, I feel, also call for judicial intervention. I am thinking particularly of the ongoing drive to revise the “BPL list”, which involves a drastic reduction in the coverage of the public distribution system, based on a flawed methodology. I would urge the court to constitute an expert committee to look into this issue, and related matters, without delay.

Box 2: Some suggested operational reforms of the PDS

1. The poor should be permitted to buy in instalments. This is already permissible in principle, but in practice the ration shops routinely fail to open even once a week in rural areas. Even when they are open, they discourage buying in instalments, for their own reasons.
2. The quality of foodgrain supplied through the PDS leaves much to be desired. The problem has arisen partly due to relaxed specification of quality during procurement. Such relaxations need to be avoided in the future in the interest of a well managed public distribution system. If any state government requests for relaxation of quality norms, this should be invariably accompanied by an appropriate price reduction besides exemption from statutory state levies.
3. Half the stock of FCI is at least two years old, 30% between 2 to 4 years old, and some grain as old as 16 years. One should restore consumer confidence in the quality of public stocks by segregating for early commercial disposal all old and relaxed quality grain from the Central Pool and from the PDS, as suggested by the Sen Committee.
4. The Fair Price Shops should be permitted to sell all commodities (other than rice and wheat) at full market prices through PDS outlets so as to ensure their economic viability. This is easier said than done, as most shopkeepers have been appointed on patronage basis, with little proven qualities of enterprise. The PDS shopkeepers are manipulators, not entrepreneurs, and certainly not committed to the interests of the poor, or driven by markets. It would be better to give these shops to already well established shops, than to relatives of politicians or those who can bribe the decision makers.
5. There is lack of infrastructure and shortage of funds with government parastatals in most states except the few in west and south. GOI should ensure that adequate

infrastructural capacity is available at the district and block levels, otherwise wasting scarce resources through leakages helps only contractors and corrupt government staff, and does not in any way help the poor.

6. A drive should be launched to weed out ghost ration cards and check that all poor people have ration cards with them. Even in urban areas the poorest may have been left out of the safety net programmes. It was observed in Maharashtra that the homeless have not been given ration cards, although they have been living on the footpath or unrecognised slums for years. Many of them may be even eligible for Antyodaya cards. Similarly migrant population is left out, although they may be living for more than 3 months continuously at a place.
7. In most states self-help groups are emerging as a viable unit of action. These could be persuaded to run food banks, and can be given food loans by government, to be returned at the time of the crop.
8. Although GoI has permitted NGOs to run food based schemes, in actual practice very few states are using the expertise and commitment of the civil society in formulating and implementing food for work or other such schemes. It would be better if this is monitored and best practices publicized, so that reluctant states may also be persuaded to involve the NGOs in this task.

3.3. Antyodaya Anna Yojana

The Antyodaya Anna Yojana (AAY) is a programme of food-based social security for destitute households. It involves the identification of destitute households through local household surveys and “panchayati raj institutions” (PRIs), and the distribution of special ration cards to these households. These ration cards give destitute households special entitlements in the public distribution system: currently 35 kg of grain at highly subsidized prices (Rs 2/kg for wheat and Rs 3/kg for rice).

Preliminary evaluations and field reports suggest that the scheme is doing reasonably well, especially in comparison with other parts of the public distribution system. Offtake levels have been quite high (close to 80% for India as a whole, in 2002-03), and the distribution of AAY cards seems to be reasonably fair. The main problem is that the coverage of AAY is very small – less than 5% of the rural population as things stand. In the light of this, a detailed proposal for the extension and improvement of AAY was submitted to the court by the petitioner in August 2002. The recommendations included an extension of AAY to 10% of the rural population, and wide-ranging suggestions for

the consolidation of this programme. For instance, there was a recommendation that pre-specified “priority groups” (e.g. widows without support and elderly persons without support) should be given AAY cards as a matter of right, and that the programme should be put on a sustainable long-term footing.

In November 2002, the court asked the Union Government to respond to this proposal within four months. The matter has not come up since and I would urge the court to raise it without delay (I understand that this matter is to be taken up at the next hearing, on 8 April 2003). This is an important opportunity to consolidate social security arrangements for destitute households.

3.4. Integrated Child Development Scheme

There seems to have been little action as far as this scheme is concerned. This is unfortunate, since the provision of well-functioning *anganwadi* facilities in all villages is essential to protect small children from undernutrition. It is also worth recalling that the early years of life are of critical importance to a person’s lifetime health and nutrition achievements. The interim order of 28 November 2001 states that an *anganwadi* should be available in “every habitation”. I am not aware that any state has made serious efforts to implement this very important direction.^{3[4]} This is all the more deplorable as earlier experience in states such as Kerala and Tamil Nadu indicates that providing well-functioning *anganwadis* in every habitation is feasible, affordable and effective.

The continued neglect of small children (aged below 3) in the ICDS programme deserves special mention. Even though the government acknowledges the importance of improving the nutritional status of the under-three age group, only recently were efforts

begun to target them in the ICDS. Most supplementation has primarily benefited the older children, among whom mortality is lower and stunting is already established.

Box 3: SOLVING PROBLEMS BY IGNORING THEM: Under-reporting of undernutrition in Maharashtra and Orissa

District administration often under-reports the magnitude of severe malnutrition. According to the National Family Health Survey (NFHS -2 1998-99), 54% of children aged under three in Orissa are underweight, out of which 21% are severely malnourished. But the data collected by the state from districts shows that the percentage of severe malnutrition in the age group 0-3 years was only 3.8% in September 98, and came down further to less than 2% of the children weighed in February 2001! Similarly in Maharashtra, according to the data collected from the districts, only 0.74% of children in the tribal areas suffered from grade III and IV malnutrition. This is gross under-reporting as the NFHS data for 1998-99 showed that the percentage of malnourished children for tribal children was 35.4%. The state governments must not allow such a degree of bogus reporting.

As many observers have reported, the GOI has been much more interested in expanding the ICDS programme than in ensuring that it achieves results. In their quest for "universalisation", they have favoured quantity over quality. That is, they are more interested in covering larger and larger populations than in reducing undernutrition rates.

While ICDS was eventually able to reach 80 percent of the development blocks in the country, it had no mechanisms to ensure that its services and supplemental food actually reached those most in need. In addition, workers were inadequately trained and were overextended, and the programme's outreach, health, and educational components were often neglected.

Box 4: INVOLVE PEOPLE AND BUILD COHESIVE VILLAGE SOCIETIES

At present the involvement of people in ICDS remains largely passive, with workers acting as 'doers' rather than change agents, and communities acting as recipients rather than participants. The repercussions of this lack of community involvement are multiple and seriously affect the possibility of the ICDS programme to achieve or sustain significant results. To begin with, the block team responsible for implementing the programme is not properly oriented on the roles and responsibilities of the communities. They typically see ICDS as another service delivery project with the villagers being the passive recipients. The community is not animated or mobilised. They know little about the purposes and objectives of the programme or their responsibility in the effort. As a

result, the villagers are unable to carry out their first assignment, the selection of the AWW. By default, this important task is often done for the villagers by powerful people. Consequently, AWWs are chosen for the wrong reasons - political, caste, and monetary payments. This can result in the AWW being from outside the village, breaking one of the basic rules of the programme. Informal enquiries reveal that more than a third of the AWWs lived more than 5 kms from the villages where they worked. In plateau area of Kalahandi and other districts of poor communications, walking 5 kms can take more than two hours. Not only AWWs, but also no other field staff does touring, unless provided a vehicle. Many AWWs are of the view, "why should I do it if others are not doing it?" Besides, the person who got her appointed to this post as also other important people who can harass her do not expect her to work for the poor.

3.5. Other Schemes

As far as other schemes are concerned, there is relatively little to report. In most states, these schemes have a small coverage, are underfunded, and their implementation leaves much to be desired. Further, there is little sign of improvement on this front during the last two years, in spite of the intervention of the court. A brief scheme-wise assessment is presented below.

National Old Age Pension Scheme (NOAPS): Among social security measures taken by the Union government, this is among the most important and effective programmes. Pensions target some of the most vulnerable people including the aged destitute, widows and the disabled. Its implementation is better than that of many other schemes. The chief problem of the scheme is its low coverage. When the number of pensions was doubled for the KBK region of Orissa in 1998, it was observed that it really brought down the number of hunger deaths, or desertions of old people.

Other problems include corruption in the selection of beneficiaries; petty officials often retain passbooks of beneficiaries; untimely payment of pensions; and very low level of pension payment in most states. The amount needs to be increased to at least Rs 250 per month, and the number of pensioners should be doubled for the 100 poorest districts of India.

Box 5: PENSION SCHEMES IN JEOPARDY DUE TO REDUCED COMMITMENT BY THE GOVERNMENT OF INDIA

Unfortunately GoI has recently transferred the old-age pension scheme to the state sector. This has several implications. First, earlier as Centrally Sponsored Scheme the states used to get the entire money from GOI (Ministry of Rural Development) as grant. Now most states will get the same amount in the ratio of 70% loan and 30% grant, which will reduce States' commitment to the scheme. Second, earlier the Ministry of RD used to transfer the amount straight to the bank account of the DRDA in the districts, and this ensured quick availability at the district level. Now, the districts will get the same amount from the state Finance Department, and fiscally weak states may often not be able to release the amount in time. Third, there is a likelihood of states diverting the fund to other pressing issues. Fourthly, as the scheme is not being funded by GoI Ministry there is no monitoring by GoI, and cases of delay or harassment might increase. And lastly, GOI used to give extra allocation of 4% of the pension amount to cover administrative cost that was used in the districts for supervision, hiring vehicles, etc. The states have stopped doing that with the result there is not even money in the districts for buying stationery, registers etc. for maintenance of accounts.

All this would mean delay in disbursement in the field. There are already reports of such delays in the disbursement of two other schemes, which were associated with the National Old Age Pension Scheme - the Maternity Benefit and the Family Benefit Schemes.

Annapurna: This scheme is essentially supposed to provide 10 kg of grain per month, free of cost, to persons who are eligible for an old-age pension but not actually receiving one. Annapurna has a very small coverage and does not appear to be well-conceived. Yet, it is disturbing to hear that some states (e.g. Madhya Pradesh) have abruptly discontinued the scheme, without making alternative arrangements to support the eligible households. The consequences are potentially devastating for the concerned households, given that many of them had meanwhile come to depend on the Annapurna scheme for their survival. This is a very serious matter and I propose to seek further clarifications on this from all state governments shortly. Care should be taken to ensure that the scheme is not removed without putting alternate social security arrangements in place.

Many states have failed to identify the complete number fixed by GOI for this scheme. The state government of Maharashtra admitted that it had been able to identify only 8,000 people in this category against a target of 60,000 set by GOI. As the population of above 65 years in the state is about 45 lakhs, out of which surely 12 lakhs would be below the

poverty line, the contention of the state government that there are no eligible candidates for this scheme cannot be believed.

National Family Benefit Scheme (NFBS): The scheme provides compensation to the family in the event of untimely and unnatural death of the primary breadwinner of the family. Information about the scheme is not widely known. Further, families have to go through an elaborate procedure to avail the benefit of the scheme. The scheme has also failed in a sense that it reaches a small proportion of potential beneficiaries.

Box 6: MISSING BABIES – The case of paltry efforts for massive needs

In Maharashtra, only 30,000 women receive any benefit from NMBS in a year, against about 30 lakh new births in the state. Out of 30 lakh, at least 3 to 4 lakh births would satisfy eligibility conditions. Thus the state must launch a campaign, and reach every pregnant and eligible mother for the cash benefit.

Fund allocation in Keonjhar district was so meagre compared to the requirement that there is a four year backlog. According to the district figures roughly 25,000 births take place in a year. If half of them are BPL families, the scheme should be benefiting 12,500 women, against this number only 1818 women were given the assistance during 2001-02 under the scheme.

National Maternity Benefit Scheme (NMBS): The scheme provides Rs. 500 for the first two live births as maternity benefit to women below poverty line. This scheme, like the family benefit scheme, is grossly under funded.

4. FURTHER ISSUES

Let me now comment briefly on a few general issues that have emerged from the experience so far, and that call for urgent consideration.

4.1. The Employment Issue

To start with, I would like to draw the attention of the court to the fact that none of the above-mentioned scheme deals with employment. Yet, assured employment at a living wage is the best protection against hunger. This makes it important to consider the petitioner's plea for an all-India "employment guarantee" programme, building on Maharashtra's experience in this regard.

Far from moving in that direction, central and state governments have shown little commitment to rural employment in recent years. In fact, employment generation under rural public works programme has declined year after year in the late 1990s. An apparent reversal of this decline occurred in August 2001, when the Union Government announced a new programme of rural employment generation, the Sampoorna Grameen Rozgar Yojana (SGRY), aimed at generating 100 crore person-days of employment per year. Unfortunately, the actual performance of this programme so far has not gone much beyond that of the earlier employment programmes it has replaced. Further, employment generation under SGRY has been highly uneven between different states, to the extent that in 2001-2 more than one third of the total foodgrain offtake under SGRY (including the "food for work" component) occurred in Andhra Pradesh, while offtake was close to nil in several states including **Bihar, Jharkhand, Maharashtra, and Tamil Nadu**. In the more deprived and hunger-ridden states, employment generation under SGRY is extremely limited. In other words, far from reversing the earlier trend of steep decline in rural employment generation, SGRY has been a medium of further decline in those states.

The implementation of SGRY has also been extremely uneven within states. The more deprived districts, and the more deprived areas within those districts, often ended up getting a very small share of SGRY funds, because it is politically or administratively expedient to spend the funds elsewhere. There are disturbing reports of a virtual absence of any SGRY work in many of the country's least developed districts. Work is often not given to those asking for it even if funds are lying unutilised, and workers cannot force the Government to give them work as no rights accrue from this scheme. Creating an

effective right can help redress the situation. In the meanwhile, the court should consider directing all the states to utilise the funds available for SGRY.

The haphazard and arbitrary implementation of SGRY strengthens the case for considering an alternative approach based on the principle of “employment guarantee”. Like earlier employment programmes, SGRY is a supply-driven programme where the allocation of work largely reflects political pressures, administrative convenience and related factors instead of the needs of poor people. In contrast, employment guarantee programmes are meant to be demand-driven, and this helps to match resources with needs. Even if it is deemed impractical to introduce a full-fledged employment guarantee at the all-India level, a step in that direction could be made in the form of employment being guaranteed in specific areas are within specific periods of the year.

Box 7: HURDLES FOR SGRY FROM BUDGET PROCESS TO THE GROUND

In the budget allocation of the Rural Development Ministry for the year 2002-03, there was originally no provision for the cost of foodgrain, but it was provided through the supplementary grants. Similar procedure is being followed for 2003-04. This uncertainty leads to delays, and it would be better to provide for the food component at the Budget Estimate stage itself so as to avoid delays in payment of wages.

In flagrant violation of the guidelines, in many States projects are being executed by using excavators, trucks and tractors instead of more labour intensive approaches. This is being done with full knowledge of the senior officials. For example in one of the study in Krishna district – out of 54 works, excavators were employed in 40 cases. Poclaines (the trade name for a kind of earth excavator) are becoming the preferred machine for undertaking a variety of village works through all kinds of programmes from the point of view of the rich who own the machines and hire them out for public works. One Poclaine can displace 17x8 persons in an eight hour day (at 17 person-days per hour), whereas it costs Rs 800 to hire a Poclaine for an hour. The ideal policy should be to discourage its use even by construction Ministries, such as Railways and CPWD, and compensate them financially to build incentives for employing more manual labour. However, the reverse is happening. Not only labour is being displaced in the so-called employment oriented schemes, food meant for the poor is then sold in the market, thus distorting market for farmers.

The fudging of muster rolls and measurement books is very common resulting in huge loss of funds that could otherwise have been invested in building rural infrastructure. The list of workers along with the number of days they have been given jobs under SGRY should be compulsorily hung in each office of the Gram Panchayats and outside each school in the village.

When funds are released by DRDAs/Zilla Parishads to Blocks or Panchayats, a Press note should invariably be issued about the date and amount released to various offices. Publication in newspapers will improve transparency. Similarly, all departments getting SGRY funds should issue a Press statement about the dates of execution of works and the dates when payments were made to the workers. This will reduce complaints that payments to workers are often delayed. A monthly gazetteer should be published at the district level of all works with details of individual workers with number of days employed, and not simply number of man-days of employment created. This should be made available to all concerned. In addition, the entire information should be put on the website of the district and should be made available in the electronic form to the prominent NGOs of the district, who can then carry out spot checks.

4.2. Social Security for Destitute Households

One of the main concerns of the petitioner was that adequate social security arrangements should be put in place to protect destitute households from hunger. As stated earlier, the extension of the Antyodaya Anna Yojana (AAY) programme is a welcome step in that direction. However, the basic issue remains largely unresolved. The need is not for ad hoc, short-term schemes but for comprehensive and durable social security arrangements. In this connection I wish to reiterate that the Union Government's response to the proposal submitted by the petitioner, regarding the consolidation of the AAY programme, is long overdue. This programme is unlikely to be adequate on its own, for this purpose, but it does seem to have much potential as an important component of the required social security system. Further measures could then be considered.

I also wish to draw the attention of the court to the fact that the entire problem of urban destitution remains largely unresolved. The urban destitute are highly vulnerable to extreme hunger, yet most of them are beyond the pale of the schemes reviewed in the preceding section. There is a need for creative initiatives in this field, and I do hope that the court will take this up in due course.

4.3. The BPL Imbroglia

As mentioned earlier, the BPL list is highly unreliable, partly because it is based on a flawed methodology and partly because of defective implementation of the BPL survey. The problem is likely to be exacerbated this year with the completion of the new BPL survey, which has been poorly planned and lacks basic safeguards against manipulation. The new survey also involves a highly questionable reduction in the number of households to be included on the BPL list.

These matters are quite complex and it would seem wise to refer to the whole issue to an expert committee. In formulating the terms of reference of this committee, it is important to note that the BPL list was not initially meant to be used as a “targeting” device for the public distribution system. Rather, the BPL list was introduced in the context of other schemes, such as the Integrated Rural Development Programme, and later used on an ad hoc basis for PDS targeting. Given the sobering experience of BPL-based targeting, the committee should consider not only how to improve the methodology of the BPL survey, but also alternative eligibility criteria for the public distribution system. It should also consider the possibility of a “universal” public distribution system, as recommended by the High-Level Committee on Long Term Grain Policy, among others.

4.4. Drought-related Issues

This report would be incomplete without a mention of the severe drought which is affecting large parts of the country and threatening the survival of poor people in many states. Field reports suggest that many drought-affected areas are witnessing a major breakdown of livelihoods, and a surge in hunger and undernutrition. During the last two years, there have been periodic reports of starvation deaths in many areas (Kashipur in Orissa, Baran in Rajasthan, Palamau in Jharkhand, Shivpuri in Madhya Pradesh, Nandurbar in Maharashtra, Chandauli in Uttar Pradesh, to name a few), and there is a

strong likelihood of a further wave of starvation deaths in the coming summer months if nothing is done to step up relief operations. For instance, according to a recent field report from Sheopur district in western Madhya Pradesh, drought-affected people in the district barely get one square meal a day and large-scale distress migration is taking place (as for livestock, the bulk of it is expected to perish during the summer).

In this connection, it is worth remembering that Writ Petition (Civil) 196 of 2001 initially came up in the context of a similar drought in Rajasthan. The petition drew attention to the destructive effects of the “labour ceilings” that had been imposed on participation in relief works, and prayed for open-ended provision of employment to drought-affected people, as per the Famine Code. These issues remain applicable today, in the context of this year’s drought. Indeed, drastic ceilings have been imposed again on the extent of employment to be provided under relief works. As a result, there is fierce competition for employment on relief works in drought-affected areas, with the same destructive consequences as two years ago, including the frequent exclusion of poor households from relief works, large-scale migration of unemployed labourers, and bitter divisions in the rural society. It seems important to revive and uphold the principle of open-ended employment (without “ceilings”) in drought-affected areas.

The main reason cited by the states for imposing these drastic ceilings is that they lack financial resources to provide more employment . However, The Hon’ble Supreme Court has already held that shortage of funds cannot excuse the failure to fulfil constitutional obligations (Paschim Bangal Khet Mazdoor Samity v State of W. Bengal (1996) 4 SCC 37”). In any case, this excuse is singularly inapplicable for the country as a whole, given the availability of gigantic food stocks.

The Union Government contributes to the cost of relief operations in the event of a calamity through the National Calamity Contingency Fund (NCCF). Unfortunately, the effective utilisation of NCCF funds seems to have been held up by frequent disputes

between central and state governments, and also by a lack of sense of urgency on both sides. In saying that they don't have the finances, the states have not justified why they have exhausted all avenues open to them. The central government, for its part, has been opaque about how it decides to allocate NCCF funds.

4.5. Information and Accountability

Before concluding, I wish to draw the attention of the court to the crucial role of information and public awareness for the success of all the initiatives we have considered. In my travels, I have been struck again and again by the disempowerment experienced in all walks of life by the rural poor due to lack of information. This applies in particular to food-related schemes, which cannot be expected to function unless the intended beneficiaries have a clear idea of their entitlements. To illustrate, BPL cardholders often do not know how much grain they are supposed to receive and at what price. In this situation it is hardly surprising that they often fail to obtain their due. Lack of information, in turn, is not an accident but often reflects a deliberate to keep people in the dark on the part of vested interests. For instance, I am told that in some parts of Madhya Pradesh, BPL cardholders have not been informed of the fact that their entitlements have been raised from 25 to 35 kgs. The dealers take advantage of this situation by selling the difference in the open market.

In this connection, it may be recalled that the interim order of 28 November 2001 includes various directions aimed at enhancing people's awareness of entitlements. For instance, posters with the relevant information were to be displayed in all villages, and regular announcements were to be made on Doordarshan and All India Radio. Some steps in that direction have been taken, with good effect. For instance, occasional announcements on television and radio have helped to spread public awareness of food entitlements. However, these initiatives have fallen far short of what was envisaged in the interim order, and the order itself did not perhaps go far enough. There is a need for much more systematic efforts to spread information at all levels and make sure that people are aware of their entitlements.

Another aspect of the information issue is the need for a better monitoring system. As things stand, information on the performance of food-related schemes is often not available until months after the event, and this makes it harder to intervene in a timely manner where appropriate. It would be useful to devise and develop a system whereby comprehensive information is submitted in real time by state governments, using a common format.

I take this opportunity to mention that the task that has been assigned to me, as Commissioner of the court, is colossal and cannot be effectively discharged by a single person. I am glad to say that my limited interventions have often produced useful results, but much more could be done if the required manpower and facilities were available. India is a vast country, and so is the canvas of this litigation. Ultimately, there is need for a correspondingly elaborate system of monitoring and redressal of the court's orders. I shall include some preliminary suggestions to this effect in the concluding section, but this matter is likely to require further attention in due course.

Going beyond the issue of information, there is also a need for stronger accountability, redressal and compensation mechanisms. As things stand, most people feel that they have nowhere to go in cases where they are deprived of their entitlements under the respective schemes. This is perhaps most evident in the case of the public distribution system, which has lent itself to rampant corruption for years without the victims being able to do much about it. But the pattern is a general one and also applies in other contexts, to various degrees.

This brings me to a final point that appears to me to be of major importance for the present endeavour of the court. If freedom from hunger is a basic right of all citizens, as argued by the petitioner, then robust redressal and compensation mechanisms ought to be in place to deal with instances where this right is violated. As things stand, such arrangements are sorely lacking. By and large, food entitlements are treated as a gracious gift of the state, and it is not considered important to punish the culprits or compensate the victims in the event where these entitlements are not realized. This neglect must be addressed if the right to food is to become a reality.

5. CONCLUDING RECOMMENDATIONS

In this report, I have reviewed the progress of the case and commented on a number of key issues connected with the implementation of interim orders. It is much easier to raise these issues than to find convincing answers to them. They cannot be resolved in one stroke, and are likely to call for sustained attention from the court in future proceedings. Meanwhile, let me suggest a few immediate steps:

5.1. Mid-day Meals

1. I advise the court to request state governments that have not complied with the order on mid day meals to submit affidavits explaining why mid-day meals are not being provided in all government and government-assisted primary schools, as per the interim order of 28 November 2001. Further, these governments should be firmly directed to initiate mid-day meals by early July (the beginning of the next school year) at the latest.
2. I advise the court to direct all state governments to continue providing mid-day meals during the summer vacations in drought-affected areas (and to consider doing the same in other areas also).
3. I advise the court to direct the states to ensure that the basic facilities for the programme are provided for including, helpers, cooks, space for storage and cooking, etc.

5.2. BPL Survey

4. I recommend the appointment of an expert committee to re-examine the methodology of the “BPL survey”, and the larger question of targeting in the public distribution system.
5. I suggest that until such time as the committee submits its report and the matter is resolved, the earlier BPL list should remain applicable.
6. In situations of drought and other calamities, relief should not be restricted to BPL households since many other households also tend to require support in such circumstances.

5.3. Integrated Child Development Scheme

7. States must be directed to increase the coverage of ICDS. It is not reaching enough children. For example, of the 158 million children in 0-6 age group, the programme reaches only 26 million - 16% of the total. This is a clear violation of the Hon’ble Supreme Court’s orders.
8. Direct the states to have a special drive to cover poor children. ICDS is not reaching children in the poorest families. As in most low-income countries, malnutrition rates in India are highest among the poor. Consequently, ICDS should aim to give particular attention to the lowest income group.
9. As per the order of the court, anganwadis must be opened in all habitations. Special emphasis should be given to remote areas immediately.
10. The states should prepare a plan for reaching under-three children. Currently attendance of children under 3 years is very low - mothers are reluctant to send young children and anganwadi workers prefer to deal with older children (those in the 3-6 year age group), as they are easier to manage.

5.4. Information Dissemination

11. I request the court to direct all state governments, and the central government, to cooperate with me in the design of an integrated “monitoring and information system” (MIS), aimed at generating comprehensive and up-to-date information on food-related schemes on a continuous basis. This will greatly help in monitoring the progress of food-related schemes and identifying lapses in their implementation.
12. I also request the court to direct the central government to provide suitable financial resources for this purpose.
13. Each district should furnish information on the schemes in their websites of districts
14. District level websites should provide information on each project sanctioned under SGRY with details including Name of the project, funds allotted, number of mandays to be created, and other relevant details.
15. Apart from putting information in the websites, information should also be placed in newspapers to enable verification.
16. I advise the court to issue further directions to ensure that people are aware of their entitlements under food-related schemes. These may include the following:
 - a. Weekly announcements on Doordarshan and All India Radio, for an initial period of six months.
 - b. Mandatory display of a new, updated poster in all ration shops, schools, panchayat bhawans, and health centres within two months.

- c. Mandatory display, in all ration shops, schools, panchayat bhawans etc. of a permanent board giving detailed information on food entitlements under the public distribution system as well as on the corresponding redressal and compensation mechanisms.

5.5. Appointment of a Second Commissioner

17. I request the court to appoint one more commissioner, for the purpose of monitoring the implementation of the court's orders. It is impossible for a single person to do justice to all aspects of this matter. I suggest Mr. Harsh Mander (Country Director, ActionAid India) as co-Commissioner. I have worked with him for a long time and have complete faith in his abilities and commitment. It is important that the co-commissioners function well as a team. I am confident that Mr. Harsh Mander suits all these requirements and would do full justice to the job on hand.

5.6. Forthcoming Deliberations of the Court

18. I urge the court to bring the following issues within the ambit of its deliberations as soon as possible:
 - a. non-compliance of specific states with the interim order on mid-day meals;
 - b. response of the central government to the petitioner's proposal on Antyodaya Anna Yojana;

- c. consolidation of social security arrangements for destitute households, including in urban areas;
- d. the need for assured employment at a living wage, as a protection against hunger