

**DR. N. C. SAXENA, COMMISSIONER AND
HARSH MANDER, SPECIAL COMMISSIONER OF THE SUPREME COURT
IN THE CASE: PUCL v. UOI & Ors. WRIT PETITION (Civil) No. 196 of 2001**

To
The Registrar
Supreme Court of India
New Delhi

April 5th, 2010

Subject: Response to Application of Ministry of Health and Family Welfare, Government of India (IA No.92) for directions regarding implementation of Janani Suraksha Yojana

Dear Sir,

As Commissioners to the Supreme Court we would like to bring to the notice of the Hon'ble Supreme Court our concerns related to the application of the Ministry of Health and Family Welfare, Government of India for directions regarding implementation of Janani Suraksha Yojana. The affidavit of the Government of India states that "The NMBS is (thus) *subsumed* under JSY which is a comprehensive package of services during pregnancy as well as post-natal care of the pregnant women".

The Supreme Court passed the following directions in relation to the NMBS (National Maternity Benefit Scheme) on 20 November 2007:

"14. At the time of hearing of the applications, learned counsel for the petitioner and the Union of India highlighted various aspects. Considering the submissions and the material data placed on record we direct as follows:-

- a) The Union of India and all the State Governments and the Union Territories shall (i) **continue with the NMBS** and (ii) ensure that all BPL pregnant women get cash assistance **8-12 weeks prior to the delivery.***
- b) The amount shall be Rs.500/- per birth **irrespective of number of children** and the **age of the women.***
- c) The Union of India, State governments and the Union Territories shall file affidavits within 8 weeks from today indicating the total number of births in the State, number of eligible BPL women who have received the benefits, number of BPL women who had home/ non-institutional deliveries and have received the benefit, number of BPL women who had institutional deliveries and have received the benefit.*

- d) *The total number of resources allocated and utilized for the period 2000-2006.*
- e) *All concerned governments are directed to regularly advertise the revised scheme so that the intended beneficiaries can become aware of the scheme.*
- f) *The Central Government shall ensure that the money earmarked for the scheme is not utilized for any other purpose. The mere insistence on utilization certificate may not yield the expected result.*
- g) *It shall be the duty of all concerned to ensure that the benefits of the scheme reach the intended beneficiaries. In case it is noticed that there is any diversion of the funds allocated for the scheme, such stringent action as is called for shall be taken against the erring officials responsible for diversion of the funds.”*

The current application of the Ministry of Health and Family Welfare is seeking to reverse these orders by arguing for merging the NMBS into the JSY scheme, placing a restriction on NMBS benefits on the basis of age and order of birth.

1. Separate NMBS and JSY:

The National Maternity Benefit Scheme (NMBS) was launched in the year 1995 as part of the National Social Assistance Programme (NSAP) and later transferred to the Health Ministry in the year 2001. Under NMBS, pregnant women from BPL families were entitled to lump-sum cash assistance of Rs. 500, 8-12 weeks before delivery. This scheme was entirely sponsored by the Central Government.

A new scheme called Janani Suraksha Yojana (JSY) was launched in 2005. The objectives of the JSY are reducing maternal mortality/infant mortality through increased delivery at health institutions while the focus of the NMBS is provision of nutrition support during pregnancy. As mentioned in the guidelines for implementation of JSY, “While NMBS is linked to provision of better diet for pregnant women from BPL families, JSY integrates the cash assistance with antenatal care during the pregnancy period, institutional care during delivery and immediate post-partum period in a health centre by establishing a system of coordinated care by field level health worker.”¹ Further the JSY scheme was envisaged in a manner where the cash assistance

¹ Guidelines of JSY, Government of India

would be conditional upon availing ante-natal check-ups and having an institutional delivery. The guidelines did not retain the objective of ensuring food security for all pregnant BPL women, unencumbered by any other conditionalities.

This entirely defeated the purpose of the NMBS as it was initially thought of, which was to provide social security to pregnant women. Linking the accruing of benefits of the scheme with various conditions severely undermine the rights of a woman to use the social assistance under NMBS to access food and nutrition, rest and regain her strength and not have to labour immediately or soon after delivery.

The National Maternity Benefit Scheme, as mentioned in the affidavit of the Government of India has now been *subsumed* by the Janani Suraksha Yojana. The objectives of both these schemes are very different. While the aim of the NMBS was to provide nutritional support to pregnant women, the JSY is towards encouraging women to have institutional deliveries. There is no doubt that institutional deliveries could help improve maternal health; however this does not mean that women no longer require nutritional support. A significant number of maternal deaths are due to anaemia related causes and therefore adequate nutritional support **during** pregnancy becomes very important.

The merging of the two schemes is causing a lot of confusion in the field with the focus of cash assistance being on only those having institutional deliveries. Although the scheme has been amended to include women who have home deliveries, information regarding this amendment has not been sent to various states as a result of which the NMBS benefits continue only on paper and lakhs of poor women in the rural areas have been denied the benefit. The GoI on its part, has not only failed to effectively monitor the scheme, but also has contributed to poor performance by signaling replacement of NMBS by JSY, despite the fact the Supreme Court has clearly directed that governments “shall continue with the NMBS”.

We therefore recommend that the NMBS and the JSY should be implemented as separate schemes with the NMBS being a cash benefit for poor pregnant women **during pregnancy**.

2. No restriction on birth order

The Government of India seeks to place a restriction on the number of children for whom the benefit under the NMBS will be provided. The Supreme Court in its order dated November 20,

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2007 (see above) has clearly stated that the NMBS must be implemented without any restrictions on the order of birth.

It is now widely accepted that it is unethical and a violation of the rights of the women to have ‘population-control policies’ that are incentive-based and with targets. The Government of India has also accepted this position in policy documents where it has been stated that having targets for sterilisation etc. would be done away with and that benefits under other schemes etc, cannot be linked to number of children. “The National Population Policy, 2000 (NPP 2000) affirms the commitment of government towards **voluntary and informed choice** and consent of citizens while availing of reproductive health care services, and continuation of the **target free approach** in administering family planning services” (National Population Policy, 2000).

In fact, the application of the Government of India has itself argued that the restriction on the birth order has been removed under the JSY because pregnancies of higher parity are more risky. In an earlier affidavit of Government of India (dated 15 July 2008), it is stated, “It was also observed that women who are at the higher parity (2+ children) are traditionally the ones who do not access medical care during pregnancy and delivery and thus are at greater risk of mortality. It would, therefore be appropriate to bring all such women of high parity and high fertility, who are at higher risk of mortality, within the fold of the medical domain. This will enable the health system to provide required services like family planning, neonatal and early childhood care, and nutritional services to these vulnerable groups rather than keeping the group outside the reach of the health care system. Keeping this category of women beyond the scope of the scheme will tantamount to putting their lives at risk and will contribute to the high rate of maternal mortality. The problem of population growth could be addressed appropriately by streamlining the services of family planning and addressing the unmet need of couples for spacing/terminal methods. JSY is for reducing maternal mortality, an objective that is different from containing population growth...”. It logically follows from this argument that there should be no restriction on the birth order for the NMBS, whose objective is providing nutritional support to pregnant women and **not** containing population growth. In fact, the NMBS can also contribute to the JSY objective of reducing maternal mortality by ensuring a healthier pregnancy.

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Further, the data from the NFHS-3 shows that, anaemia is prevalent among a higher percent of women who have more than 3 children than among women who have fewer children. While 54.9% of women with 2-3 children ever born are anaemic, 58% of women with 4-5 children and 59% of women with 6 or more children ever born are anaemic. Anaemia is a contributing factor for maternal mortality as well.

It is therefore recommended that there should be no restriction on the order of birth for giving benefits under the NMBS.

3. No restriction on Age

The application of the Government of India itself states that “Data from the NFHS-3 and Registrar General of India shows that nearly 26% of women get married by 15 years of age and that 12% of mortality is among women aged 15-19 years.” However, at the same time it makes a plea for not giving benefits for women under the age of 19. It must be noted that girls who are married and pregnant before the age of 19 are already victims of a social system that does not protect their rights to childhood, health and education. Punishing the victim for the crime cannot be accepted. Younger women in fact need additional support given their vulnerability during pregnancy. There should therefore be no restriction in giving benefits under the NMBS to women based on their age.

4. Summary

Application of Ministry of Health and Family Welfare	Commissioners' Response
“...JSY which subsumes the NMBS is a very comprehensive scheme to improve maternal health and restricting the benefit to the pregnant women as per only the NMBS scheme would in effect deprive her of the comprehensive package of assistance and services. Hence, the continuation of NMBS as a separate scheme would not be	The two schemes are separate with different objectives – one being nutritional support during pregnancy and the other incentivising institutional deliveries. There is no reason why benefits from the NMBS should “ <i>deprive her of the comprehensive package of assistance and services</i> ”. These services can continue to be provided through the JSY.

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appropriate”	There cannot be a trade-off between nutrition and safe delivery, and facilities must be provided to ensure that women have access to both.
“In NMBS, the cash benefit was made to the beneficiaries 08-12 weeks before delivery to enable her to avail of more and more/or better food presumably so that the weight and health of the mother and the foetus is improved. The behaviour sought to be incentivised is to encourage the mother to consume better nutritional food but this condition is not attached to the cash payment. Thus, there has been no evidence about the effectiveness of this strategy.”	The NMBS is not an incentive scheme but rather a “support” scheme. Although there has been no large scale study carried out by the GoI, field evidence collected by the Commissioners’ office shows that this money if provided in time is indeed used in many cases towards food and/or health expenses during pregnancy. Further, with this benefit being given only to those women who are BPL, it is very likely that any additional cash into the family is used on essentials such as food.
“...the payment of incentives after delivery instead of 8 – 12 weeks prior to delivery is meant to encourage institutional delivery and if this amount is paid before the delivery, there will not be enough incentive remaining for the woman to come to the institution for delivery especially in high performing states where the differential between payment to the pregnant woman between home and institutional delivery is very low.”	Again, the objectives of the two schemes are different and these problems arise when they are ‘merged’. The schemes should be separated with different budget allocations. In such a case, the benefit given under NMBS prior to delivery would not be part of the JSY but independent of it. Therefore the amount given under JSY will not be affected. For e.g. women in high performing states who choose to have a home delivery will get Rs. 500 under the NMBS, but not the Rs. 700 under JSY. On the other hand those who have institutional deliveries will get Rs. 500 from the NMBS and Rs. 700 (and not Rs.

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	200) from the JSY (total Rs. 1200).
“Extending the maternity benefit irrespective of number of children goes against the concept of family planning which is intended to curb the population growth. It is necessary that women are encouraged to voluntarily adopt the small family norms. The restriction on age and number of children under JSY for home deliveries in all states and for institutional delivery in high performing states is in line with the Government of India policy to promote better maternal health by aligning with the policy of minimum age at marriage and encouraging family planning.”	Women with higher parity are at a greater risk and therefore need more support. The objective of the NMBS is not family planning but providing nutrition support to women during their pregnancy. All pregnant women irrespective of number of children must be given benefit under the scheme.
“It is respectfully submitted that, the empirical data shows that younger women are at higher risk of maternal mortality. Therefore the age of the mother is a relevant factor. Besides, women below a particular age are prohibited from legally getting married.”	Precisely because younger women are higher risk they should not be left out of the ambit of any services. A woman who is married below the age of 19 is already a victim of the practice of child marriage and cannot be further victimised for no fault of hers. Other policies such as implementing the child marriage act, extending higher education for girls etc. have to be implemented to prevent child marriages.

5. Directions Sought

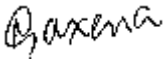
It is therefore proposed that the Hon’ble Court reiterates the directions that were given in relation to the NMBS on 20 November 2007 as below:

1. Direct Government of India and all state governments/UTs to continue with the NMBS.

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2. Benefit under the NMBS should be paid to all BPL pregnant women during their pregnancy, about 8-12 weeks prior to the delivery date.
3. There should be no restriction on the number of children/order of birth for a woman to be eligible to receive benefit under the NMBS.
4. There should be no restriction on the age of the woman for her to be eligible for benefit under the NMBS.

Sincerely Yours,



Dr. N.C. Saxena



Harsh Mander