

**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**

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September 5, 2011

The Registrar

Supreme Court of India

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Dear Sir,

Sub: Response based on field surveys in eight States on the implementation of the National Maternity Benefit Scheme/Janani Suraksha Yojana

This is with reference to IA 98 in the matter 196/ 2001 (PUCL v. UoI and Others). We had filed a response on the same matter on 5 April 2010 and would like to put forward further data available with us at this time.

The Commissioners office, in partnership with our advisers in the states, conducted a detailed field survey last year in eight of the poorest states across the country to assess the performance of all the food schemes that are sub-judice in this case. The main objective of this survey was to assess the performance of the food schemes at the grassroots level in relation to the existing Supreme Court orders. The survey of the covered the following aspects: Coverage (inclusion/exclusion), Availability, accessibility and quality, Problems in implementation. The surveys were conducted in four districts in each state representing different agro-climatic regions of the state. Based on the results of this survey, our own assessment of the scheme based on official data and advice from experts working in this area we would like to bring to your notice the following:

**i. NMBS Subsumed under JSY:** In spite of the order of the Supreme Court dated 20<sup>th</sup> November 2007 clearly stating that NMBS must continue, the Government of India has subsumed this scheme under the Janani Suraksha Yojana (JSY). Officially there is no scheme called NMBS in the government records and this is one of the reasons why the scheme is being neglected and also causing a lot of confusion in the states. While there has been a more than ten-fold increase in Janani Suraksha Yojana coverage from 7.39 lakh beneficiaries in 2005-06 to

about 1 crore in 2009-10 there has been no such increase in the coverage of the National Maternity Benefit Scheme (NMBS). The two schemes have diverse objectives. National Maternity Benefit Scheme is exclusively a program for extending maternity benefits for nutritional support during pregnancy and child nursing, while Janani Suraksha Yojana is a program to incentivise desired behaviours with cash transfers for institutional delivery. National Maternity Benefit Scheme is considered subsumed under Janani Suraksha Yojana<sup>i</sup> but the focus on nutritional support during pregnancy (8-12 weeks before delivery) is not being maintained as seen in all the documents /reports of the Union Of India of the Janani Suraksha Yojana. For e.g in the Annual Report on Health<sup>ii</sup> to the People of India, GOI, Ministry of Health and Family Welfare, September 2010 the report on Janani Suraksha Yojana is as follows:

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“Popularly known as the Janani Suraksha Scheme (JSY), the conditional cash transfer scheme resulted in dramatic increases in institutional delivery. Janani Suraksha Yojana enables women to make use of public health facilities for safe delivery by providing Rs. 1,400 to cover travel costs and other expenses in rural areas of low performing states. It also provides cash incentives to female community health workers for promoting safe care in pregnancy and facilitating access to institutional care...”

**II Specific Guidelines Not Yet Issued:** Responses from several state governments to the Commissioners letter No. Data Request/596/allstates dated 12-11-2008 and Data Request/1033/JSY dated 27/08/2011 on the implementation of the orders of the Hon'ble Supreme Court dated 20 November 2007 on National Maternity Benefit Scheme show that specific guidelines regarding benefit of the scheme without restriction to place of delivery/age of the woman/ number of children have not been issued nor have changes been made in the guidelines of the scheme.

Changes in the eligibility and guidelines of the Janani Suraksha Yojana scheme (Annexure 15 of the compilation) are also needed to be made based on the directions of the Hon'ble Supreme Court by the Union Of India.

### III. Findings of Survey

#### a. Coverage under NMBS/JSY

**Order of the Hon'ble Supreme Court dt. 20 November, 2007,**

“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.... It shall be the duty of all concerned to ensure that the benefits of the scheme reach the intended beneficiaries.”

The figures below gives the coverage of the NMBS in the four districts each in the seven states wherein the total eligible BPL population of the village was surveyed.

**Table 1.1: Coverage of National Maternity Benefit Scheme subsumed under Janani Suraksha Yojana in the survey**

State	No. of villages	No. of eligible women covered	No. of eligible women who received monetary benefit:	
			Total	% of women who were covered
Gujarat	39	480	336	70.00%
Madhya Pradesh	40	482	227	47.10%
West Bengal	40	364	217	59.62%
Orissa	40	730	414	56.71%
Jharkhand	39	165	82	49.70%
Bihar	40	743	248	33.38%
Assam	60	201	107	53.23%
Chattisgarh	37	343	166	48.40%
<b>Total</b>	<b>335</b>	<b>3508</b>	<b>1631</b>	<b>46.49%</b>

The data shows that less than half of the women eligible for the scheme i.e poor/ SC /ST received support under the Janani Suraksha Yojana/ National Maternity Benefit Scheme.

**Table 1.2: Monetary benefits received by eligible women as per delivery place**

State	No. of eligible women covered	No. of eligible women who received monetary benefit:		
		No. who had home delivery	No. who had hospital delivery	Total
Gujarat	480	145	191	336
Madhya Pradesh	482	0	227	227
West Bengal	364	75	142	217
Orissa	730	21	393	414
Jharkhand	165	27	55	82
Bihar	743	11	236	248
Assam	201	13	94	107
Chattisgarh	343	59	107	166
<b>Total</b>	<b>3508</b>	<b>351</b> <b>(19.53 %)</b> <b>( 10.5%)</b>	<b>1445</b> <b>(80.41%)</b> <b>(41.19%)</b>	<b>1797</b> <b>(100 %)</b>

The table above clearly shows that only 19.5 % of the women who delivered at home received support under the National Maternity Benefit Scheme. Clearly, National Maternity Benefit Scheme is marginalised not subsumed under Janani Suraksha Yojana since 80.4% of those who received support were women who had institutional deliveries. This is completely reverse of the existing reality on the field as seen against the data from NFHS-3, where in Madhya Pradesh only 20.2% births in rural area were institutional deliveries, while the survey reveals that not one women from the estimated 80% women who had home deliveries in Madhya Pradesh received support under National Maternity Benefit Scheme or Janani Suraksha Yojana.

**b. Age of women who received support under National Maternity Benefit Scheme**

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“The amount shall be Rs.500/- per birth irrespective of number of children and the age of the women.”

According to NFHS-3 a striking feature is the high level of childbearing among young women. More than half of women age 20–49 had their first birth before reaching age 20, and women age 15–19 account for almost one-fifth of total fertility. Studies in India and elsewhere have shown that health and mortality risks increase when women give birth at such young ages both for the women themselves and for their children. As against the average 19.1% of rural women age 15-19 who were already mothers or pregnant at the time of the NFHS- 3 survey, the Commissioners survey shows that only 2.83% of women who received benefits of National Maternity Benefit Scheme were under the age of 19 yrs and from the total eligible women the % comes down to as less as 1.36%. This indicate that there are clear wide spread violations of the Hon'ble Supreme Court orders on National Maternity Benefit Scheme.

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**Table 1.3: No. of women under the age of 19 years covered under the scheme.**

State	No. of eligible women covered	No. of eligible women who received monetary benefit:	Age group of women	
			< 19 years	> 19 years
Gujarat	480	336	1	335
Madhya Pradesh	482	227	11	216
West Bengal	368	217	6	211
Orissa	730	414	16	398
Jharkhand	165	82	2	80
Bihar	743	248	6	242
Assam	201	107	NA	NA
Chattisgarh	343	166	0	166
<b>Total</b>	<b>3512</b>	<b>1797 (100%)</b>	<b>42 (2.34%)</b>	<b>1648 (97.51%)</b>

c. Coverage of women with more than 2 children

**Table 1.4: No of women who had more than 2 children covered under the scheme**

State	No. of eligible women covered	No. of eligible women who received monetary benefit:		
State	No. of eligible women covered	No. of eligible women who received monetary benefit:		
		No. who had 2 or less children	No. who had more than 2 children	Total
Gujarat	480	250	86	336
Orissa	730	341	73	414
Jharkhand	165	44	38	82
Bihar	743	148	100	248
<b>Chattisgarh</b>	<b>343</b>	<b>136</b>	<b>30</b>	<b>166</b>
<b>Total</b>	<b>2461</b>	<b>919 (73.76%)</b>	<b>327 (26.24%)</b>	<b>1246 (100%)</b>

According to NFHS-3<sup>iii</sup> Women may have large families because they want many children, or they may prefer small families but, for a variety of reasons, may have more children than they actually want, **84.6% of married women in India having two children did not want any more children.** If many women in India are not using family planning, it is not due to lack of knowledge about family planning but unmet need of family planning services, violence against women and lack of decision making in the household ( only 36.7% of married women reported participation in decision making while 37.2% of women reported violence from the spouse).

Unmet need for family planning is highest (27 percent) for young women below age 20, who are particularly interested in spacing their births. Unmet need in different states varies from 7–9 percent of currently married women in Punjab, Haryana, Andhra Pradesh, Gujarat, and Himachal Pradesh to 25–36 percent in Meghalaya, Nagaland, Arunachal Pradesh, Uttar Pradesh, and Bihar. These results underscore the need for strategies that provide spacing as well as terminal methods in order to meet the changing needs of women over their lifecycle.

It is thus clearly the supply side gaps that are used to discriminate for coverage under the National Maternity Benefit Scheme against the most vulnerable of women who have multiple pregnancies or conceive at a younger age.

**d. Timing of Payment:** In all states except West Bengal where 30% of women were paid the amount during pregnancy, payments were made after delivery. This clearly indicates that the National Maternity Benefit Scheme has not been subsumed but has been discontinued and replaced with Janani Suraksha Yojana.

**e. Major findings on the National Maternity Benefit Scheme. (State Survey Reports 2010)**

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1. The information regarding the National Maternity Benefit Scheme is not being made widely publicised and awareness regarding its purpose, procedures and entitlements remain poorly known.
2. There is wide variation in the implementation of the Janani Suraksha Yojana across the states and utilisation of the scheme within the poorest has gaps.
3. The absence of clear guidelines based on the courts order in the Janani Suraksha Yojana has led to the poor outreach of the scheme amongst women having home deliveries.
4. The scheme is not reaching the most vulnerable women- i.e Young women under the age of 19 years, women who have multiple pregnancies

#### **IV. Recommendations on NMBS from Experts:**

The following are excerpts from letters written to the Commissioners by experts working in the field of maternal health (the full letters have been attached as Annexures 1,2,3 resp).

- a. Dr. Abhijit Das- Member, Advisory Group on Community Action, a Standing Committee of NRHM, GoI, Member, Steering Committee, Health, 12<sup>th</sup> Five Year Plan, Planning Commission, GoI, Director CHSJ
- b. Jashodhara Dasgupta – Member HLEG Universal Health, Planning Commission, Member of the Technical Resource Group on Maternal Health, MoHFW, GOI , Coordinator Sahyog
- c. Dr. Gita Sen- Member of the High Level Expert Group on Universal Health, Planning Commission, Professor ,Centre for Public Policy, IIM Bangalore.

The Experts conclude on basis of the current Research and National Health Data Surveys such as DLHS-3, SRS and NFHS-3 that

- Malnutrition and iron deficiency are major contributors to maternal death
- The problem of maternal anemia and malnutrition among women is widespread in the Country
- A much larger proportion of socially and economically weaker women are part of the cohort of young women who have children below 19 years of age
- A much larger proportion of women from socially and economically weaker women have more than two children.
- The right approach is to actively work to prevent early marriages, improve availability and quality of family planning services in poor districts in a manner that it does not trample on people's human rights.
- Governments approach of disincentives such as restricting the benefits of NMBS to women under 19 or those having more than two children are ineffective and punish the most vulnerable and should be removed.

#### **V. Directions Sought:**

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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.
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.

We further propose that the Hon'ble court further directs the Government of India to

5. Submit quarterly reports regarding the implementation of the scheme amongst those who have had home deliveries, timing of payment and coverage of the most vulnerable.
6. Increase the amount of Rs. 500/- currently being provisioned for National Maternity Benefit Scheme
7. Remove restrictions of schemes age of woman and number of children from all government schemes

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Sincerely Yours,

Dr. N.C. Saxena

Harsh Mander

Annexures:

1. Letter from Dr. Abhijit Das- Member, Advisory Group on Community Action, a Standing Committee of NRHM, GoI, Member, Steering Committee, Health, 12<sup>th</sup> Five Year Plan, Planning Commission, GoI, Director CHSJ
2. Letter from Jashodhara Dasgupta – Member HLEG Universal Health, Planning Commission, Member of the Technical Resource Group on Maternal Health, MoHFW, GOI, Coordinator Sahyog
3. Letter from Dr. Gita Sen- Member of the High Level Expert Group on Universal Health, Planning Commission, Professor, Centre for Public Policy, IIM Bangalore.
4. State-wise Major findings on the National Maternity Benefit Scheme with recommendations for a better implementation.

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<sup>i</sup> <http://india.gov.in/citizen/health/viewscheme.php?schemeid=1656>

<sup>ii</sup> <http://mohfw.nic.in/>

<sup>iii</sup> <http://www.nfhsindia.org/data/india/indfctsm.pdf>