



- DEBATING STATE OBLIGATION
- CHOOSING BETWEEN BREAD AND FREEDOM
- GOING BEYOND THE RIGHT TO FOOD
- CASH VERSUS FOOD
- DOES UNIVERSAL MEAN 'UNIFORM'?
- PROTECTING CHILDREN
- GENDER-JUST FOOD SECURITY LAWS
- THOSE AT THE EDGE
- **STRINGS ATTACHED**
- ENFORCING RIGHTS

Should state food and cash transfers have conditionalities attached?

Barring the requirement of school attendance for school meals, India's law contains few conditions. Conditions for claiming maternity benefits are ambiguous. However, the debate is still open, as the discussion about conditionalities has a lot to do with effectiveness and changes in behaviour. It is also important to consider whose rights are being protected.

ARGUMENTS IN FAVOUR OF CONDITIONALITY

- Induces poor families to avoid suboptimal investment decisions in human capital
- Increases taxpayers' support for social programmes
- Programmes can use failure to fulfil conditionalities in order to assess the functionality of public service facilities, and allocate resources to improve them

ARGUMENTS AGAINST

- Unjustly punishes most vulnerable people for not being able to fulfil conditions because of their disadvantaged and vulnerable position
- Constraints on available public infrastructure also limit the capacity of vulnerable people to comply
- Limits rights of the most vulnerable, especially women and out-of-school children

An important debate centres on whether the state's duties to provision food and social protection should be conditional on certain socially beneficial actions being undertaken by the recipients. Barring school attendance for school meals, India's law contains few conditions (although conditions for maternity benefits are ambiguous).

During the formulation of the law, there was no serious proposal for imposing conditionalities on PDS grain transfers and on young child and pregnant mother feeding entitlements. However, there is a strong belief among many state officials that maternity benefits should be conditional on age of marriage, family size, ante- and postneonatal checkups, vaccinations, and institutional deliveries. There is also conditionality implicit in school meals – that of school enrolment (but not of school performance).

Conditionalities imply that in order to become eligible for certain social security schemes, potential beneficiaries must fulfil certain socially beneficial conditions. In support, a World Bank-sponsored study argues that (poor) families do not behave as rational individuals with perfect knowledge, and as a result make suboptimal investments in human capital; thus governments "... 'know better' what is privately good for poor people than do the poor themselves, at least in some realms." It states further that because conditional schemes reward and encourage "good behaviour" practices, they are more acceptable to taxpayers and other lobbying groups. Critics argue that this premise of conditionality is problematic, as it assumes that the poor are incapable of making good decisions independently; thus their behaviour has to be conditioned by penalizing them if they fail to take socially beneficial decisions.

In India, the debate about conditionality is so far unresolved for maternity benefits. Many state officials as well as a section of reproductive health experts believe that these benefits should be subjected to the following conditions: the mother should be over 19 years old, she should receive benefits for two live births only, and she should undergo antenatal and postneonatal health examinations, in addition to institutional deliveries.¹ Such conditions were already applied in schemes covering smaller populations before NFSA. The debates



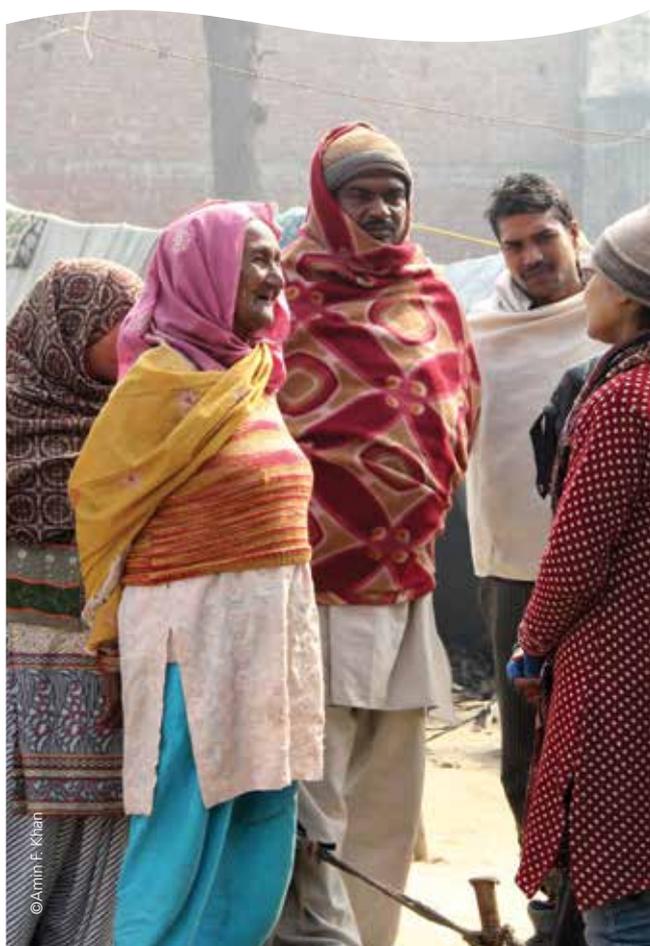
about whether these conditions should apply to the near-universal maternity benefits mandated by NFSA were not carried into Parliament (most of the Parliamentary debates around NFSA concentrated on the PDS, and not on the other major entitlements including maternity benefits). NFSA also does not resolve these questions in a categorical way, as it guarantees near-universal maternity benefits to pregnant women based on the scheme prepared for this by the central government, without clarifying whether this scheme should or should not have conditions.

But these issues were contested keenly instead in the Supreme Court. Prior to the passage of NFSA, the central government ran a scheme for maternity benefits for poor pregnant women who fulfilled only two conditions, being 19 years of age and having up to two births. But the central government subsumed this within a larger scheme subject to the entire range of conditions described above. The petitioners as well as the Supreme Court Commissioners, in what is popularly described as the Right to Food Case, opposed these conditions in the Supreme Court. The court rulings broadly agreed with the views of the petitioners and Commissioners.²

1 See: <http://mohfw.nic.in/WriteReadData/l892s/file28-99526408.pdf>

2 Supreme Court Order of 27 November 2011 in *PUCL vs UOI* in WP(C) No. 196 of 2001 (available at www.righttofoodindia.org/data/2007nov11scorder.doc).

The central government argued strongly in support of the conditions, pointing to the need to incentivize a higher age of marriage for the health of mothers (in a situation where the median age of marriage for girls hovers around 16.5 years) and to promote checkups, inoculations, institutional deliveries, and fewer births. Indeed, there is evidence that the imposition of these incentives was followed by improved maternal and neonatal health. Studies show an increase in rural institutional deliveries from 29.8 percent in 2002–2004 to 37.8 percent in 2007–2008, and a reduction of about four perinatal deaths (death of the foetus or newborn) and two neonatal deaths per 1 000 live births, although attribution is contestable. Moreover, the central government argued in the Court that if maternity benefits were not restricted to women 19 years and above and for up to two live births, the scheme would discourage family planning and contravene the legal age for marriage. The Supreme Court asked the state to continue to provide maternity benefits to all BPL women, but also asked the government to consider these issues.



In response, the argument is first that these studies do not establish without a doubt that these positive health outcomes occurred directly because of the conditionality. Other arguments against conditions to access maternity benefits do not contest the benefits of higher age of marriage, fewer births, regular checkups, inoculations, and institutional deliveries. But, as the Commissioners argued, the purpose of maternity benefits is distinct: to provide some form of social security to pregnant women, and to enable them to access better nutrition during pregnancy. Making the cash entitlement contingent on the site of delivery would defeat its purpose.

The prevalence of anaemia increases with the number of children born, which indicates that women who have more children require more nutritional support. Malnutrition, including anaemia, contributes to a significant number of maternal deaths. Field evidence suggests (although admittedly stronger evidence is required) that cash transfers for pregnant women, if provided in time, are used in many cases towards food and/or health expenses during pregnancy. A ministry official commented that excluding women who already have two children or more would deprive 60 percent of women targeted under the scheme of this benefit. This would be tantamount to putting their lives at risk and contributing further to the high rate of maternal mortality. Furthermore, it is argued that these conditions penalize the mother, who is most often powerless in making decisions about her reproductive health; there may also be constraints on available public infrastructure.³

Even in global discussions, an important critique of conditionalities is that, paradoxically, they punish people for not being able to fulfil conditions because of their disadvantaged and vulnerable position. There is also the possible paradox that conditionalities may indeed on occasion protect children rights, but at the same time may have a mixed effect on adults (mainly women), who are burdened with transaction costs and exposed to abuse by health staff or teachers who report on the fulfilment of conditionalities. Poor households face high opportunity costs along with economic, social, and even physical barriers in meeting

3 Supreme Court Order dated 11 November 2007 in *PUCL vs UOI* in WP(C) No. 196 of 2001.



the conditionality of cash transfers. In these circumstances, besides being unethical, conditionalities may perpetuate the circumstances that prevent the family from improving its standard of living. But in some countries like the United Mexican States and the Dominican Republic, as a complement to the conditional cash transfer programme, governments allocated resources to foster capacity and quality of the health and education system and to fill gaps. They used

information on the failure to fulfil conditionalities in order to assess the functionality of the public service facilities and improve them. They then established mechanisms to avoid penalizing families that failed due to poor quality of the services or remoteness.

Exactly the same worries riddle the NFSA restriction of midday meals only to children who study in schools (government and government-aided). Thus, implicitly, the law imposes the conditionality of school attendance for receiving midday meals, which deprives children who are unable to attend school from benefiting from nutritious hot-cooked meals. Once again it is argued that this penalizes the most vulnerable children, who suffer a double whammy of being deprived of their rights to both education and food. The argument here is that whereas every effort should be made to enrol out-of-school children into school, they should not be barred on any ground if they arrive at a feeding centre and seek food.

No other entitlement under NFSA has any conditions. The Act does not explicitly impose conditionality on maternity benefits, but arguably leaves the window open for these in case they constitute part of the central government's "scheme". But school meals clearly impose the condition of school attendance, which excludes those children who are the most vulnerable.

This set of briefs are derived from the publication: FAO. 2015. *State food provisioning as social protection – Debating India's national food security law*, by Harsh Mander. Rome, FAO.

The Food and Agriculture Organization of the United Nations (FAO) would like to thank the UK Department for International Development (DFID) and the Centre for Equity Studies (New Delhi, India) for the financial and technical support.

FOR MORE INFORMATION

Visit the right to food website
www.fao.org/righttofood
 or contact us at
righttofood@fao.org

