

Civil Society

PARIVARTAN REVISITED

HOW TO EXPOSE CORRUPTION

Public hearings in Delhi have shown it is possible to use the right to information law to expose graft and forgery by government officials

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**WE HAVE
DONE
A YEAR.
THANK
YOU!**

NGO with grit defeats Heinz,

From a dusty office in Pitampura BPNI fought cases,

Rita Anand
New Delhi

HHE Breastfeeding Promotion Network of India (BPNI) looks like a humdrum NGO working out of a cramped office in dusty North Delhi. It employs a handful of people and is headed by an earnest doctor. In May 2003, the NGO won a major victory in its long-drawn battle against baby food manufacturers. BPNI got the Union government to amend the Infant Milk Substitutes Act of 1993 and ban advertisements and promotions of baby food for children below the age of two. The ban went into effect from November 1, 2003.

This was a defining moment for BPNI. But the news barely found mention. Over the years, the breastfeeding cause has lost its lustre. Feminists shrug indifferently. The jholawallas look bored.

But Civil Society was intrigued. How did BPNI get laws changed without campaigns, slogans, celebrities, dharnas? Arrayed against them were multinationals like Nestle, Wockhardt and Heinz. There was also India's dairy cooperative, Amul. How did they do it?

Dr Arun Gupta, BPNI's national coordinator says there was no single strategy. "We simply adjusted our plans as we went along." This meant relentless advocacy with MPs and the bureaucracy for over eight years. Every stage of the campaign needed new guerrilla tactics.

Early days The history of the battle against the feeding bottle dates back to the 1970s. Several case studies documented the deleterious effect infant foods and milk substitutes were having on the health of infants in developing countries. Multinationals promoted these through aggressive advertising and marketing.

Seduced by pictures of chubby babies, mothers opted for packaged products instead of breast milk. In countries where clean water was not available, the use of feeding bottles resulted in a marked rise in diarrhoeal deaths. Colostrum a rich source of antibodies in mother's milk was being denied to babies, lowering immunity. Malnutrition and the infant mortality rate recorded an increase.

The issue was hotly debated for a while and led to the adoption of an International Code for Marketing of Breastmilk Substitutes at the World Health Assembly (WHA) in 1981. The Code sought to control marketing practices by manufacturers of infant foods and milk substitutes. Former Prime Minister Indira Gandhi made a stirring speech at WHA in support. The United States was the only nation that declined to be party to the agreement. Other member-states, including India, agreed to draw up a suitable national legal frame-

work for implementation.

It took 11 years for that to happen.

India has the highest number of under-five child deaths in the world. Research establishes that most deaths are caused by poor nutrition. According to WHO and UNICEF, about 1.5 million babies can be saved each year by increasing breast-feeding during the first six months.

First law In 1983, the Indian government inserted a Code on Protection and Promotion of Breastfeeding including labelling rules into the Prevention of Food Adulteration Act (PFA). But comprehensive legislation had to wait.

Explaining the long gap, Dr Gupta points out the mid-eighties were a time of political instability. He says dairy giant Amul stalled attempts by the Voluntary Health Association of India (VHAI) to get legislation through.

Finally, VHAI's Mumbai branch came up with a draft bill and won the support of the Bharatiya Janata Party's Ram Naik, Union minister for Petroleum and Natural Gas. "Naik was approached because he was perceived as being honest and sympathetic to the cause," explains Chander Uday Singh an activist lawyer who works with BPNI and the Association for Consumers Action on Safety and

Health (ACASH).

Naik agreed to introduce the draft in the Lok Sabha as an innocuous private member's bill. After three attempts the bill was picked by lottery. The ruling Congress wanted the honor of presenting it. Arjun Singh, Union minister of Human Resource Development (HRD) took responsibility. In August 1993, the Infant Milk Substitutes Act 1993 was notified and India became the tenth country in the world to pass such legislation.

An ambiguous law BPNI began work in 1992. "We knew the IMS Act was imperfect. But we thought, at least we have a law," says Dr Gupta. The government passed on the onerous task of monitoring the IMS to ACASH in Mumbai and BPNI in Delhi.

There were ambiguities in the Act, which encouraged violations. For instance, in Section 2 (a) advertisement was defined as "any notice, circular, label, wrapper and other documents and also includes any visible representation or announcement made by any light, smoke, sound or gas."

It was therefore unclear whether it was legal to advertise infant food and milk substitutes on TV and radio.

In section 2 (d) while classifying the

health care system, drugstores and pharmacies were excluded.

Under Section 2 (f) infant food meant "...any food being marketed or otherwise represented as a complement to mother's milk to meet the growing nutritional needs of the infant after the age of four months." But the World Health Organisation (WHO) recommended exclusive breastfeeding till the age of six months and introduction of baby food after six months to two years of age.

Section 3 (a) stated: "No person shall take part in the publication of any advertisement for the distribution, sale or supply of infant milk substitutes or feeding bottles." Advertising infant milk substitutes and feeding bottles was therefore banned, but infant food was not.

However in Section 3 (c) promotions of all three were prohibited... "no person shall take part in the promotion of use or sale of infant milk substitutes or feeding bottles or infant foods otherwise than in accordance with the provisions of the Act."

Every container had to carry several lengthy messages and warnings. These were to be displayed rather prominently. Pictures of babies, women or graphics were not permitted for infant milk substitutes under section 6 (2) of the Act.

Section 7 (1) stated that "educational material" circulated should include infor-



Dr Arun Gupta (third from right) and his team at their Pitampura office in New Delhi

Nestle, Amul, Wockhardt...

lobbied for 9 years, got baby food advertisements stopped

mation promoting breastfeeding and "the harmful effects on breastfeeding due to the partial adoption of bottle feeding". But since "educational material" was not clearly explained advertisements were printed as pamphlets and passed off as being educational.

The Act made it illegal to provide "financial inducements" to health workers but doctors and medical researchers were left out.

A futile chase For nearly eight years BPNI and ACASH doggedly pursued multinationals, corporates, public sector undertakings and even Doordarshan as they skirted the IMS Act.

Infant food ads popped up on soap wrappers, tins of talcum powder and other unrelated products. Posters put up by Nestle "...I love you Cerelac" on streets and markets, were splashed. Worse mandatory warnings were not printed. This was illegal. BPNI sent a notice. An apology arrived. The posters were reprinted with statutory labelling requirements in fine print. Now this was against the rules, said BPNI.

Gujarat Dairy's Amul Spray container was sold with a teddy bear on its label. Feeding bottles were given as "free gifts". Indian Oil beamed a TV commercial showing its Maruti Engine Oil being poured into the engine of a car with a feeding bottle. When BPNI objected, the company's marketing director replied: "The feeding bottle used in our commercial for promoting Maruti Genuine Oil is only an analogy to portray that the most suitable nutritious food should be..."

Nearly all TV stations including Doordarshan telecast commercials. The Law ministry's advice to Doordarshan to please uphold the IMS Act was ignored.

Gupta says the insidious hold of the baby food manufacturers on the health system began to grow. Free samples of baby food were given to doctors for "testing". Nestlé's nutrition services offered international fellowships to paediatricians and sponsored meetings and seminars. Likewise Heinz's publication "In Touch" announced sponsorship for research in nutrition. Multinationals also financed seminars and workshops for paediatricians.

Court to court As early as 1994, BPNI and ACASH approached the criminal courts to pin down Nestle. That year Nestle advertised Cerelac for babies during the fourth month whereas the IMS Act section 2 (f) specifically stated infant foods could be introduced only after the fourth month.

The two NGOs hired a young lawyer for a fee of Rs 2000 and filed a complaint in the court of the Metropolitan Magistrate,

New Delhi. In 1995 the criminal court found Nestle guilty of violating the IMS Act, took cognisance of offence and summoned the company through its Managing Director.

Nestle approached the Delhi High Court and stated it was complying with PFA rules, therefore the IMS Act was not applicable to them. Chander Uday Singh, who represented ACASH, contends that a new Act supersedes an older one if the two are in conflict.

Nestle wanted the case in the lower court quashed. "But the judge did not give an injunction," says Dr Gupta. In 1998 the High Court gave directions for the criminal trial in the lower court to proceed. It came up for hearing in December 2003. Throughout, says Dr Gupta, Nestle employed a battery of lawyers to adjourn the case and frustrate BPNI and ACASH.

World opinion Meanwhile, the WHA was getting uncomfortable about the trillion-dollar food industry's role in child health. Over the years, the assembly had passed several resolutions with limited success. In 2001 a WHA resolution recommended exclusive breastfeeding for six months and complementary foods only after that.

At a meeting of the WHA in May 2002, the Indian government was most critical of baby food companies. India said since companies were driven solely by profit, it was unrealistic to expect them to promote breastfeeding. It urged careful watch on the financial support such companies offered to health professionals. Led by the Indian government, member states said no to public-private partnerships.

The WHA meet limited the role of the commercial sector to ensuring quality control and said companies had no role to play in nutrition programmes for babies or young children as it led to a "conflict of interests". WHO endorsed WHA's position.

Act local Dr Gupta says international agreements do influence national governments but finally it is local action, which works.

"Remember from the start that the government is not going to do anything. You have to prepare the bill, convince them, answer all questions and pilot it through," he says. In 1994 BPNI and ACASH had approached the government to amend the IMS Act in order to control marketing. "We are not pushing women into breastfeeding," says Dr Gupta.

With Uday Singh's help appropriate amendments were drawn up and the Ministry of Human Resource Development (HRD) was approached. "The ministry especially the Department for Women and Child Development were very supportive," recalls Singh. The

department constituted a Task Force from various ministries and departments of the Central government and voluntary agencies. The National Commission for Women gave its inputs.

It took quite a while for some members of the Task Force to understand what BPNI was talking about. Dr Gupta explained international agreements India was party to, the importance of breastfeeding, the IMS Act, the violations taking place and the legal changes required.

The file travelled through the Ministry of Health, Ministry of Food and Civil Supplies and the Law ministry. There were objections at every stage and BPNI had to defend its position. "It is crucial to know how the government works," says Dr Gupta, "you need to have legal advice at all times to answer queries". Finally in 1998 the Task Force recommended these amendments to the government.

After this the file got stuck at the HRD department. On and off BPNI would make inquiries about its progress. Frequently, clarifications and questions would be sought. "Once a junior official inquired whether any precedent to such amendments existed anywhere in the world," recalls Dr Gupta. Examples were sent from Ghana and Bangladesh, countries with similar problems. "These are just small countries," Dr Gupta was told, dismissively. BPNI was convinced multinationals were behind the delay.

Still Dr Gupta befriended the deputy secretary and made a presentation to lower rung officials. "Educate everybody," he says and don't ignore the junior staff.

Personal networks In 1998, BPNI had organised a national workshop on child nutrition to sensitise the media. Former Union Minister for Information and Broadcasting, Sushma Swaraj was invited. "She was very supportive and endorsed our stand," says Dr Gupta.

Her personal physician Dr Ashok Dutta was a good friend of his. He advised Dr Gupta to meet her and offered to arrange it. Dr Gupta went to her home and informed her about TV channels, including Doordarshan, misusing the IMS Act. He told her that his file was stuck in Sumitra Mahajan Union HRD minister's department. Swaraj spoke to her. The next day the file finally moved to Mahajan's table. Meanwhile, BPNI got a question on the amendments raised in Parliament. The Deputy Secretary in the HRD ministry was asked to reply. In this way pressure built up on the bureaucrats and Mahajan.

The turning point came in September 2000. Swaraj banned direct or indirect promotion of infant milk substitutes, feeding bottles and infant foods through the Cable Television Network (Amendment) Act and Rules. "I received a call from Dr

Datta on that fateful day, asking me to call on her immediately," recalls Gupta. "I went immediately to her house. She was going to table the amendment. She asked me whether it was all right. I said, 'Yes.'"

Dr Gupta had won half the battle. Nearly 40 million Indians watch TV. Overnight ads for baby food and infant milk substitutes were blanked out.

Right atmosphere But the legal amendments were still stuck in the HRD department so BPNI began networking politicians. This was considerably tougher. "Nestle can get a meeting with a minister easily, but we cannot."

Mahajan agreed to organise a meeting of parliamentarians. Several MPs attended. Dr Gupta made a presentation. The MPs listened and said they would be supportive. But nothing happened.

In September 2001, BPNI went back to Ram Naik and told him emotionally about the cause they espoused and the file. Naik was leaving for Indonesia, but he was sufficiently moved. He picked up the phone and spoke to Mahajan in Marathi and fixed a meeting for BPNI the next day. This time Dr Gupta informed her about WHA and WHO resolutions to which India was party and provided her with printed proof.

In March 2002, the bill finally entered the Lok Sabha and was debated. Prior to this, BPNI activists met politicians including Pranab Mukherji and Manmohan Singh to garner support. An advocacy kit was prepared for each MP to educate them about the amendments. The HRD ministry suggested a Joint Parliamentary Committee (JPC) examine the bill. This was a dangerous stage. "It was essential to keep the heat on, otherwise the bill may have been put on the backburner," says Chander Uday Singh.

The sessions of the JPC were not placid. Chander recalls sitting around a table while some 18 MPs asked questions. Many MPs were openly hostile. "Even if people are unsympathetic, just soldier on," says Dr Gupta. Fortunately Arjun Singh was the chairperson. Dr Gupta went to his home and briefed him.

The JPC passed the bill in December 2002.

"Once a bill is okayed, it is better not to tamper with it, otherwise the process will start all over again," cautions Dr Gupta. The December 13 attack on Parliament stalled its safe passage once again. BPNI worked overtime to keep interest in the bill alive. In May 2003 the bill was passed in the Lok Sabha and the Rajya Sabha. In June, came the President's assent.

But the baby food companies did have one last victory: they managed to delay its implementation till November 2003.

It took nine years for the amendments to happen.