

Transforming the Agenda of a Fortification Legislation: National Program Case Studies and Lessons Learned from Bangladesh

(Written By: Basanta Kumar Kar, Chief Executive Officer, The Coalition for Food and Nutrition Security(India), New Delhi, India. E-basantak@rediffmail.com)

Summary

In 2013, in the midst of one of the worst phases of political turmoil, Bangladesh passed the ‘Vitamin A enriched Edible Oil Law’, to directly address the issue of micronutrient malnutrition, popularly known as hidden hunger. It was the result of years of advocacy, firm political will and the relentless courage of multiple-stakeholders that the Law survived a High Court stay, which was finally vacated in 2015, after a 14-month long legal battle. The complex law making process passed the test of public interest, public purpose and reasonableness. Building a shared vision, a new nutrition narrative, knowledge assimilation and transfer across clientele; as well as an inclusive multi-stakeholder engagement in a public space were key drivers of success. The passing of this Law not only promised a better micronutrient profile for the poor and marginalized, but also displayed the strength of the political will in shaping Bangladesh as a nutrition pioneer in South Asia. The mandatory fortification is more likely to increase access to safe and nutritious products and hence help the communities achieve the desired health and nutrition impact. Without additional financial burden to the state, the self-sustaining and cost effective market based model on food fortification with state accountability emerges as a strategic fit for many other countries.

Key words: Food fortification; policy and advocacy, agenda setting, Vitamin A fortification, refined vegetable oil, micronutrient malnutrition, political commitment, premix, writ petition, Law, Act, Parliament, Parliamentary standing committee, Quality Assurance and Quality control mechanisms.

Introduction: The Making of a Law: A Long-winding Advocacy endeavour

By 2021, Bangladesh set up a vision to become a middle-income country. Despite political turbulence, numerous natural disasters and emergencies, Bangladesh has achieved spectacular growth and success in improving several human development indicators, including reducing maternal mortality, infant mortality, and acute hunger. As an exemplar country, Bangladesh chose to fortify edible oil in the year 1997. The mandatory fortification of refined vegetable oil with Vitamin A was chosen by me as a top most policy reforms agenda to improve equitable access through strong regulatory enforcement and quality control mechanisms. It is both a cost effective as well as a sustainable solution to control micronutrient malnutrition.

Startup phase: Bangladesh brought out the first ever mandatory legislation on fortification of salt with iodine in the year 1989. Learning lessons from the success of this program, international development organizations, undertook pilot and action research programs and built food fortification alliance during 1997 to 2010. Nestled between private and public interest agenda, the startup phase, full with trials and errors, was to understand political economy, create an enabling environment and bring on board, the all-powerful Bangladesh Vegetable Oil Refiners’ and Vanaspati Manufacturers’ Association (BVORA) for edible oil fortification. During this phase, the South Asian region witnessed judicial activism—a momentum on rights-based approach transforming safety net

programs to entitlement programs. In the diluted stakeholder and message alignment and fragmented and overlapping landscape; Global Alliance for Improved Nutrition (GAIN) signed the oil fortification project agreement with UNICEF in January 2010. GAIN provided a grant of 3 million USD to UNICEF Bangladesh to implement oil fortification, particularly to fortify refined edible palm and soybean oil with Vitamin A. The project was designed in partnership with the Ministry of Industries (MoI), Government of Bangladesh, Bangladesh Standards and Testing Institution (BSTI), Oil refineries and BVORA. Anticipating strong regulatory enforcement and quality control mechanisms which can expose unsafe food practices; BVORA opposed the project from the beginning. UNICEF, after signing the agreement with GAIN, could not mark a dent to roll out the program. The stiff opposition from BVORA and indifference from the policy makers and political leaders strangled the much-awaited program in its infancy.

Building a shared vision and legitimacy on Vitamin A fortification

In January 2011, as the first Country Manager of GAIN, I landed in Dhaka with a vision to control micronutrient malnutrition through sustainable business models by improving nutrition governance. My initial strategy was to understand political economy, identify few champions, build a business case, roll out the program through UNICEF, demystify the age old perception on GAIN and make it as a legitimate civil society voice. Through strategic use of bureaucracy, I engaged with the ministers, law makers and willing refineries. The democracy provides space for civil society and social activists to perform social watch role and shape public opinion. With aggregation of knowledge and through transparent and inclusive dialogue; I reached out to the most vocal critics of the fortification and successfully brought them on board. By mid-2011, we successfully negotiated with six refineries to carry out the fortification process on a voluntary basis with technical support and financial support from GAIN- UNICEF project. The communication plan was well laid out with the creation of an attractive food fortification logo. As a mark of recognition and reward, the Industries Minister and law makers attended test launch programs at the refineries. The first ever food fortification national consultation in October 2011, witnessed a robust attendance of senior Cabinet Ministers and Secretaries strengthening the fortification agenda. In February 2012, the Industries Minister launched the program and unveiled the first ever fortification logo to be used by the refineries those who pass the quality audit. A zero tolerance protocol was developed on safety and safeguard measures.

As this gathered momentum, the next step was to generate a public discourse on the findings of the National Micronutrient Survey (NMNS) 2011-12, facilitate mainstreaming of the fortification agenda in state policies by changing the narrative. With the publication of NMNS, I was requested to co-lead the National Micronutrient Deficiency Control Strategy. As per NMNS, the prevalence of sub-clinical vitamin A deficiency, as measured by serum retinol level (serum retinol < 0.7 mmol/l), was 20.5% among preschool children (aged 2-<5 years); the prevalence was significantly higher in the slum clusters, at 38.1%. The prevalence was 20.9% and 5.4%, respectively, among school-age children and non-pregnant, non-lactating (NPNL) women. The deficiency among the school-age children in the slums was 27.1%. At the national level, over half of preschool (56.3%) and school-age children (53.3%) had a mild degree of vitamin A deficiency, while mild deficiency affected over one-third (34.3%) of NPNL women. The prevalence of anemia in preschool children was 33.1%. It was 36.6% and 22.8% respectively in the rural and the urban clusters. The prevalence of anemia in NPNL women was 26.0%. The vitamin-A supplementation program was limited in coverage, it only addressed the

needs of pre-school children and post-partum women, and did not reach to 100% of these sub-groups.

The Vitamin A deficiency, cost effective premix, limited coverage from supplementation program and new research on the need and relevance of Vitamin A to address all pervasive anemia; provided a strong rationale. For the policy makers, the fortification of refined vegetable oil with Vitamin A was regarded as an ideal vehicle for fortification in a country where the per capita consumption of oil, according to the NMNS, was 24.4 grams. The fortification standard developed by the technical advisory group having public interest oriented eminent experts reaffirmed the safety and safeguard measures.

Take off phase: Strategising mandatory Fortification: In this phase, a comprehensive strategy was laid out to facilitate necessary approval and assent by the minister, the cabinet led by the Prime Minister, Ministerial Standing Committee (MSC), Parliament and President in different stages of law making process. Plans were worked out for a multi-stakeholder alignment, scaling up the program and generating people's demand. Consumer and civil rights groups appreciated the science behind the idea of mandatory fortification of edible oil with Vitamin A, and extended their support. By mid-2013, the fortification program was scaled up to sixteen refineries which had 60% market share. The fortified edible oil products were made available across the country. Use of fortified salt and edible oil in our pioneering community-led, hot-cooked-meal based school nutrition program generated unusual political attention. The Ministry of Health and Family Welfare allocated special budget to promote oil fortification. Intense media and communication campaigns were launched to generate consumer demand. The use of the fortification logo was promoted extensively as a mark of quality-complied product. As refineries across the country promoted the brand of fortified oil, and access to the products improved, the demand shot up and this helped establishing a fair pricing system demystifying age old perception on rising of the price with the fortification.

The campaign received a shot in the arm when the office of the Prime Minister acknowledged the merits of the law in improving access of the fortified products to the marginalised. The Cabinet Secretary became a true champion to pursue the cause. We received a legitimacy and emerged as a credible partner of choice. I represented in numerous policy and advisory bodies in the country.

Navigating the Advocacy Endeavour amidst turbulence and turmoil: Looking at the turbulent landscape and risks, UNICEF did not join the phase II of the program from July 2013. The international development organisations sat at the fence. In a significant development, in July 2013, we at GAIN steered towards signing the most valued Cooperation Agreement (CA) with the Economic Relations Division (ERD) of the Ministry of Finance, Government of Bangladesh. The Ministry of Industries was designed as an executive agency to sustain and scale up the oil fortification program with mandatory legislation. From UNICEF, the role devolved in favour of the Government with increased ownership. Our direct oversight to the program increased harmony to mitigate risks in unison. The indifference of a number of international development organisations and signing of CA with direct oversight by GAIN, made BVORA hostile. With support from FBCCI (Federation of Bangladesh Chambers of Commerce and Industry), the violent BVORA waged a war against the law.

Amidst all of this, I had to face a BVORA sponsored media and public trial. In a meeting held at the Ministry of Industries in July 2013, BVORA chairperson and office bearers criticized the Minister, Secretary and GAIN; and cited conflict of interest issue, and blamed GAIN for promoting its business interest agenda to sell premix through mandatory law. Interestingly, by this time, entire premix

procured by the Government was being supplied through GAIN premix facility (GPF). BVORA and its allies put tremendous pressure to paralyse the fortification program and reached at the Prime Minister's office to express their concerns with veiled threats. Fearing the rising price of the essential food commodities controlled by these business houses; the Prime Minister's office instructed the Ministry to go slow with the law-making during the period of fasting (the Ramadan month) between July'13 to early August'13.

In 2013, Bangladesh witnessed unprecedented political turbulence. Defying, blood, arson, violence and death, we were working in a team and at times moving through rickshaws and ambulance vans in disguise to advocate this important legislation that can benefit the poor. Personally, I have witnessed blasts of cocktail bombs and heard sounds of barrels and blasts during meetings at the office of the Ministry of Industries, located at the busy and crowded Motijheel area of Dhaka city. It is an experience which needs to be mentioned and acknowledged as it shows the political commitment and leadership to take on a public interest agenda amidst turmoil.

From the month of September to November'13, amidst turbulence; Bangladesh witnessed significant milestones on the law making process.

From August to September'13, the draft law was developed along with the Minister's approval on Cabinet note. We engaged in extensive one-on-one discussion with the Parliamentarians and key Ministers with research, evidences and best practices.

In October'13, the draft law was placed before the Cabinet and in a rare legislative gesture; the Cabinet approved the draft law without any comments. The Cabinet Division sent the draft law for vetting to the Ministry of Law. BVORA had a quick gain and succeed in their attempts to influence a State Minister of Law, and the grapevine was abuzz with details of the unfair means BVORA had used to influence the Minister, which led to delays, uncalled for queries and clarifications on the draft law. Alternatively, the provocation and unfair measures bolstered the efforts of the policy makers to bring out the law. With renewed vigour, we worked in unison to transform the agenda of a legislation.

In November'13, the Minister of Industries personally intervened with the Law Minister to break the deadlock. With the intervention at the Prime Minister and Speaker's office, the law was listed in the cause list' of the parliament for a discussion during the special session of the parliament on November 18, 2013. The bill was placed and discussed in the parliament and later referred to the Parliamentary Standing Committee (PSC). The very next day, the PSC cleared the bill with few amendments. The bill was then placed before the Parliament. On November 20, 2013, the Bill was presented in the Parliament and APPROVED THROUGH A VOICE VOTE defying many resistances on the last day of the Parliament. BVORA was considering filing an injunction suit before the Law receives the President's assent. Understanding the urgency, on November 28, the Ministry of Industries officials went to the President office and secured his assent. On November 28, 2013, the Hon'ble President gave his assent on the Bill: The Bill became a law. After the assent, the law was notified in the official gazette. I was requested to draft the 'Rules' made under the law.

The salient features of the Law are:

- The law defines edible oil—which means any vegetable oil (refined or crude) taken as food by humans, including soybean, palm and palmolein or any other vegetable oil (rice bran oil) but it shall not include mustard oil, coconut oil, olive oil etc.

- The law makes mandatory production, sale, supply, preservation and marketing Vitamin A fortified edible oil. It bans the import and export of unfortified edible oil.
- It mandates tagging fortification logo on the container, the government to undertake awareness-raising activities, fixes a standard for adding premix/fortificant with minimum and maximum level and periodic review or scientific assessment of the quality standard, safety and safeguard measures.
- The law prescribes stringent quality assurance and quality control mechanisms and empowers BSTI as the nodal agency for regulatory enforcement and monitoring.
- The law defines duties and responsibilities for BSTI, producers, wholesaler, retailer, hotels, restaurants and commercial foodstuff producers, police, other law enforcing agencies, the National Consumer Rights Protection Department, and the local government authorities.
- In a significant governance measure, the law lays out clear provisions on offences, penalties and trial of the offences. It includes both fine and imprisonment and additional penalties in case of repeat offence.

Head-on phase: Managing and Mitigating post Enactment Turbulence: In January 2014, the new government came to power. A new Minister of Industries took over. Looking at the opportunity, BVORA challenged the law and termed it to be a private interest law enacted without reasonableness.

In February 2014, BVORA along with all the 22 refineries, filed a writ petition in the Supreme Court of Bangladesh (High Court Division) under Article 102(1) and (2) of the Constitution of the People's Republic of Bangladesh in the matter of Enforcement of fundamental rights guaranteed under Article 32, 40 and 42 of the Constitution, challenging the Vegetable Oil Fortification Law. The petition made the Government of Bangladesh as a party. The writ petition, severely critical of GAIN, questioned the public interest nature of the law. To our utmost surprise, BVORA managed a judicial stay order. At this point, it appeared as if the process had to start from scratch, all over again. The excitement and enthusiasm to enforce the law across the country in the complex legal system suddenly dried down. I found myself losing allies internally and externally.

Here are some of the highlights of BVORA's argument against Vitamin A Fortification:

- The petition challenged the public interest, public purpose and reasonableness of the Act. It stated that the law was made 'at the instance of foreign premix suppliers like GAIN and others without having any test or examination report'.
- The enforcement of the law is completely dependent on the import of Vitamin A premix which is supplied by GAIN and other international suppliers.
- The petition was critical on the permanent/perennial nature of the legislation. It stated that the deficiency of Vitamin A is a temporary phenomenon which can be 'fulfilled' through 'one point of time' fortification, dietary diversity and/or supplementation program. Mandatory fortification is irrelevant as it makes provision for 'rest of life'.
- Foods like vegetables and animal fat from where Vitamin A can easily be gathered is easily available in Bangladesh.
- The mandatory fortification in all the products along with the 'criminal prosecution under the impugned Act is against the principle of equity'. The industry compliances mentioned in the Act would incur additional overhead expenses increasing financial burden to the industries.

- The fortification of edible oil using chemical process/vitamin will deprive the consumers' options, for those who intend to buy non-fortified edible oil". The consumers will be bound to use fortified edible oil against their 'Will and need on payment of extra cost'.
- The legislation is not evidence based, the quality assurance and quality control measures included in the Act are not scientific and the premix used is derived from animal source which has cultural sensitivities.

Even as the writ petition complicated the issue further and I found myself losing my allies, my personal safety and security became a point of concern too. With the transfer of the Secretary in the Ministry of Industries, we lost a champion and had to restart our efforts from scratch. With a handful of supporters, we strategised to re-demonstrate the top political will, coopting fence sitting refineries and re-build a strong case to defend the law using scientific and legal rationale. The government appointed technical expert committee re-endorsed the safety and safeguard mechanism. Understanding the religious sensitivities we gathered evidence from the GAIN Premix Facility (GPF) on source of premix supplied to Bangladesh since 2011. Fortunately, more than 60% of the premix supplied were from vegetable and synthetic source. An interface and dialogue with the new Industries Minister in our two major national policy seminars and the launching of oil fortification program in one refinery transformed the thinking and actions of the Minister. The Minister realised the ploy, developed a conviction to vacate the stay order and in early 2015, he intervened using his power and influence.

It took almost a year, but we made a breakthrough.

After several court hearings, with arguments and counter arguments, the Bangladesh High Court on March 16, 2015 vacated the stay order. The Law came into force after a fourteen month long legal battle. It vindicated my position. The Rules made under the Act were published in November 2015. In a national workshop in December 2015, the Industries Minister gave a stern warning to defaulting refineries to join the fortification program within 72 hours, failing which unfortified edible oil would be withdrawn from the market. As of April 2017, 83% of total edible oil produced/refined in Bangladesh, is fortified. All the 37 refineries (27 refineries for soybean and palm oil and 10 refineries producing rice bran oil) are part of the program. In line with the law, the country is importing only fortified soybean, palm and rice bran oil. The mobile courts and BSTI are effectively functioning for regulatory enforcement and monitoring. For the Government and key donors, it stands as an exemplar program.

Key drivers of success:

In the making of this law, a systematic and thoughtful advocacy strategy was planned and executed for five years. Below is a narrative on the key drivers of success.

- **Relentlessly pursue public interest:** With my long experience in law making, I was quite categorical about public interest elements in the legislation and included public interest provisions, viz safety and safeguard, and accountability of all the key stakeholders' with very strong regulatory enforcement mechanism including fines and imprisonment for defaulters. Therefore, when the law was challenged in Bangladesh High Court, the government could provide sufficient evidences to prove that it was for the benefit of the community.

Build an inclusive partnership and strategic alliances: Any paradigm of development should be inclusive. The investment in inclusive multi-stakeholder partnerships at micro and macro level paid rich dividends. The partners catalysed action to position mandatory legislation and minimised numerous antagonistic views and unfair-lobbying.

- **Generate community demand:** The community remains at the centre of political decision. The political leaders were fed with strategic information on the need, relevance and cost effectiveness of the program that can benefit women and girls, poor and marginalised. By July 2013, the project had made headway on coverage, reach and consumption of the fortified product—it covered a population of 82 million, including children, women of reproductive age and people living in urban slums. The aggressive brand promotion measures by the industries, affordable cost structure, active engagement of the quality control agency, positive stories in the media on value proposition ushered a revolution and generated a consumer taste and demand; very difficult to reverse.
- **Create and inspire a shared vision:** We convened numerous inclusive multi-stakeholder consultations from 2011-15 involving political leaders and legislators across party lines to build a political consensus. Sincere efforts were made to use a new nutrition narrative to link the benefits of fortification to women’s empowerment, the country’s growth, productivity and demographic dividend. Women’s empowerment is the cornerstone of Bangladesh public policy. A series of consultations were organised involving social activists around women’s nutrition and their entitlements.
- **Knowledge assimilation and transfer across clientele:** Systematic studies and research(s) in close partnership with the government on business models, market and technical feasibility, social-cost-benefits analysis, health and nutrition benefits, safety and safeguard measures, legal options, risk and mitigation measures and stakeholder analysis provided informed choices to the policy makers. The research and evidences enabled the Government constituted technical committee to bring out fortification standard, quality assurance and quality control mechanisms in line with WHO guidelines. The knowledge was disseminated across the country through a series of policy dialogues and roundtables in a fair and transparent matter. It helped in building a stakeholder and message alignment around oil fortification law.

Lessons Learned

Vitamin A is crucial for maternal and child survival. Vitamin A deficiency is the leading cause of preventable blindness in children and increases the risk of disease and death from common but severe infections among children such as diarrhea and measles (WHO). The deficiency is one of the causes of anemia. It is necessary to frame the issue (nutrition/fortification) with the country’s vision, and shape the political commitment around the community’s needs using research and evidences. Despite opposition, the Government of Bangladesh saw the merits in bringing in a legislation to benefit the poor, specifically women and girls. It vindicates that policy reforms on food fortification can draw political and policy attention. Deception is not a great way to sustain advocacy effort and reputation. With the clamor for nationalism and new national order and growing judicial activism in South Asia; the development organisations need to be purposeful, demonstrate program delivery effectiveness and work diligently to fulfill public interest and public purpose agenda in order to be relevant and legitimate, to set and transform the food fortification agenda.

References

1. Making Vision 2021 A Reality- Government of Bangladesh document
2. The Health, Nutrition and Population Sector Development Program 2011-2016, Government of Bangladesh
3. National Micronutrient Survey(2011-12), Bangladesh
4. GAIN and UNICEF Bangladesh Website: www.gainhealth.org and <https://www.unicef.org/bangladesh/>
5. Bangladesh Demographic Health Survey-2011
6. Vitamin A Fortification of Edible Oil Act, 2013
7. Writ petition filed by BVORA in the Supreme Court of Bangladesh (High Court Division)- February 2014
8. National Strategy on prevention and control of Micronutrient Deficiencies, Bangladesh (2015-2024)
9. The Fortification of Edible Oil with Vitamin 'A' Rules, 2015
10. Guidelines on Food Fortification with micronutrients: A joint publication by WHO and FAO