

Romance With Right To Information: Indian Scene

By Prof. Manubhai Shah

Citizens' right to information is described on the international plane by different nomenclatures: Freedom of Information Act, Access to Information Act, Citizens' Right to Information Act, and the like. Different legislations in different countries have different historic backgrounds, in the absence of which probably the laws would not have been enacted there.

For example, the US Freedom of Information Act would not have seen the light of day, but for the painful historic event of the USA's involvement in the Vietnam War and the loss of a large number of lives of American soldiers for a cause not strictly related to the defense or interest of the USA.

The Use of Law

It may be said without any exaggeration that the use of the law and the courts for promoting and protecting consumer interest began in India for the first time during 1978 with the birth of Consumer Education and Research Centre at Ahmedabad.

In the absence of specific legislation on Citizens' Right to Information and even other statutes for promoting and protecting consumer interest, CERC had to invoke citizens' Fundamental Rights under the Constitution of India by approaching the High Court and/or the Supreme Court of India from time to time.

Citizens' Fundamental Rights relied upon in different contexts at different points of time were by and large the following:

1. Citizens' right to life and liberty: especially in the context of ensuring safety and health of consumer's vis-à-vis hazardous goods and services.
2. Right to equality before law and equal protection of law: seeking protection against monopolies, particularly State monopolies and powerful business organisations, rightly described by the Supreme Court of India as consumers and business firms as parties of 'unequal bargaining capacity'.
3. Citizens' right to form associations to promote and protect the interest of the minority and the weaker sections of society, essentially used for establishing the locus standi of the consumer and citizens' groups, particularly in the context of public interest litigation.
4. Freedom of Expression: for providing information to the consumer, the reader, and the author's right to reply.

To the real-life series of events, I take the liberty to describe a few historic milestones.

The First Struggle

Our first struggle during 1978 was demanding a copy of the proposal submitted by the Gujarat State Road Transport Corporation to the Government of Gujarat, Department of Surface Transport, justifying a proposed increase in the bus fare, to enable members of the public to file their suggestions and objections effectively, pursuant to the provisions of the Motor Vehicles Act.

The State Government's reply was that it was confidential invoking the provisions of the Official Secrets Act, a British legacy, and thereby it was refusing the same. Our stand was that no consumer organisation or members of the public could ever make any effective representation unless they had a copy of such a proposal with detailed justification. Not providing the said information would be violation of the principles of natural justice and in contravention of the provisions of the Motor Vehicles Act and the basic principles of effective public participation.

The State Government increased the bus fare without providing the copy of the proposal. CERC challenged the decision of the State Government and the Court held such fare hike as illegal, being against the principles of natural justice and also simultaneously upheld citizens' right to information.

1979 was another landmark for reasons more than one.

As an organisation, we enlarged our mandate for environment protection, besides promoting and protecting consumer interest in respect of goods and services. We confined our role of environment protection to public safety and health hazards, particularly in this case the Machchu Dam disaster.

It was a disaster on the river Machchu, near Morbi, Rajkot District, Saurashtra, where 1800 men, women and children lost their lives and property worth Rs.103 crore, including cattle, got destroyed.

In view of such a massive tragedy, in response to the demands for a judicial enquiry from the Congress Party in opposition against the Janata Party in power, a Judicial Enquiry Commission was set up headed by the sitting High Court Judge, Hon'ble Justice B.K.Mehta together with an assessor, Prof. Ravi Mathai, Director, IIM, Ahmedabad.

We appeared before the Enquiry Commission. Relevant to the Right to Information came up an interesting question before the Commission.

Collector's Report

The Government of Gujarat had earlier requested the Collector of Rajkot to conduct an enquiry and submit a Report on the nature and extent of damage, particularly the causes, which had led to the tragedy and the absence or inadequacy of early signals, and evacuation, which could have minimised the gravity of the tragedy. The Report was already submitted by the Collector to the Government of Gujarat.

We requested the Government to give a copy of the Collector's Report to the Commission and to us to effectively participate before the Commission and offer our views and comments on the relevant issues on dam safety.

The Government as usual pleaded confidentiality, referred to the Official Secrets Act and refused to part with it and give us a copy.

Interestingly, the Chairman of the Commission, Hon'ble Justice B.K. Mehta, informed the Advocate General, Mr. J.M. Thakore, appearing for the State, that the Commission had the Report of the Rajkot Collector in its custody and that he had already gone through it.

The Advocate General made an interesting technical submission that His Lordship would not take a judicial notice of such a document and would not refer to and rely upon the same in the report of the Commission!!!

We challenged the decision of the Gujarat Government before the Gujarat High Court. The Hon'ble High Court overruled the Government objection and held that the Commission, in its report, would be free to refer to and rely upon the Rajkot Collector's Report.

Another Struggle

Then came another struggle of a different kind, where the party involved was a Government corporation, viz. Life Insurance Corporation of India (LIC), a statutory body being a monopoly for life insurance in India, owned and controlled by the Government of India.

Interestingly, it also involved two-fold rights: Readers' Right to Information and author's Right to Reply -- two sides of the same coin.

The relevant Article on Fundamental Right was Citizens' Right to Freedom of Expression.

Within the conceptual framework the Freedom of Expression includes the Right to Information and the Right to Reply without which the Freedom of Expression shall be incomplete.

Unlike other countries, India does not have a separate and specific Fundamental Right of the Freedom of the Press. By and large, Courts have covered Freedom of the Press within the scope of the Right of Freedom of Expression.

Briefly, the facts were that I as Managing Trustee of CERC had published a research paper titled "A Fraud on Policyholders by LIC" highlighting the unfair treatment to policyholders through non-availability or inadequate availability of the plans and policies by reason of restrictions on the eligibility criteria and risk cover, otherwise available to policyholders in other countries.

Similarly, outdated tables of premium where mortality ratios were not updated, the ratio of the administrative cost was beyond the statutory limit, and thereby recovering higher premium.

Plans and policies were more savings-oriented insurance covers that too with bonus, with higher premium in relation to risk-oriented insurance cover with lower rates of premium.

The study had shown that for pure individual Term Insurance cover the rates of premium were 1/13 to 1/39 of the Endowment Insurance cover premium.

The said publication was widely covered by various newspapers and magazines.

Mr. Krishnan, a Chartered Accountant and member on the LIC Board, wrote an article The Hindu, the daily newspaper from Madras (now Chennai). He referred to my research paper and tried to demolish the concerns voiced therein. In the process, he referred to me at 19 places by name as to what I had said here and there in my published research paper.

When I came to know of that article, I sent a reply to The Hindu, which was published.

The Editor's Stand

Later on, the Editor of Yogakshema, a magazine published by the LIC, reproduced the article of Mr. Krishnan. When I came learnt of it, I requested the then Chairman of the LIC, Mr. Mathen, to publish my reply by likewise reproducing it from The Hindu. The Chairman was unwilling to do so on grounds that Yogakshema was a house magazine and the LIC could not publish any article or write-up, which would hurt the LIC's interest.

My argument obviously was that had the LIC not reproduced the article of Mr. Krishnan in Yogakshema, I would not have requested the LIC to publish my reply. In a sense, it was my right to reply and readers' right to information; they had a right to know as to what was the other side of the story of Mr. Krishnan's article.

Since the LIC was unwilling to do so, CERC and I filed a writ petition before the Gujarat High Court, invoking the Fundamental Right of Freedom of Expression.

I won the case.

The Court directed the LIC to reproduce my reply in Yogakshema. Incidentally, the High Court directed the LIC to pay me Rs 35/- as cost.

The LIC went in appeal to the Supreme Court of India, obtained a stay order against the Gujarat High Court decision. Finally, the Supreme Court decided the case in my favour, directed the LIC to reproduce my reply with an apology for not publishing the same earlier.

In the process, a number of years had passed away. However, the author's Right to Reply and readers' Right to Information were finally vindicated.

The cases narrated conclusively established the proposition of law that the Court was competent to issue directions upholding citizens' Fundamental Right to Information. However, the difference persists.

It is one thing that citizens get information as a matter of course and it is another that they have to go to court, incur heavy cost and have a long-drawn litigation, spread over a number of years, including the first and second appeal, and then get the information.

It was in this context that CERC got further involved in championing Citizens' Right to Information Act to be enacted by the Parliament of India.

The IDRC, Canada, funded a study tour of the USA, Canada and the U.K., undertaken by me along with my colleague Ms. Pritee Shah, to study the Freedom of Information Act, its origin, history, and the present status and what would be the appropriate kind of law for India that we would like to crusade for.

The finer aspects of the Freedom of Information Act in the USA were obligation of the Government Department concerned to submit a report to the Congress every year about the requests received and honoured or rejected, details of the cases and justifications as to why they were rejected.

Public Interest

Another development was regarding total or partial waiver of fees for seeking information, particularly when a citizen seeks information for promoting public interest and not for personal or commercial interest.

An interesting feature of the Canadian model was that the country had earlier appointed two Commissioners: the Commissioner of Information and the Commissioner of Privacy. But over the years, having regard to the conflict in the approach of two Commissioners, they now have only one Commissioner. If a citizen does not get the information from the Department concerned, he or she can approach the Commissioner of Information, who will use his good offices to get the information to the citizen.

Taking a cue from the Canadian model, in the Bill that we have prepared for India, we have made a provision for the jurisdiction for the citizen or the consumer to approach the Consumer Court for getting information, meaning thereby that it is not only giving citizen a statutory right but there must be a quick and inexpensive remedy.

Forgotten Promise

So far as the U.K. is concerned, unfortunately nothing much has happened. Every political party at the time of election makes a promise and then the promise is not kept. So there was not much to learn from the U.K. model. If some changes have taken place recently, I do not know.

Coming now to the Indian scene, having completed the study tour and other literature survey that we had from other countries, where information is being made available to citizens as a matter of right, we held some seminars at Delhi, Ahmedabad and Pune with the participation of some foreign experts as well. The seminars were funded partly by the IDRC, Canada, and thereafter by Friedrich Naumann Foundation, Germany.

Now, having debated three different Seminars at 3 different places at periodical intervals, we drafted the Bill called "Access to Information Act". Without any desire for a pat of the back, I must say that some of the eminent jurists of India have hailed the draft Bill prepared by CERC as the best and the exhaustive one available in the country.

Other two Bills were prepared by the Press Council of India and, of course, the Government of India, which was introduced in Parliament.

The Bill, having been introduced in the Parliament, has been referred to the Joint Select Committee of the Members of Parliament. They were kind enough to invite me to appear before them.

I am very happy to share the interactions between me and the Committee. Apart from other views and comments that I made supporting and on the lines of the Bill that we have prepared, including the provision that we have made that first role of the Government should be to put all records in place, and even if they need six months' or a year's time, let the implementation of the law be delayed but let them be ready with all the material at one place in the respective Departments of Ministries.

'Alien Enemy'

Other provision, which I mentioned earlier, both from the USA and the Canadian model, we have tried to provide in the Bill, which, of course, I highlighted before the Joint Parliamentary Committee. I made two other submissions: one, the access to information, the right, should not be restricted only to citizens, but to any one whoever visits or whoever even passes in transit through our airports, for that matter, the reason being that there could be anything that may happen when foreign nationals' freedom may be even at risk and therefore I suggested to the Committee that the law should explicitly provide that the right is given to one and all except "alien enemy".

Now the expression "alien enemy" obviously was not a very common phrase. So they asked me that I should define the expression "alien enemy". Of course, I explained at the meeting but thereafter I sent a note after returning to Ahmedabad giving the definition.

I made one more suggestion viz. that even if the best of the Freedom of Information Act or Citizens' Access to Information Act is passed by the Parliament, if we do not have another corresponding law called "Whistle Blowers Protection Act", the Right to Information Act by itself will not serve a very effective purpose, the reason being that if a citizen gets information and he uses the information for promoting and protecting public interest, he continuously runs the risk of being assaulted, harassed, blackmailed, maligned, and equal risk also applies to the members of his family, including kidnap and murder, for that matter. Therefore, if such a law is not passed by India, then to that extent this will remain incomplete and inadequate.

The Hon'ble Members of Parliament wanted me to give them some model of that. So after returning to Ahmedabad, I sent them the law passed by the Queensland and the name of the law is "Whistle Blowers Protection Act".

Many Exemptions

Now this is the latest development that I am referring to. I also would like to record here that a number of States in India have passed State legislations on citizens' right to information. They vary from State to State and I was disappointed to see that the law passed by Tamil Nadu had more exemptions and exceptions than citizens' Right to Information.

Normally two exceptions are accepted the world over in countries where information right is given, viz. it should not adversely affect the security of the State and relationship with the foreign countries.

Now let us wait and see what our Parliament does. But one fact would still remain. Unless and until citizens assert their rights and pursue the remedies, only getting an enactment is not an answer, it is only a beginning of the story.

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