



**Manubhai Shah**

**Manubhai Shah is one of our foremost consumer rights advocates. The organisation he founded, CREC, is one of the most effective forums for the redressal of consumer grievances and for attempting to make our laws more sensitive to consumer concerns. He is one of our few activists who have chosen to give up a lucrative personal career in order to devote himself full time to work for the public good without any remuneration.**

**This is Manubhai's own account of the principles on which his organisation was founded and the pioneering work CREC has done in the last two decades.**

**-Editor**

## **A Professionally Managed NGO**

### **Manubhai Shah speaks about his Mission and Organisation**

**I** joined Arvind Mills after I finished law school in 1952, starting at a monthly salary of Rs 150. By 1978 I had put in 26 years of service and risen to the position of General Manager. I was eligible for retirement benefits on completing 30 years of service, though the maximum age of retirement set by the company was 65. At that point my earnings were considerable enough to enable me to pay Rs 1,500 per month as income tax to the Government of India. I began to consider what I could do to repay my debt to India for being so kind to me, and how I could best use my strengths for the good of the society. The answer I finally arrived at after much contemplation was to start an organisation that would promote consumer protection through the law.

Being rational, I did not decide this hastily. I decided to first try out my ideas in a planned manner for four years, from 1978 to 1982. If after four years of hard work it turned out to be fruitful, I promised myself that I would leave Arvind Mills permanently. At that time I was 48, and at the end of four years I could have returned as Managing Director and served until I reached age 65, that is, for 13 more years. After arriving at an understanding with

Arvind Mills' top management about my plans to spend the next four years in consumer protection, I started attending my office at the Mill for one half of the day and spent the other half on consumer protection issues.

I was aware that India does not have elaborate consumer legislation such as the US. However, I felt that, even with our meagre statutory authority for consumer protection, by invoking provisions of the fundamental rights of the citizens of India, one might be able to do quite a bit.

During those days Prof. Ramesh Bhatt was writing a column "Problems of People," in Gujarat Samachar every Wednesday. I knew him as the husband of Ela Behn Bhatt of SEWA, then a leader of the Textile Labour Association, Ahmedabad. I asked him if he would join me in pioneering the use of the law and the courts for consumer protection and he agreed. Bhatt had been carrying on consumer education and research activities through an organisation he had named the Consumer Education and Research Centre. After we began working together, in August 1978 we set up a formal Public Charitable Trust in the same name - Consumer Education and Research Centre (CERC) - with Rs 251 as an initial corpus,

Ela Behn Bhatt as a Settler of the Trust, and Ramesh Bhatt and myself as Trustees.

I concluded that not taking any recompense from CERC would satisfy the classical concept of a Trustee and give me even greater independence than the other Trustees on the Board. I was already earning a decent salary. Had I been seeking to earn more, there would have been no reason to leave my full time position at Arvind Mills. Before leaving the Mill, I was aware that my financial situation would not be as comfortable as it had been while I was the General Manager of a large prosperous textile mill; I would have to give up some of the income, power, prestige and connections I had gathered over the years. Nevertheless, I have been able to enjoy a reasonable standard of living that does not cause a lot of hardship to myself or my family. I maintain a car but not a chauffeur, I travel by second class AC by Gujarat Mail to and from Bombay but not by First class AC or by Air at CERC's cost. I stay at a club in Bombay but not at a five star hotel. I do not get reimbursed for the use of my car and my telephone for my CERC related expenses, let alone draw any remuneration.

Having been a manager for 30 years, I began by focusing my attention on building up the organisation using a professional, managerial approach. For example, no sooner was the Trust formed than we sought and obtained recognition as a research institute under Section 80G(5) of the income tax laws. By 1979, we had obtained tax exempt status under Section 35(1)(iii) of the Income Tax Act. Thus, a donor to CERC can claim a full deduction of his donation to us from the income tax department.

During 1978, when CERC was set up as a formal organisation, there were a handful of consumer groups in a few cities of India such as Bombay, Delhi, Calcutta, Madras, Visakhapatnam, Surat, and Pune. The oldest was formed in 1965. However, CERC was the first consumer group to use a combination of the law, lobbying with influential political figures, and publicity in the media to reach the general public. This combination sometimes helped us achieve higher public visibility. State and central government organisations in the Road Transport, Electricity, Telephone, Insurance and other similar sectors were the first to be taken to court.

Now we focus on class actions. But even during the period when we used to deal primarily with individual complaints, we never made a value judgment until we first listened to all sides to get a full picture of the situation. We were always firm but polite, and gave a long rope to the party complained against to enable them to try to resolve the consumer complaint in their own way, but in a fair manner. By following this procedure, many complaints were resolved without the need to litigate. However, if they were unable to satisfactorily resolve the complaint and we had to go to court, we were then in a better position to demonstrate that we had given them enough time and opportunity to resolve the complaint against them. We always try to see to it that all complaints are resolved without bad blood being created. As a result of this approach, there have been times when those against whom we have fought cases have even given us donations.

Besides providing relief or justice to individual complainants we also contest practices unfair to all consumers, including unfair consumer contracts. As seemingly incidental or peripheral issues arose during the process of handling complaints, we took them to their logical conclusion. We not only use the courts, we also lobby and advocate for enactment of new laws or amendments to existing laws, and try to persuade ministers and secretaries to exercise their discretionary powers to formulate more consumer friendly functioning. We ask legislators to raise questions in the Lok Sabha or in the assemblies, we petition committees of the Lok Sabha and Rajya Sabha to issue directions to the relevant ministries. We keep in touch with the media to highlight consumer issues, and with regulatory authorities such as the Securities and Exchange Board of India (SEBI) and the Food and Drugs administration.

These are some of our guiding principles:

- CERC Trustees do not and will not draw any remuneration from the organisation.
- CERC will not accept companies as members, only individuals.
- CERC does not depend upon a small set of funding agencies. It has developed and maintained support from multiple sources of funding, including small donations from individual citizens.
- CERC is independent of any political party, though it is glad to use the help of elected officials.
- CERC accepts donations from business firms, state or central government agencies, and foreign

funding agencies. However, it does not accept funds where there are potential or actual conflicts of interest. For example, companies whose products we are likely to test, rank and evaluate in our laboratory are not approached by us for donations. Nor do we accept donations from companies engaged in producing unhealthy or socially undesirable products such as tobacco and alcohol.

➤ CERC does not take any action such as publish a report, issue a press release, or file a case before a court or regulatory authority until we have first informed the party complained against. We always give them an opportunity to correct the situation or to explain their views on the matter. We stick by this rule whether we are dealing with an individual complaint, a class action suit, or public litigation.

➤ CERC makes its full and transparent accounts available to members, the public, and all authorities. It holds annual general meetings regularly.

➤ CERC promptly refunds, in a friendly and polite manner, the membership fees, and returns the files and papers of any member, consumer or complainant dissatisfied with our efforts to resolve their complaint.

When we have resolved an individual consumer complaint to the consumer's satisfaction, our fight has just begun. CERC is primarily concerned with larger issues such as insuring that unfair contracts are rendered illegal, unenforceable and not binding on the consumer. We then pursue the larger issues involved, such as the legality and validity of the conditions of the contract or any other related issues. We are committed to use these opportunities to develop new



**Consumer Education and Research Centre, Ahmedabad**

legal precedents in consumer law in India.

The trend towards improved consumer protection has gained quite a bit of momentum in the last 20 years. The Consumer Protection Act of 1986, as well as the establishment of consumer courts at three levels - district, state and national - have accelerated the process. However, consumer protection has not been progressing as well as CERC would have wished. Though the number of consumer groups in the country has substantially increased, more so after the enforcement of the Consumer Protection Act of 1986, a large number of consumer groups do not have adequate resources, including professional manpower and finance. A research survey we conducted a few years ago indicated that there were about 700 consumer groups; 240 responded to our questionnaire. Their situations are disturbing. About half (48 per cent) of the consumer groups had less than Rs 10,000 annual income and expenditure; another 10 per cent of them had between 10,000 and

20,000. Therefore, more than half (58 per cent) had an annual income and expenditure of Rs 20,000 or less. Even our own organisation, CERC, the best funded of all the consumer groups, has an annual expenditure of approximately one crore, while the next largest consumer group had an annual expenditure of ten lakh, far less. Though consumer courts have been doing well compared to our traditional civil courts, expectations of the consumers and consumer groups that their cases would be decided within 90 days has created a lot of frustration among them. A large number of cases remain undecided for such long periods as five years. It is also unfortunately true that the consumer movements are very weak in many parts of the country.

Initially we approached individuals and organisations that knew and trusted us personally. As General Manager of Arvind Mills, I had come into contact with large number of individuals and organisations that we later approached for

donations. Similarly, I approached other professionals like lawyers, chartered accountants and management experts that I had previously dealt with while I was a manager, a visiting professor at the Indian Institute of Management, Ahmedabad, and secretary of the Ahmedabad Management Association. Once we became visible through our performance, we began to approach other donors and agencies too.

In 1979 we had our first major funding breakthrough—a grant from the Ford Foundation. Dr (Mrs) Kamla Chaudhary, who was earlier in Ahmedabad at ATIRA, then IIM and later joined the Ford Foundation, New Delhi. She felt that the kind of litigation that we had initiated against state monopolies was similar to what the Ford Foundation had previously supported during the 1960s and 1970s, in the area of public interest law. Therefore, she took a lot of interest in CERC. Our first grant from Ford Foundation was for a sum of US \$ 25,000 in 1979. Thereafter, the Ford Foundation supported us for seven years. Ford Foundation's support year after year built up our credibility with other funding agencies, both Indian and international. In addition, we make a special appeal to Indian donors once a year.

We do not have the hang-ups that some voluntary organisations and particularly, consumer groups have against foreign funds. At the same time we are careful that they do not dictate terms and that we are not overly dependent on them. But that is true for all our sources of funding. It is a mistake to presume, as some activists think, that business houses and foreign funding

agencies are overly keen to donate money to NGOs, and particularly to consumer organisations.

We gradually moved into consumer advocacy in related fields such as environmental protection, public safety and health hazards, as natural extensions of our concerns with consumer rights. Another new focus became investor protection, a natural corollary of consumer protection, since investors are consumers of financial services.

Though we were aware of the importance of comparative testing, ranking and evaluation of consumer products by consumer organisations, initially we did not take any initiative in that direction since it requires massive investment in terms of land, buildings, and purchase of equipment. I had visited such testing laboratories run by consumer organisations as early as 1981 and 1982. Fortunately, IDBI, on behalf of a consortium of financial institutions, took the initiative, approached us and asked if we were willing to set up a comparative consumer product testing laboratory on similar lines to those of Consumer Union, New York, and Consumer Association, London.

We receive approximately a thousand individual complaints in a year. There are a few complaints that concern employer-employee relationships or family disputes. They obviously do not fall under the consumer protection framework. There are some complaints from employees of small firms where we nevertheless approach the employer. We tell them that, though it is not a consumer issue, the complainant being unprotected under consumer law and regulation, if the company were

to resolve the complaint fairly it might bolster the firm's reputation and prestige. Sometimes we receive complaints from agents who market or distribute company goods. We take a similar approach to that of complaints from an employee of a small company with his employer. I must say that no party has so far raised an objection that these complaints do not fall under our jurisdiction and therefore, we have no business to pursue them. About 85 per cent of the complaints CERC receives are resolved through correspondence, negotiations and persuasion. In other cases, we advise the complainant to take the matter to the consumer court or we ourselves take their complaints to consumer court and become a party to the complaint.

Here are some examples of our approach:

■ There is a double Accident Benefit Clause in the Life Insurance Corporation (LIC) Policy that says that this benefit becomes payable only if the death or disability takes place within 90 days. In the initial case we litigated, we got the double accident benefit for the complainant widow, Joyatiben Patel, who comes from a small village in north Gujarat, by focusing the issue in the media and raising a question in the Gujarat Assembly. State Minister of Finance Mr Janardan Pujari was so embarrassed before parliament because, even though LIC had an income of Rs 25 crore per day at that time, it was nevertheless refusing to pay Rs 35,000 as double accident benefit to the widow on the grounds that her husband died within 92 days, not within 90 days, of the accident. As a result of all the controversy we initiated, LIC



changed their contract terms for double accident fatality benefits to 180 days instead of 90 days. We are still not satisfied, and continue to pursue the issue.

■ Similarly, another LIC insurance complaint resulted from a clearly discriminatory policy provision. It stated that a married woman must die or sustain an injury in a public place for a claim of double accident benefit. This provision is known as “notorious clause 4B.” CERC got such unfair, discrimination and restrictive conditions of eligibility for individual term insurance struck down by the Gujarat High Court as a consequence of our Writ Petition; the Supreme Court upheld the verdict in LIC’s appeal against the Gujarat High Court decision. Besides striking the provision down as an unfair and restrictive eligibility condition, the Supreme Court laid down a profound new proposition, which can be broadly stated as: any contract or any condition of contract between two parties of unequal bargaining capacity that is unfair, one sided or unilateral offends the conscience of the Constitution of India, namely, a citizen’s fundamental right to equality before the law and equal protection under the law. Therefore, such contracts and conditions are unconstitutional, illegal and unenforceable. The Supreme Court further observed that its new interpretation of the constitution is not limited to cases involving the LIC or any other government undertaking, but is equally valid for all organisations that provide any types of goods and services where the parties have unequal bargaining capacities.

■ In CERC’s proceedings before the Machhu Dam Disaster Judicial Inquiry Commission, the Government of Gujarat took a stand that the Rajkot Collector’s report



**CERC’s testing laboratory**

was confidential, and therefore, the Commission cannot refer to, rely upon or reproduce from the said report. The High Court held that the Commission was entitled to refer to and rely upon the Rajkot Collector’s report.

■ In another judgement, our case against the asbestos companies and the government, the Supreme Court, in addition to giving relief to the workers of the asbestos factories, laid down a broad proposition of law, it almost created another fundamental right. It ruled that workers have a basic right to physical health and strength since they are doing manual work. This judgement of the Supreme Court is widely used by trade unions and environment protection groups.

■ CERC, in the course of challenging the Gujarat Government’s decision to withhold our state grant of Rs 1,53,000 in an attempt to punish us for litigating against the government in the Machhu Dam Disaster, not only got the grant restored, and continues to get the grant every year. In addition, and more impor-

tantly, the High Court declared that disbursement of legally allocated public funds is a public duty of the Government and not a private favour to any individual or institution. It ordered that the government has to act rationally, reasonably and without discrimination in disbursing financial assistance. This decision is being referred to and relied upon by other voluntary organisations that have run into similar problems with arbitrary refusals by government officials to disburse legally allocated government grants.

CERC continues to affect basic consumer policy on many other issues: for example, CERC is challenging the practice of sellers claiming that goods once sold cannot be taken back. It is also developing the concept of court ordered corrective advertisements and punitive damages for false advertising. □

CERC brings out a bimonthly magazine on consumer issues called **Insight**.