

BOOK REVIEW

IN THE PUBLIC INTEREST—A REVIEW

BY

ROBERT H. KLONOFF*

Many lawyers have written books recounting their most significant cases.¹ These books provide entertainment and enrichment for lawyers and nonlawyers alike. The most recent addition to this genre—and, in my opinion, the most important—is the captivating book *In the Public Interest*, written by the world-renowned public interest lawyer M.C. Mehta.² Mehta has spent the last twenty-five years litigating landmark environmental and human rights cases before the Supreme Court of India.³ His three-volume book chronicles eighteen of his most important cases. Volume one contains Mehta's firsthand account of his most important lawsuits, while volumes two and three contain reprints of the actual court decisions in the cases. This set provides the reader with great insights into the mind of a legendary lawyer, and offers an introduction both to India's legal system and to its unimaginably difficult environmental and human rights problems.

U.S. readers will immediately discover that Mehta's device for litigating lawsuits has no analog in U.S. law. In almost every instance, Mehta's suits were brought as "public interest litigation." Under this device, a lawyer needs no client to proceed. Unconstrained by American doctrines of standing or case or controversy, Mehta has been able to target injustices by bringing suits on his own behalf, as a member of the public, without signing up clients. Perhaps the closest analogy in our system is the class action, but

* Dean & Professor of Law, Lewis & Clark Law School.

¹ See, e.g., F. LEE BAILEY WITH HARVEY ARONSON, *THE DEFENSE NEVER RESTS* (1971); ROBERT S. BENNETT, *IN THE RING: THE TRIALS OF A WASHINGTON LAWYER* (2008); JOHN KROGER, *CONVICTIONS: A PROSECUTOR'S BATTLES AGAINST MAFIA KILLERS, DRUG KINGPINS, AND ENRON THIEVES* (2008); LOUIS NIZER, *MY LIFE IN COURT* (1961).

² 1 M.C. MEHTA, *IN THE PUBLIC INTEREST: LANDMARK JUDGMENTS AND ORDERS OF THE SUPREME COURT OF INDIA ON ENVIRONMENTAL AND HUMAN RIGHTS* (2009).

³ P.N. Bhagwati, *Foreword* to 1 MEHTA, *supra* note 2.

a class action requires one or more adequate representative parties who have standing to pursue individual claims.⁴ Moreover, a class action attorney who mounts a successful case can look forward to attorneys' fees at the conclusion of the case.⁵ There is no fee recovery for the successful public interest litigant in India, which makes Mehta's lifelong devotion to such litigation all the more remarkable.

Mehta's cases represent some of the most highly publicized and significant cases in the history of Indian jurisprudence. They include, for example, a seminal suit seeking to stop industrial pollution in Agra, which threatened the world famous Taj Mahal; a suit challenging multiple sources of pollution on the beautiful, historic, and holy Ganges River; a suit to remedy the devastating air pollution in Delhi; a suit involving a major gas leak in Delhi, often referred to as the "second Bhopal"; a suit challenging the deplorable and rampant abuse of children as laborers; and many others.

Mehta's firsthand account of these historic cases is fascinating and important on three levels. First, there is great value in just learning the details of these landmark cases. Second, Mehta's discussion of the strategy choices he had to make in bringing these difficult lawsuits provides a primer to young lawyers—and even seasoned advocates—looking for guidance on persuasive advocacy. Finally, in this era when law school graduates attach so much weight to job compensation and prestige, Mehta makes a compelling case for lawyers to devote themselves to public service.

I.

Mehta's book is a primer on the development of environmental law in India. Perhaps the core legal doctrine that enabled him to pursue his cases was convincing the Indian Supreme Court, in the context of the Ganges River case, to endorse a constitutional right to a healthy environment. Mehta based his argument on Article 21 of the Indian Constitution, which grants the basic rights of life and liberty.⁶ In the Delhi Gas Leak case, Mehta convinced the supreme court to adopt the concept of strict liability for hazardous activity based on the nineteenth century decision from England in *Rylands v. Fletcher*.⁷ In a case involving groundwater pollution in villages near Bichhri, Rajasthan, Mehta convinced the court to adopt the so-called "polluter pays" principle, which provides that the costs of remedying pollution should be borne by the party that causes the pollution.⁸ In a case involving pollution by tanneries in Vellore, Tamil Nadu, Mehta convinced the court to adopt the three-part principle, known as the precautionary principle, whereby 1) government officials "must anticipate, prevent and attack the causes of

⁴ See, e.g., ROBERT H. KLONOFF, CLASS ACTIONS AND OTHER MULTI-PARTY LITIGATION IN A NUTSHELL 30–31 (3d ed. 2007).

⁵ *Id.* at 274–75.

⁶ 1 MEHTA, *supra* note 2, at 73–74.

⁷ *Id.* at 205 (citing and discussing *Rylands v. Fletcher*, (1868) 3 L.R.E. & I. App. 330 (H.L.) (appeal taken from Exch.)).

⁸ *Id.* at 309.

environmental degradation”; 2) in cases involving serious threats of damage, “scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation”; and 3) the polluter has the burden of showing that its actions are “environmentally benign.”⁹ Using each case as a building block, Mehta has been able to weave together an impressive and important body of law for use in the next case. He has, almost single-handedly, created an array of doctrines to enable lawyers throughout the country to mount major environmental law cases. And he has done so litigating against prominent lawyers representing the most powerful and resourceful industries in the nation.

Mehta does not pretend that he has single-handedly eliminated environmental concerns in India. To the contrary, he recognizes that the country is plagued by serious environmental problems, including “badly polluted” air, “rivers [that] are still teeming with disease and filth from uncontrolled municipal sewage,” and “groundwater [that] is still being extracted, far in excess of its carrying capacity, for the uncontrolled development of residential high-rises.”¹⁰ He also laments India’s “rampant” poverty¹¹ as well as the serious corruption in the country, which he says “is endemic, infecting every level of government and wasting precious political energy.”¹² In his view, the biggest impediment to solving India’s environmental problems “is the failure of the Indian government to adequately enforce existing environmental laws.”¹³ Thus, the book provides not just historic background about key cases, but also a compelling blueprint about what needs to be done going forward—work that must be carried forward by the next generation of public interest lawyers.

II.

As a pure trial manual, this book provides enormous insights for inexperienced and experienced lawyers alike. Mehta’s book is rich in explaining his thinking and strategic choices in litigating his cases. Having been a courtroom litigator myself for more than twenty years, I found great insights and new ways of thinking in Mehta’s book.

Some of his teachings are well known: Be well prepared and visit the site where the events in question took place.¹⁴ But many of them are unique and highly insightful. For instance, Mehta explains that, in litigating industrial pollution near the Taj Mahal, he did not emphasize the obvious argument about preserving this historic landmark. Instead, he made an economic argument for favoring the Taj Mahal over industry: The Taj Mahal, as the country’s major tourist attraction, was a source of millions of dollars in revenue and would be so for the foreseeable future. As Mehta put it, “[R]evenues of the Taj could

⁹ *Id.* at 323.

¹⁰ *Id.* at 458.

¹¹ *Id.*

¹² *Id.* at 464.

¹³ *Id.*

¹⁴ *Id.* at xxix–xx.

build 100 refineries, but . . . even 100 refineries could never build the Taj.”¹⁵ In other words, Mehta realized that an argument based on historic preservation alone would not be persuasive, so he responded to the industries’ economic arguments with economic arguments of his own.

One of the most fascinating strategy decisions involved a water pollution case in which Mehta brought to court a bottle containing a sample of the polluted, dark-colored water. At a crucial moment at a court hearing, he told his opposing counsel in open court, “If you take even one sip of this water that the villagers have to drink daily, I will drop this case.”¹⁶ Of course, opposing counsel declined, and Mehta was thus able to remark, “If you are not willing to have even one sip of it, how can you expect the people of Bichhri to drink it?”¹⁷

As yet another example, Mehta offers a counterintuitive reminder that a lawyer should be cautious about taking on a case in which the aggrieved parties are emotional and passionate. As Mehta notes, “[T]he lawyer needs to provide compelling facts in order to facilitate the Court’s understanding of the matter. Altruistic arguments, without specific injury, will get the lawyer nowhere in Court. Emotional clients make it more difficult for the lawyer to gauge the facts.”¹⁸ This advice is sorely needed: Too often lawyers get hung up on emotion and passion and lose sight of the need to analyze the facts and law in a careful and objective matter.

III.

Perhaps the most valuable contribution of Mehta’s book is its ability to inspire young lawyers to pursue a career in public service. Because his legal positions attacked the political and economic elite in the country, Mehta endured personal hardship to pursue his causes. He was burned in effigy,¹⁹ victimized by threatening phone calls,²⁰ and forced to endure arm-twisting offers of large payoffs for dismissing his cases.²¹ He persevered despite these challenges, and despite the great financial sacrifices of serving as a public interest lawyer. He did so because he strongly believed in the causes he undertook. His book provides compelling testimony that one attorney can truly make a difference. As law school professors and administrators, we can urge our students to “give back” and pursue public service, but nothing can compare with the firsthand account of someone who has been at the forefront of public interest advocacy. By documenting and memorializing his greatest legal challenges, Mehta provides a model for young lawyers who want to make a difference in the world.

¹⁵ *Id.* at 19.

¹⁶ *Id.* at 303 (internal quotation marks omitted).

¹⁷ *Id.* (internal quotation marks omitted).

¹⁸ *Id.* at 387–88.

¹⁹ *Id.* at 38.

²⁰ *Id.* at 227.

²¹ *Id.*