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Book Review: In the Public Interest (2009)

BOOK REVIEW

by

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IN THE PUBLIC INTEREST (2009) BY M.C. MEHTA, PRAKRITI PUBLICATIONS, NEW DELHI VOL. I, PP. 538, PRICE Rs. 9000/-

The story starts from the National Law Institute University, Bhopal where I assigned a student to work on "M.C. Mehta's Academic contributions: inside and outside the Court". Fortunately the student, who was assigned this project, successfully completed his research project. Since then I am requesting the budding environmental law teachers to do research on this topic. I am very happy that Mr M.C. Mehta himself has made available his contributions in his book entitled '*In the Public Interest*¹ in three volumes. Volume One¹ provides narrations of Mehta's battle with life and also law position and law profession. The landmark judgments and orders of some of the cases he fought also find a place in Volumes II and III. They mainly deal with the leading and transiting judgments of the Supreme Court of India on environment.

Presently only volume one was received for its review and is under review in this paper. It has been chapterised under eighteen heads. *Mehta* mostly dealt with the leading environmental cases. It also includes cases on the child labour, child imprisonment and finally one that is anguishing in jail awaiting for the execution of death penalty. The journey continues with Mr Mehta's evolving certain modus operandi by the Supreme Court in the right to dissemination of environmental education. Finally *Mehta* closes with an "epilogue".

Mehta opens with "Prologue": how the journey began? The story starts with Mehta's presidentship of Youth Action Committee to fight for Jammu's statehood with only five rupees in his pocket. His experiences brought him near to "a fundamental truth of social struggles".² Coming to the subject, *Mehta* enumerates reasons for degradation of environment of India. The problems have been beautifully highlighted by *Mehta*, the common man has knowledge of these causes but he wants the solutions which a reader does not find in the "Prologue". The most interesting part of the prologue comes in the concluding part wherein *Mehta* dwells upon two aspects: one, the essential knowhow for the young environmental lawyers; and second, competency in handling techno-science litigations. Once these basics are



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mastered then *Mehta* says "the environmental lawyer can become an unstoppable force". In the second phase of suggestions come: visit of site before a case is taken, the case must have merit and deep connection with the issue, the brief must be meticulously prepared with the assistance of scientist or expert in environmental impact and finally the lawyer must know the court's thinking, great lessons for the budding environmental lawyers.

Chapter One titled, "the Taj Mahal: Defending a symbol of Love", narrates the entire history of Taj Mahal from 1631 down to 2003, a three hundred and seventy two years tale; however, there is one mistake in historical presentation and that is, Mumtaz

Mahal in fact died at Burhanpur in Madhya Pradesh and not "Bherampur", which is in West Bengal. The seventh wonder of the world and one of the most priceless national monuments is today crying and dying a slow death not of its own but the man made death traps. The ecorapers included, the industrialists, in general and Mathura refinery in particular, foundaries and factories, brick kilns, the notorious land mafia, builders, illegal miners, the municipality and the State and Central governments. Hard work, long researches and spot visits of Mr Mehta saw the Taj environmental litigation on positive side where the Supreme Court, through its orders from time to time, could issues environmental friendly directions and has exposed nefarious, corrupt and unconcerned selfish approach of the authorities. But the negative side of the coin still remains that the culprits were not made accountable. The Court cannot administer mechanical justice and say that its job is over after the judgment is delivered. The judicious justice requires administration of justice to reach to its real objective. Unless this is done, the peoples' faith in judiciary will slowly witheraway, a tumbling block in the constitutional development. The Supreme Court Judge has himself confessed that "(P)eople are reposing more fifth in local goons for redressal of their grievances than in the judicial system"³, a sorry state of affairs. The students of law would have been happy if *Mehta* had given what transpired between the Judges and the lawyers in the process of the orders. Mr Mehta, being present although in the court, could have given a brief of some interesting arguments or anecdotes as one finds in say for example, Setalvad's "*My Life*" to make further readings more enjoyable.

The next important case is "the largest environmental litigations in world history"⁴, the *Ganga Pollution case*.⁵ The Supreme Court took cognizance of its pollution way back in 1985. The industries, the builders, pollution boards, planners, the State and national Governments have all been cruel to Mother



Ganga who raped, exploited and corrupted the holy water for their selfish interests. Such nefarious and notorious activities, it may be pointed out, have forced people, animals, birds, soil and what not, of the gangatic plan to die a slow death. It will not be irrelevant to mention that whenever there was terrorists attack, the entire nation cried. Is not the actions of Ganga's enemies less than such attack? *Mehta* has highlighted the outcome of the long journey wherein the court tried to bring in innovations in the environmental jurisprudence. But at the end, *Mehta* makes confession that still the Ganga is "polluted", "under siege" and "far from protected" a hapless and helpless situations. Is not it a pious obligation of the people of India towards the Goddess Ganga to save her from the *rakshahas Mehta* appreciated the role of the apex court but the tragedy was that only one person was found to be in contempt of court, inspite of the fact that time and again the court showed its unhappiness over non-compliance of directives. Further, the Court was aware of the fact that crores of rupees were thrown, down the drain in the ganga action plan, a cash cow for the corrupt officials, still the court hardly moved in the matter. This silence has allowed the corrupted to become more corrupt, leaving *Ganga* to cry and silently dry, a sad end of gangetic exercises.⁶

The next success of Mr Mehta was in the *Kamal Nath case*.⁷ He fought a heavy legal battle with a very powerful person, a Minister of Environment and Forest, Government of India, Mr Kamal Nath, whose family had the largest share in span motels Pvt. Limited extended the campus of the Span Resort over the river Beas causing obstruction in the flow of water, resulting in pollution of water. All this was possible because of the high weight of Mr Kamal Nath wherein the authorities yielded to his

pressure and broke all the norms of rule of law. It is interesting to note that Mr Kamal Nath had strong hold on the voters of Madhya Pradesh and therefore, the party in power, instead of punishing him for his act of playing with the Beas river, simply "shifted him to the Ministry of Textile". Should the politics remain silent on the grave stricture passed by the Supreme Court against an M.P. and that too an important member of the cabinet, a question which *Mehta* has not raised. Further at one point *Mehta* says that "the proceeding was not brought as a criminal case, fine could not be imposed". However under Article 32 the Supreme Court has time and again stated that it has the "power to forge new remedies and fashion new strategies designed to enforce the fundamental rights"⁸ and therefore, the question is: how can there be any inhibition on the court's power to impose fine.



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Chapters Five and Six reflect *Mehta's* concern to keep Delhi environment clean. In this, the *Oleum Leak case*⁹ deserves special attention. The photographs of the Gas Leak, panic in Delhi and geographical map of Sri Ram Fertilisers given in *Mehta*, give a clear view of the Delhi leak to even a layman. It must be acknowledged that the apex court has appreciated the bold initiative taken by the petitioner who "rendered signal service to the community by fighting" "a valient battle against a giant enterprise and achieved substantial success".⁹ The beauty of Mr Mehta's efforts was that though at many occasions he could not succeed¹⁰ but he did not leave any stone unturned in his journey and in this case the end was that the objective mission of Mr Mehta was fulfilled—the closure of Sriram Food and Fertiliser Industries.

In Chapter Six the reader will find something beyond what is reported in the law reports: Mr Mehta's detailed efforts of persuasion, dialogue with experts, court's questioning and his response, have finally bore the fruits. The students of judicial process will find a think tank in the twenty one pages of journey in this part of *Mehta*. However, there are three points which a reader does not find answers in *Mehta* inspite of Mr Mehta's long experience in the environmental litigations: One, why did the Supreme Court unsettle the settled law of 1868¹¹? and what shall be its repercussion on India's existing position? and further will it get a firm ground in the Indian soil? Two, why the "illustrious career"¹² Judge, Justice P.N. Bhagawati, who is also known for his dynamism and fundamental rights friendly approach, left the question open, whether the SFFI was "other authorities" or not under Article 12 of the Constitution of India? Chief Justice Bhagwati disposed of the matter by simply saying, '(W)we have not had sufficient time to consider" the matter.¹³ It may be pointed out that the same Judge, after detailed deliberations, had evolved the test to determine whether an authority is "other authorities" or not in the leading case of *Ajay Hasia*¹⁴ In the present case



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the learned Chief Justice could have just tested SFFI on those essential requirements which would not have taken much time on the basis of the readymade test. Further, it may be pointed out that the learned Chief Justice could, within the time available, unsettle the one hundred twenty years settled law and further fixed the quantum of compensation, how can one believe that the Court had no sufficient time. As such

what prevented the learned Chief Justice to decide this matter remains a mystery! However Divan and Rosencranz¹⁵, give one reason: "the Chief Justice's failure to assemble a majority". And the third, in the nascent field of law, science and technology, *Mehta* could have made some specific contributions as well. This would have some directions to the law schools in evolving a course on "Law, Science and Technology".

The Delhi episode does not stop in Chapters Five and Six but it goes on in Chapter Seven, wherein the Delhi Master Plan and other environmental unfriendly actions are dealt with. This Chapter highlights the same story: the inaction and misaction of the industries and other role players. However, the case of *Delhi Minister for industries exposed in Mehta* is startling. The Minister, in his own house in the residential colony, was operating an electroplating factory "flouting all norms of safety with aplomb". When the show cause notice was issued by the Supreme Court, the Minister concerned shamelessly denied all charges of pollution and informed the Court that "he had installed pollution control devices". But on inquiry the averment was found totally false. The inquiry further unearthed that the factory did not have any approval of the Central Pollution Control Board though he, through his high weight, could manage permission of the Municipal Corporation of Delhi and further a more aghasting fact was revealed: the factory had employed child labour. This is a case which exposes the fact that a big fish can sail scot free in the restricted zone with no accountability and responsibility. *Mehta* only deals with the illegal employment of children. It hardly completes the story of seriously erring Minister. This gives an impression that the Court side tracked the erring *Minister's case*, a serious mistake in the administration of judicious justice. Similar is the fate of the Chief Minister of Delhi who encroached on the musical dancing fountain park and set-up, with the revenue of the park, a camp office and also "built the building for his personal use". In this case, the Court did not allow such encroachment and "evicted the Minister". Was eviction the only answer? Again a case of half-baked justice.

This Chapter reveals startling information which the students of law have no knowledge of. They include, for example: bribery and use of muscle power in legal litigations and profession. A substantial amount was offered



to Mr Mehta in order not to make him fight a case against industrial houses—"Rs. 20 million". Fortunately M.C. Mehtas was not for sale". Does this not show an undercurrent in the legal professional world as well? Should *Mehta* remain silent over such activities? The silent spectators have infact allowed a leeway to such criminals in the Indian society. The tendency to overpower the legal professional is another aspect which *Mehta* has drawn a serious attention of the environmental lawyers in particular and the readers in general. The examples are: "Government security service" "had been shadowing me for the last three days".¹⁶ The threat to his life required Mr Mehta" to hire a private guard to protect myself.¹⁷ The second and a more serious incident narrated was that of the consequences of success of Mr Mehta where the court ordered to close down large number of industries and for others, to shift to a new relocation. For such successes Mr Mehta received threatening calls at odd hours with dire consequences of his brilliancy. "A well organised plan" was made to attack Mr Mehta by a large crowd even threatening his life. Fortunately timely help from policemen saved Mr Mehta otherwise "I may have been killed". If this is the professional hazards that the lawyers are facing, then the question is: what is the future of legal profession in such conditions in India? How many lawyers are there who can withstand such crisis

and still say 'I carried on'? Should not such aftermath of the judgment be brought before the Court? Silence in such serious matter, as already pointed out, would allow the criminals to continue freely to disbalance the scale of administration of judicious justice. These incidents teach a lesson that the lawyers must perform their duties fearlessly with dedication and commitment. So what is the lesson? "(W)e must hold our home to the highest standards. If we do not, who else will?"

In the subsequent Chapters *Mehta* has highlighted the role of chemical industries and tanneries. *Bichhri case*¹⁸, a case of "rogue" industries, was taken to the Supreme Court on the demand of the large scale victims. It exposes the industries running illegal business activities to accumulate large scale profits at any cost. But the Court has come down very heavily on them. Though, all plants and factories of the respondents were ordered to be closed but the fact remained that "the people of Bichhri continue to suffer" and "awaiting compensation for their ruined life". This brings back the question raised after the judgment: should not the people, who "rose in near revolt", be allowed to settle their score in their own way? Who is accountable for such circumstances? Is not time ripe that the Supreme Court must set its house in order before people loose faith in the judiciary?



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Another important case which was taken to the Supreme Court was *Vellore citizens case*¹⁹ "where a large number of tanneries who were producing eighty percent of leather goods to be exported, pumped out "40 million liters of untreated toxic effluent every day". "onto neighbouring fields, road sides, water ways, onto open lands and into the Polar river". Such actions caused large scale harm and damage to the large number of the consumers of aforesaid facilities. *Mehta*²⁰ points out that more than 20,000 people staged demonstration and a large number of women carried pots of polluted water and broke them before the office of the municipal authorities. But all these hardly awake the appropriate authorities from slumber. Further even though the Supreme Court applied the "polluter pays principle", and "precautionary principle", and issued large number of directions, unfortunately it left the matter to be taken care by an authority to be constituted by the Government. Should not the Supreme Court itself have decided the matter instead of delegating the responsibility to an authority? When such authority will be constituted by the Government with no time schedule—only the future can tell! The result of the high sounding exercise was: back to the zero position. Secondly, has the authority, if constituted, followed the directions of the Supreme Court is not mentioned in *Mehta*. If this is not done, will not Mr Mehta persue the matter further to fulfil his commitment towards *Bharatiya* environment?

The subsequent thirty-two pages breaks the sequence of environmental litigations with hardly and justification and it deals with cases of child labour, child imprisonment and the one anguishing in the death cell of Jhansi jail. The Court issued important directions in *Shivkashi Child Labour case*²¹ but the end in this case is not different from the other cases mentioned above. *Mehta* points out the sad end: a "lip service to the millions of forgotten children", and who will "remain forgotten".²² What is then the solution? *Mehta* advocates "each of us, to come to their aid". It is an ideal solution but the question remains: will we be able to wipe out tears from each eye, a dream of Mahatma Gandhi which remains unfulfilled till date?

The environmental litigations history finally closes with the *Environmental Education case*²³ "the only judgment of its type in the world". The talk of

environmental fundamental right and fundamental duty, right to environmental information, awareness and awakening and the public spirited environmental litigations, would be meaningless if "We, the People of India"



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remain environmentally illiterate. Mr Mehta's repeated efforts required the Supreme Court to issue directions to the disseminators of information and environmental awareness and education and *Mehta* reports that after the court directions and orders, "things started happening". The readers want to know, in the end where do we stand today. *Mehta* does not give the answer. We may talk about the tall claims of the directions but they are vague with no time schedule and how many of them will see the light of the day is very doubtful.²⁴

Mehta closes with an "epilogue" with the opening remarks that the "battle for sustainability and justice is far from being won", and therefore, what is need is "go on the offensive". Is the lesson of "offensive" correct for the budding environmental lawyers? "Offensive against whom? Further, what degree of "offensive" approach be adopted. Is not tolerance and patience, the need of hour? We all know that government authorities have failed but *Mehta* suggests that the government "may be made effective". The inaction, misaction and corruption which have become a culture of the officials, the question is: who will bell the cat and when? The second aspect is corruption in environmental jurisprudence but *Mehta* has no long story to tell and therefore, the readers will find the discussion on corruption a misfit in the journey of *Mehta*. Further, *Mehta* suggests the application of the principle of accountability at the executive level. Who will make them accountable, is a million dollar question. Still further, the question is: why restrict the accountability to the executive alone, must it not to be extended to all the regulators and the appropriate authorities, including the legislature and judiciary? There are two more suggestions in *Mehta*: one, to adopt sustainable lifestyle, a Gandhian vision; and two, a piece of advice to the budding environmental lawyers.

Mehta's long journey from the President of "Youth Action Committee" for Jammu's statedhood down to environmental education and awareness, has been greatly educating and has opened doors for others to join the journey for other unknown areas silently suffering from environmental degradation. It has provided large number of important lessons to the judges, lawyers, environmental role players, enviroacademics and last but not the least, the citizens of India, a great service to the environment of our *Matreebhumi*. Mehta's writings keep the readers engrossed in reading, a sign of quality work. The flawless printing and good get up deserve all praise. So in the end what comes out? It is a valuable work which must find a place in not only law and professional libraries but also libraries of all the role players. With one note of concern that the price of the three volumes, Rs. 9000/- will be



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beyond the pocket of the commonmen. The social justice has been sacrificed at the hands of environmental justice. Secondly, the wish of the present reviewer to know Mr Mehta "outside the court", remains incomplete.

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¹ Referred to hereinafter as Mehta

² Mehta, xvii.

³ *Hindustan Times*, (Lucknow Edition), 14-10-2009, 9.

⁴ Mehta, at 120.

⁵ *M.C. Mehta v. Union of India*, (1988) 1 SCR 279 : (1988) 1 SCC 471 : AIR 1988 SC 1115.

⁶ See, State of India's Environment: The Citizens Fifth Report, 91-108 (1999).

⁷ *M.C. Mehta v. Kamal Nath*, (1997) 2 SCC 411 : (2000) 6 SCC 213 : (2002) 3 SCC 653

⁸ *M.C. Mehta v. Union of India*, (1987) 1 SCC 395

⁹ *M.C. Mehta v. Union of India*, (1986) 2 SCC 176 : AIR 1987 SC 965, 982.

¹⁰ See, for example, the Registrar of the Supreme Court when approached by Mr M.C. Mehta did not expediate the petition as "the matter is not urgent one"—Mehta at 192. The Supreme Court did not support the findings of the high power committee appointed by Mr Mehta, "(w)e were disappointed" at 201; Mr Mehta had requested in his petition for the closure of SFFI but initially the court limited the scope of its ruling to the short-term measure -id at 201.

¹¹ *Rylands v. Fletcher*, (1868) LR 3 HL 330 : (1861-73) All ER Rep 1 (HL). The Judges of the Supreme Court have given diffused opinions on the applicability of the doctrine of absolute liability. *Union Carbide Corpn. v. Union of India*, (1991) 4 SCC 584 : AIR 1992 SC 317. See particularly the judgment of Misra, C.J. See also *Charan Lal Sahu v. Union of India*, (1990) 1 SCC 613 : AIR 1990 SC 1480. See particularly C.J. Mukherji's judgment, (1990) 1 SCC 613 : AIR 1999 SC 1480 at 1545 and Justice Rangnathan's judgment, (1990) 1 SCC 613 : AIR 1999 SC 1480 at 1557.

¹² Mehta, 204

¹³ *M.C. Mehta v. Union of India*, (1987) 1 SCC 395 : AIR 1987 SC 1086, 1098.

¹⁴ *Ajay Hasia v. Khalid Mujib Sehrarardi*, (1981) 1 SCC 722 : AIR 1981 SC 487.

¹⁵ Divan and Rosencranz, *Environmental Law and Policy in India*, 2008, 533.

¹⁶ Divan and Rosencranz, *Environmental Law and Policy in India* at 226.

¹⁷ Divan and Rosencranz, *Environmental Law and Policy in India*, at 226

¹⁸ *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212.

¹⁹ *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647.

²⁰ Mehta at 313 to 315

²¹ *M.C. Mehta v. State of T.N.*, (1996) 6 SCC 756.

²² Mehta at 416-417, 422.

²³ *M.C. Mehta v. Union of India*, (1992) 1 SCC 358 : AIR 1992 SC 382.

²⁴ See, for detailed criticisms, C.M. Jariwala, *Environment and Justice*, 2004, 198-199.

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