
preface to the first edition

Public clamour to put our judicial system back on track has risen to crescendo. The good or bad fortune of a nation depends on three factors; - its judicial system, the way it is made to work and the respect it inspires. The above declaration was made by the great George Bidault long ago. Since then much water has flown under the bridge yet the criteria so laid down still holds good. A nation can be christened as fortunate only and only when its judicial system is so strong that it inspires faith in the public. Luckily to a greater extent the judiciary of our country commands good respect and public faith. Man is gregarious by nature. In due course, it was realized that by associating closely with fellow-beings a fuller and complacent life can be achieved which can easily provide for his material needs, can completely satisfy his spiritual desires and can help in fulfilling greater aspirations. To achieve above utopian stage the first and foremost condition is that internal law and order is maintained, at all costs. The offenders have to be brought to book effectively and quickly so that the faith in the judicial system does not erode. But, at the same time a quintessential care has to be taken that the Rule of Law prevails. The failure to impart real justice is internecine because justice has to be provided to all and sundry irrespective of the fact that one is accused and is facing trial and the other has complained against and is an aggrieved person. Our criminal judicial system is mainly based on the principle that not even a single innocent person should be punished may be ten guilty are acquitted and go scot free. For that matter a great responsibility has been cast upon the law enforcing agencies and so also on the Judiciary. To strike a balance between the two-imparting justice and saving an innocent person, is not an easy task. It is like walking on a razor's edge. The radical changes, which have taken place over the years, in our society, have made the task more onerous. This problem has been further compounded because of

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preface
to the first edition (*contd.*)

the fact that the moral values in the society have vanished or if not vanished completely, they have taken a back-seat. The Indian Penal Code the Evidence Act and the Code of Criminal Procedure are comprehensive Codes in themselves and take care of all sorts of problems which arise and which may arise in future. Problems arise when the general presumption on which the laws are based are found wanting. The Law-makers presumed that the citizens possess a certain level of morality in their day to day life. For example it was presupposed that any witness, who will enter in the witness-box would not tell a lie after oath is administered. But alas! the recent perception about a witness is that either he would abstain from deposing or else he would make a deposition which will be far from a truthful version of extents. Either he is afraid of or he is paid for not revealing truth. In that view of the matter, we cannot blame the existing laws, but we have to find out what are those factors which are hindering the normal course of justice. What are the real reasons which come in the way of delivering justice, particularly in a criminal trial whereby justice is delayed most of the times? The delayed justice tantamount to injustice, at the same time a buried justice may lead to injustice. I have widely deeply connected and concerned about such delays during my tenure as practicing lawyer for a long span of more than two decades. During my practice time, I used to jot-down various typical factors, piquant situations and reasons, which contributed towards delay in delivering justice and also, in a way, hindered in imparting real justice. With all my humbleness, I would suggest various modes and methods which I thought during my period of practice, as a lawyer, that they would definitely work in curbing the monster of 'delayed-justice'. Some of the write-ups and excerpts of my such writings were also placed for perusal and kind consideration of the then Hon'ble Law Ministers of our country, namely, Hon'ble Shri Ram Jethamalaniji and Hon'ble Shri Arun Jetleyji, who hap-

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preface
to the first edition (*Contd.*)

pened to visit our office of Income-tax Appellate Tribunal in Bangalore when I was posted there as a Judicial Member. I had also an occasion to give some of the suggestions, which were drawn from my those research works, to Hon'ble Mr. Justice V.S. Malimath, who headed the Committee to suggest amendments in Code of Criminal Procedure and other allied enactments. I am trying to put my personal experiences in the shape of a book hope that the same will throw ample light on various subjects of general importance which are encountered by litigants day in and day out. I have written this book in a way that it may not look like a compilation of the provisions of the law or of torn pieces from various landmark judgements. A book prominently studded with the provisions of laws and citations of Land Mark Judgements is simply ignored by a lay-man with a presumption that it was meant only for the lawyers and Judges. This book contains the gist and the essence of provisions and precedents, wherever necessary, but still it would be read everyone alike. My endeavour has been to present it in a shape of any ordinary book of general interest.

I hope that through this book I may be able do some social service. I believe that readers would be benefited by getting enlightened to greater extent. For a long time, I had been thinking of getting this published but it has become possible only now with the Grace of Almighty.

August 24th, 2008
Krishna Janmashatmi

HARI OM MARATHA
Judicial Member
Income-tax Appellate Tribunal
