

# BOOK REVIEW

THE JUDGE SPEAKS, *Dr. Justice A.R.Lakshmanan, Universal Law Publishing Co., New Delhi, 2009. HB. Pages 411. Price: 550.*

There are many reasons why one should peruse a judge's writing. For one it is an excellent source for gauging a judge's thought process - the way a judge perceives an issue, his biases, his manner of comprehension, etc. Secondly, for insider information that would otherwise be hard to come along, and finally, how things had unfolded during the hearing of important judgments that the judge was involved with. Such information is almost impossible to determine from the usual carefully constructed judgments that are delivered from the bench.

Justice Lakshmanan served on the bench of four high courts (Madras, Kerala, Rajasthan and Andhra Pradesh High Court) before retiring as a judge of the Supreme Court of India. As a judge he is credited with delivering some path breaking judgments most notably in *K.Ramakrishnan and Anr v. State of Kerala*<sup>1</sup> which banned smoking in public places. Very few people are aware that he belongs to a rare cadre of judges who rarely reserve judgments and even when forced to do so reserve it for a maximum period of 2-3 days.

'*The Judge Speaks*' is in fact the third in the trio of collection of speeches delivered by Dr. Justice A.R. Lakshmanan. The first two titled 'Voice of Justice' Volumes I and II are collection of speeches delivered during his term on the bench. 'The Judge Speaks' on the other hand is a collection of lectures and speeches delivered by Justice Lakshmanan as the Chairman of Law Commission of India.

At the outset one should note that these writings are not academic in nature. They are musings or what the judge himself calls – 'random thoughts.' These random thoughts span an expanse of legal issues including Taxation, Consumer Rights, Alternate Dispute Resolution, Rule of Law, Criminal Justice System, Cyber Crimes, and Judicial Reforms to name a few. Of course they at times do traverse to matters of general nature including 'Architect's duty towards Society', 'Rajiv Gandhi's Assassination', 'Remembering Impressive Personalities', 'Rotary - New World Society', and 'Inspiring Excellence' to mention a few. Consequently therefore for obvious reasons repetition of ideas is a major shortcoming of this book.

There are however a few lectures which form good starting material for a beginner to that topic. For instance 'Legal System: A Global Overview' provides for a broad understanding of various types of legal systems around the globe and their distinguishing characteristics. 'Alternate Dispute Resolution: An Indian Perspective' and 'Arbitration Trends' provides for a rudimentary understanding

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<sup>1</sup> AIR 1999 Ker 385.

of what is meant by alternate dispute resolution and how it has been incorporated in the Indian legal system. 'NDPS Act and Related Issues' rather elaborately deals with the attempt of law in India to address problems related to drug abuse. 'Administrative Tribunals in India' traces the history behind establishment of these tribunals and deals at length with important decisions that defined the administrative tribunals in India. These and similar other lectures (including Challenges to Indian Patent Regime), are extremely informative and serve as rather useful starting points. On the flip side though they merely reiterate old knowledge and rarely reveal new perspectives or suggest novel solutions to existing problems.

But that said, quite a few lectures hold promise, some for the sheer pleasure of reading and others for fuelling further debate and research. In the former category would fall write-ups such as 'Report on Proposed Amendment to Article 348 suggested by the Joint Secretary and Legislative Counsel, Legislative Department' and 'Constitution and Court Language'. It all started with the proposed amendment to Art 348 of the Constitution which sought to make it mandatory for the Department of Legal Affairs, Ministry of Law and Justice to undertake original drafting in Hindi, and similarly the Supreme Court and High Courts to mandatorily deliver their judgments in Hindi. The said proposal was sent to the Law Commission for their considered opinion, which in turn forwarded the same to many eminent jurists. The article, a collation of the varied responses, makes for a very engaging read.

Instances falling in the research category would include his lecture on the inauguration of the workshop on tax deducted at source titled 'Comprehensive Aspects of Tax Deducted at Source and Allied Transactions', which presented two knotty issues in desperate need of comparative research. The first being sections 269SS-269T of the Income Tax Act, which had been introduced with the specific aim and purpose of preventing tax evasion. Numerous decisions of the Central Board of Direct Taxes and ministry circulars have whittled down the scope of the said section. The resulting scenario was that though a statutory provision had been introduced with a specific aim, its applicability had been excluded based solely on administrative instruction, leading to a dangerous situation wherein application rested on the sole discretion of the executive without any guidelines in place for the exercise of this discretion.

The second issue the author puts forward for consideration is the high level of indecisiveness exhibited by the government in the area of tax on dividends. This has remained a contentious issue since for long tax on dividend was held to be different from tax paid by the company on its income out of which the dividend was paid. Intense opposition led to abolition of dividend tax and in its place a tax on the companies on dividends paid was imposed to make good the loss suffered by the government. However within two years of abolition, the dividend tax was reintroduced. This sorry state of affairs continued with repeat abolition of dividend tax within two years. What is now required is clarity on how tax on dividends or suitable alternatives could be introduced into the complex system of Indian taxation without further contributing to existing flux.

Other lectures like ‘Prevention of Suicide’, apart from revisiting the old debate surrounding euthanasia, raises an important question pertaining to extension of application of § 309 of Indian Penal Code to instances of attempt to commit suicide by starvation. In other words, if a man undertakes a fast unto death, without openly declaring his intention of doing so, and the evidence falls short of the conclusion that a stage of imminent danger of death had been reached, could he be held guilty of the offence of attempted suicide? ‘Legal Issues in Cyber Crime’ discusses the appropriate standards or rather lack of them in instances of misrepresentation, fraud or cheating in cyberspace transactions that often span transnational space. Increased interaction on net raises interesting questions of freedom of speech and expression on cyberspace. For instance, would existing standards applicable to article 19(1) of the Constitution of India apply equally especially to questions pertaining to morality, decency, privacy and pre-censorship?

‘Custody of Child-Divorced Parents’ and ‘India, Inter-country Parental Child Removal and the Law’ are erudite rendition of applicable law. Indian law is found wanting when dealing with parental abduction, especially in cases of inter-parental child removal, where children of foreign parentage are brought to India in violation of a foreign court order. To send back or not is a dilemma which still plagues Indian courts, especially so when there is no uniform policy on this matter.

Such tantalizing bits are rather disappointingly punctuated by mundane pieces substantially affecting the readability of work. Articles such as ‘Living Legends T.Dulip Singh’, ‘NRI Achievers’, ‘One of the Oldest Bar of our Country’, ‘Remembering Impressive Personalities’, ‘Krishnagiri Bar’ and ‘Tamil Diaspora Meet, 2009’ though extremely informative are clear misfits in the present work and should have been edited out.

To sum up, the author must be credited for bringing out thought provoking issues in simple and lucid manner. The write-ups are clear presentations of issues that matter and in evolving them the author has drawn on his rich repertoire of knowledge including that of ancient Indian jurisprudence. But on the whole ‘The Judge Speaks’ delivers far less than it initially promises. It is a powerhouse of legal and judicial trivia, and though managing to raise questions of important bearing, it fails substantially to suggest new, innovative or ‘out-of-box’ ideas to tackle them. Of course to hold such expectations in the first place may be expecting too much but when the writer is of such eminence, expectations are but natural.

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