

The Salient Features of the Art of Writing Orders and Judgments

by

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All the world over true peace depends not upon gun-power but upon pure justice.

Mahatma

Gandhi

“ The Judicial power of the people does not belong to Judicial Officers - We should not identify ourselves or attach ourselves personally with that power but merely see ourselves as servants delivering judicial service.”

Judgment writing is a skill that can be learned, practiced, improved and refined. A well structured Judgment enhances clarity and conciseness and helps ensure the reasoning process in complete.

All of you have by now completed one year of office and have acquired some Judicial experience. Chief Justice of Australia, Hon'ble Murray Gleeson AC states that there are four aspects of judicial status or performance, they are Independence, Impartiality, Fairness and Competence.

Independence:-

The judiciary is seen as the third arm of government, separate from and independent of the legislature and the executive. Judges maintain rule of law, uphold the Constitution, and administer civil and criminal justice according to law.

Impartiality:-

Impartiality has been regarded as the essence of the administration of justice. It is essential for a Judge to maintain in Court, a demeanor which gives to the parties an assurance that their case will be heard and determined on its merits and not according to some personal predisposition on the part of the judge. Word of caution against giving too much scope to your natural humor in a courtroom.

Fairness:-

The judge must give both parties a proper opportunity to put for their evidence and arguments and must approach decision making with an open mind. It would be unfair for the Judge to express unnecessary opinions or general conclusion on facts, without knowing the whole of the background in question. A judge should never cause unnecessary hurt.

Competence:-

We live in an age of accountability. What is required of judges is changing. The present programme conducted by of our state Judicial Academy itself stands testimony to the changing pattern.

With the above principle in mind let us proceed to the topic of the day.

What is a Judgment?

Judgment as defined in Section 2(9) CPC means the statement given by the Judge of the grounds for a decree or order. What a judgment should contain is indicated in Order 20 Rule 4(2) CPC. The process of reasoning by which the court came to the ultimate conclusion and decreed the suit should be reflected clearly in the judgment. Whether it is a case which is contested by the defendants by filing a written statement, or a case which proceeds ex parte and is ultimately decided as an ex parte case, or is a case in which the written statement is not filed and the case is decided under Order 8 Rule 10, the court has to write a judgment which must be in conformity with the provisions of the CPC or at least set out the reasoning by which the controversy is resolved. [Balraj Taneja V. Sunil Madan, (1999) 8 SCC 396]

Judgment is the most important document for the parties as well as the Judge and more important for the Judge the reasons in support of his Judgment. Clear thinking is the key to clear writing. A clearly expressed Judgment demonstrates the interest of the subject and the exposition of legal reasoning. Reasons given by a Judge in a Judgment indicate the working of his mind, his approach, his grasp of the questions of fact and law involved in the case and the depth of his knowledge of law. In short, the judgment reflects the personality of the Judge and, therefore, it is necessary that it should be written with care and after mature reflection. In the words of Chief Justice Mukharji:-

“The supreme requirement of a good judgment is reason. Judgment is of value on the strength of its reasons. The weight of a judgment, its binding character or its persuasive character depends on the presentation and articulation of reasons. Reason, therefore, is the soul and spirit of a good judgment.”

Generally speaking a judgment adjudicates on the rights of the parties as

they existed before the suit in which it was obtained. A judgment is an affirmation of a relation between a particular predicate and a particular subject. So, in law, it is the affirmation by the law of the legal consequences attending a proved or admitted state of facts. Its declaratory, determinative and adjudicatory function is its distinctive characteristics. Its recording gives an official certification to a pre-existing relation or establishes a new one on pre-existing grounds. It is always a declaration that a liability, recognised as within the jural sphere, does or does not exist. A judgment, as the culmination of the action, declares the existence of the right, recognises the commission of the injury, or negatives the allegation of one or the other. [Gurdit Singh V. State of Punjab, (1974) 2 SCC 260].

The word "judgment" has a concept of finality in a broader and not a narrower sense [Shah Bahulal Khimji V. Hayaben D. Kania, (1981) 4 SCC 8]

Thus Judicial precedents define Judgment to mean a decision which affects the merits of the question between the parties determining some right of liability. It is understood as a statement given by the Judge on the grounds of a decree or order, as defined under Section 2(9) of the Code of Civil Procedure.

What is an Order ?

Section 2(14) CPC, defines order to mean the formal expressions of any decision of a Civil Court which is not a decree.

What is a Decree?

A decree is a formal expression of an adjudication which conclusively determines the right of parties with regard to all or any of the matters in controversy in a suit, could be preliminary or final decree with the exceptions (see Section 2(2) CPC). Thus essentially a Judgment/Order/Decree determines

rights of parties to a 'lis'

In the words of Socrates :-

Four things belong to a Judge;

to hear courteously,

to proceed wisely,

to consider soberly and

to decide impartially

The pre-requisite for a 'good' Judgment/Order is a good hearing. A lawyer, would normally know more about the facts and the relevant law. By giving a proper hearing provides the requisite material to enable the Judge to prepare the Judgment. Hearing the submissions of the lawyer appearing in a given case becomes interesting, when the Judge does a bit of home work by going through the papers before the matter is heard. I do not mean, reading to the point of decision making. But, perusal of the pleadings, the deposition of key witnesses and the issue which would arise for consideration. This not only makes the Judge comfortable during the hearing it makes it interesting for the lawyers too. By doing so, the Judge becomes "a participating Judge" during the hearing. Factual discrepancies are clarified then and there, the law on the issue is discussed and as to how it could be applied to the fact in issue. This process of active participation of a Judge during hearing not only makes the task of Judges and lawyers easy but imbibes confidence in the mind of the litigant, who is more often present in the Court room. Thus **"Justice is not only done, but is seen to be manifestly done"**. There may be cases where there are lengthy pleadings, scores of witnesses, voluminous documents and elaborate arguments. A Judge is therefore not only expected to remember the facts but also the law on the subject and the precedents which are placed before the Court. To make the task easy for rendering a Judgment, a Judge should maintain a minute note book or a note pad to jot down points during the course of hearing. These notes could be written down in whatever manner

comfortable with the Judge, it should be readable and be of assistance while preparing the Judgment. Counsels could be eager to complete their arguments, the Judge could always call upon a counsel to formulate his submission and make precise notes of such submissions. In fact, this minute book/note pad after a period of time, if preserved, would be a repository of information and come in handy at all times. Therefore my suggestion is to maintain a note book instead of a loose leaf minute book.

One pre-requisite before commencing the hearing of a Court case is to frame the issues. It is advisable for the Judge to frame the issues, though draft issues are circulated by the counsels. If your predecessor in office had framed the issues, you have to go through the pleadings to satisfy yourself as regards the matter to be decided in a particular case.

As the beginning of the judgment introduces the subject matter, the conclusion should resolve each of the issues identified at the start. The ending should contain no new material, whether factual or legal, which has not previously been discussed.

Thus, Judge has gone through the pleadings, framed the issues, recorded the deposition, made notes on the arguments, and is now ready to prepare the Judgment. A Judge has to speak through his Judgment, therefore there should be clarity in his delivery and decision to be supported by reasons. Lengthy Judgments invite criticism and are boring.

Hon'ble Mr.Justice M.M.Corbett, Former Chief Justice of the Supreme Court of South Africa.

Recommends a basic structural form for Judgment writing:-

(a) Introduction Section:

(b) Setting out of the facts:

- (c) The law and the issues:*
- (d) Applying the law to the facts;*
- (e) Determining the relief; including costs,*
- (f) Finally, the order of the Court:*

Elaborating on the above structural form it is said:-

(a) Introduction section should state how the matter has come up before the Court, description of parties and their activities in brief, relationship of parties, etc and in precise terms what the case is about.

(b) The facts of the case could be gathered from the pleadings, not a verbatim repetition, but to the extent necessary, and from the evidence placed before Court. At this stage it is convenient to set out the undisputed facts first. As far as the disputed facts it would be logical to defer it after the issues are identified and while considering each individual issue. You are liberty to discard evidence and facts which are not relevant to the issues in the case. Judges should see that their pronouncements are judicial in nature and do not normally depart from sobriety, moderation and reserve. They should refrain from being sarcastic in their judgments. The language of the judgment should be entirely devoid of anything approaching factiousness. Be precise, make your sentences short and adopt simple language. By developing a habit of summarising in your own words will lead to a better and more accurate understanding of the case. When it comes to the disputed issues of fact, it is not just a question of clear and logical narrative, but bringing out one's Judgment to bear on the evidence and decide where the truth lies.

(c) Identification of the law and the issues depends on the case and different situations. (i) Facts may be common and the decision will depend on how the disputed question is resolved (ii) Parties may agree on the law and its application, and the decision will depend on how the facts are determined (iii)

Both, fact and law may be in dispute and both have to be resolved, (iv) Where there is no dispute about facts or law, but the case depends on how the law is to be applied to the facts.

(d) The next stage is applying the law to the facts. It determines how the case is to be decided. Once the basic facts and law have been decided, the answer is clear. But, this may not be so in all cases, and when it is so the Court has to decide the principle of law which has to be applied by deciding the matter, by considering the circumstances of the case by adopting a fair, reasonable and proper interpretation.

(e) Determining the relief (including costs) depends upon the findings of law and fact and the conduct of the proceedings.

(f) Finally the order of the Court must be carefully drafted in the light of the findings as to the relief to be granted.

Judgments in Criminal Cases:-

While rendering Judgments in Criminal cases, the following are to be observed as required under Section 354 CrPC. The Judgment shall contain the point or points for determination, the decision and the reasons for the decision, the Section of IPC or other law under which the accused is convicted and punishments to which he is sentenced. Separate sentence must be passed by the Court in each proved offence. The Judgment should also indicate (1) whether the sentence to run concurrently or consecutively (2) whether the accused is entitled for set-off or not, the period of detention, if any, undergone by him as under trial. (Sec. 427 and 428 Cr.P.C.). In case of acquittal, the Court shall state the offence of which the accused is acquitted and direct that he be said at liberty.

Criminal Cases:-

In the words of Justice S.M.N. Raina in his book *Law Judges and Justice* would state that in criminal cases the importance of the trial judge is even more than it is in a civil case. Even in cases resulting in conviction, a good deal of importance is attached to the appreciation of evidence by the trial court. A wrong acquittal is as bad as an erroneous conviction. In either case, the interests of the society are adversely affected. There are many cases where if the trial judge acquits the accused his acquittal will not be disturbed by the High Court on the ground that the innocence of the accused having been re-enforced by the judgment of the trial court, there should be strong reasons to come to a different conclusion. If, on the other hand, in the same case the Judge were to convict, the conviction may be upheld. Thus the delicate balance is in the hands of the Magistrate or the trial judge and it is for him to discharge his functions properly so as to advance the interests of justice.

In a criminal case the framing of the charge is most important. The Magistrate or the Judge should see that a proper charge is framed and for this purpose he may consult the draft charges given in the *Law of Crimes* by Ratanlal. In the matter of offences under other Acts, it should be seen that all the ingredients of the offences are specified in the charge with all material particulars.

Courts should only deal with the subject-matter of the case and issues involved therein. The courts should desist from issuing directions affecting executive or legislative policy, or general directions unconnected with the subject-matter of the case. A court may express its views on a particular issue in appropriate cases only where it is relevant to the subject-matter of the case. *[SOM MITTAL Vs. GOVERNMENT OF KARNATAKA, (2008) 3 SCC 574]*.

Each Judge has a different way of writing Judgments, and there may be wide variation in style. Each judge has an individual manner of expression.

Judgments should be expressed in a language and style which suits the decision-maker. What is more essential is lucidity rather than style. Lucidity should be the prime aim in Judgment writing. Eminent jurists recommend using short sentences, without packing too many ideas in a single sentence. While setting out facts try to maintain a simple straight forward flow. Repetition of words or phrases to be avoided and observe normal rules of grammar. Flowery language and literary allusion may be avoided and such over indulgence may detract from the seriousness of the Judgment. For easier reading, employ the active rather than the passive voice. This creates a more direct impact eg., *Passive voice: "he was acquitted by the Court"*, *Active voice: "The Court acquitted him"* "I shall always remember my first day as a Magistrate" This is much better than "My first day as a Magistrate will always be remembered by me". In writing a Judgment it is often necessary to refer to the Judgments of superior Courts which would aid in your reasoning.

Edit the Judgment:-

It is commonly said that there is no such thing as good writing, there is only good rewriting. Preparing a draft judgment is hard work. But the hardest work begins when the draft Judgment is finished. Good editing ensures that a judgment is lucid, thorough, coherent, concise and has transparent reasoning. It identifies flaws, such as the use of discriminatory language. Editing is a manifold task that should include:-

- using a checklist of topics or issues to ensure that the judgment embraces all that it should and that all issues are resolved
- checking names, dates, figures and other data for accuracy
- eliminating repetition
- excluding irrelevant findings of fact
- pruning lengthy quotations of law, passages of transcript, or extracts from affidavits or documents tendered in evidence
- removing and replacing Latin expressions, jargon or outmoded

expressions

- eliminating explanations of the obvious
- using the active voice rather than the passive voice, wherever possible
- simplifying lengthy, complex sentences and adopting short sentences, where appropriate
- checking the use of punctuation to avoid ambiguity and facilitate comprehension scrutinizing the length and content of paragraphs.

Of course, time is a factor in determining how much editing is possible. But even when a decision must be delivered urgently, some editing is still required, especially to ensure that the decision covers all the issues raised for determination. Where there is no immediate pressure of time (other than the imperative to deliver a decision as expeditiously as practicable), a more thorough revision should be undertaken. The more a judgment is edited or revised, the better it will be, within reason.

Importance of the personality of a judge:-

It is extremely essential that the Judge should be able to command the confidence of both the parties and this depends a good deal on the manner he conducts himself in court while hearing a case. For the Judge, as well as the lawyer, the technique of handling a case varies according to the nature of the proceedings before the Court. The Judge must not only possess but exhibit a keen-ness to get at the root of the case and a desire to do justice so as to inspire confidence in the parties that their case is in the hands of an able, impartial and a wise Judge. A loose remark, here and there, by the Judge may be justified just to break the monotony of the proceedings and the tense atmosphere of the court but the Judge should be cautious not to make any utterance which may be indicative of the Judge having made up his mind or being inclined in favour of one party or the other. Nothing is more disheartening to a party and his lawyer than the attitude of a Judge suggesting

a loaded mind.

A Judge has to constantly ask himself whether in giving his judgment he is doing justice. Therefore, in every case a judge hears, he has to bear in mind the majesty of the Law, the contribution that it can make to the betterment of society and the protection it can give to the humble and weak who is pitted against the rich and the powerful. (**M.C.Chagla, Former Chief Justice, Bombay High Court**)

Hon'ble Mr.Justice R.V.Raveendran, Judge, Supreme Court of India in a recent lecture delivered at the National Judicial Academy, Bhopal, on "Rendering Judgments – Some Basics" (Decision making & Judgment writing) has set out elaborately on the topic of the day. The following paragraphs would be relevant for the Judges assembled here.

- Cases are not disposable commodities to be treated as mere statistics. Their purpose is not to provide a livelihood for lawyers or provide monthly disposal quota to Judges.
- Cases have to be decided purely on merits. A Judge should remain impartial. He should shun bias or prejudice. He should not be affected by pressures – either external or internal. External pressures are those which lead to bias or prejudice on account of friendship, hostility, enmity, relationship, caste, community, religion, political affiliation, or promised or expected financial benefits. Internal pressures arise on account of a Judge's ideology or philosophy or attitude. A Judge should not allow these to cloud his judicial impartiality. Many a Judge whose honesty and integrity are not doubted, give room for being branded as Judges with recognised disposition or ideology. Depending on his ideology or leaning, he ends up earning the sobriquet: a "landlord Judge" or a "tenant

Judge"; or as a "convicting Judge" or an "acquitting Judge"; or as a "pro-government Judge", or an "anti-establishment Judge"; or as a "pro-rich Judge" or "pro-poor Judge"; or as a "pro-labour Judge" or a "pro-management Judge"; or as a "relief-oriented Judge" or a "technical Judge"; or as a "liberal Judge" or a "negative Judge". Of course each Judge, as a human being, is bound to have convictions, prejudices, notions, philosophies and views which may unconsciously influence and mould his decision and reflect upon the manner in which he administers justice.

- When a Judge ceases to have an open and impartial mind, he ceases to be fair and just. In short, he ceases to be a Judge.
- When a Judge puts on his judicial robes, he should put off not only friendships, relationships, caste, community, religion, political sympathies, but also put off his prejudices, per notions, and personal philosophies. He cannot owe any kind of allegiance to anything other than impartiality, truth and justice. Impartiality is a virtue, which is not easy to achieve, acquire or maintain. It requires consent effort and sacrifice.
- Integrity is one of the building blocks which makes up impartiality.
- Litigation is diverse-civil, criminal, family commercial, tort, administrative, constitutional, labour, taxation, etc. Judges will have to adopt different approaches for different types of cases. An understanding of human feelings may be necessary in family disputes.
- It is better to ask questions, understanding the issue and then decide rather than attempting a decision without fully grasping the issues or the finer nuances of law involved. The object of your questions and observations, of course, should be to elicit relevant clarifications and not to exhibit your knowledge and learning.
- In dealing with Criminal Cases, [Common sense, logic, respect for

moral values and an understanding of human psychology, are necessary for a Judge to render effective justice. Sound common sense, perception as to what is right and wrong, and commitment to justice are the tools that would assist in criminal cases].

- The main functions of a reasoned judgment are:(i) to inform the parties (litigants) the reasons for the decision; (ii) to demonstrate fairness and correctness of the decision; (iii) to exclude arbitrariness and bias; and (iv) to ensure that justice is not only done, but also seen to be done. The very fact that a Judge has to give reasons that will have to stand scrutiny by the Bar and the public as also by the higher courts, brings in certain amount of care and caution on the part of the Judge and transparency in decision-making.
- Several lengthy judgments which purport to be reasoned judgments but do not contain any reasons. They extract the pleadings, catalogue the documents, refer to the evidence in detail, set out the arguments, and then proceed to, or rather jump to a conclusion or decision, without analysis or reasons for the conclusion. A judgment, howsoever detailed or lengthy, will be unintelligible or "non-speaking", if it fails to disclose the reasons for the decision.
- Simple words, short sentences, brief statement of relevant facts, thorough analysis of the evidence, clear enunciation of the legal position, proper application of the law to the facts and grant of appropriate reliefs warranted by the case in clear terms, are the hallmarks of a properly written judgment or order.

General Observations:-

The Trial Courts form the base of the judiciary and bulk of judicial work is handled by them. Their importance lies in the fact that it is on their performance that the quality of administration of justice largely depends. Many cases in these courts are of poor litigants. A good deal of responsibility, therefore, lies on the Presiding Judge or Magistrate to ensure that proper

material is brought on record which is necessary for arriving at a just conclusion and that the case is handled promptly in such a manner that no litigant suffers on account of poverty or lack of proper legal advice.

Start of A Judgment:- Example of Lord Denning's skill

“It happened on April 19, 1964. It was bluebell time in Kent. Mr and Mrs Hinz had been married some 10 years, and they had four children, all aged nine and under. The youngest was one. Mrs Hinz was a remarkable woman. In addition to her own four, she was foster-mother to four other children. To add to it, she was two months pregnant with her fifth child.

On this day they drove out in a Bedford Dormobile van from Tonbridge to Canvey Island. They took all eight children with them. As they were coming back they turned into a lay-by at Thumham to have a picnic tea. The husband, Mr Hinz, was at the back of the Dormobile making the tea. Mrs Hinz had taken Stephanie, her third child, aged three, across the road to pick bluebells on the opposite side. There came along a Jaguar car driven by Mr. Berry, out of control. A tyre had burst. The Jaguar rushed into this lay-by and crashed into Mr Hinz and the children. Mr Hinz was frightfully injured and died a little later. Nearly all the children were hurt. Blood was streaming from their heads. Mrs Hinz, hearing the crash, turning round and saw this disaster. She ran across the road and did all she could. Her husband was beyond recall. But the children recovered.

An action has been brought on her behalf and on behalf of the children for damages against Mr Berry, the defendant. The injuries to the children have been settled by various sums being paid. The pecuniary loss to Mrs Hinz by reason of the loss of her husband has been found by the judge to be some £115,000; but there remains the question of the damages payable to her for nervous shock – the shock which, she suffered by seeing her husband lying in

the road dying, and the children strewn about.”

Not all legal writers have the stature, the skill or the ability of Denning LJ. Certainly, to copy him is not necessarily a good idea. But one can learn from gifted writers and emulate the finer points of their judgment structure.

The Tamil Nadu State Legal Services Authority has brought about a sea of change in this regard. It is for us to utilize the services of the Authority to under all possible assistance to the litigant which would ultimately result in upholding the rule of law.

Finally about judicial decorum. This relates to decorum in Court rather than in rendering Judgments. In the words of Francis Bacon:–

The parts of a judge in hearing are four; to direct the evidence; to moderate length, repetition, or impertinency of speech; to recapitulate, select and collate the material points of that which hath been said; and to give the rule or sentence. Whatsoever is above these is too much; and proceedeth either of glory and willingness to speak, or of impatience to hear, or of shortness of memory, or of want of a staid and equal attention.

For most Judges, preparing judgments is the most demanding, challenging and even stressful part of judicial life. However, it can also be the most creative and rewarding. Today's programme organised by the Tamil Nadu State Judicial Academy would have been of assistance to you in improving your skills.

References :

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- 3 Judgment Writing: Form and function by Hon'ble Dennis Mahoney AO QC
- 4 Judgment Writing – I by Justice M. Jagannadha Rao
- 5 Judgment writing – Hon'ble Justice Roslyn Atkinson, Supreme Court of Queensland
- 6 Seven Steps to clearer Judgment writing by the Hon'ble Justice Linda Dessau, Family Court of Australia
- 7 Law Judges and Justice by Justice S.M.N.Raina, Former Judge, High Court of M.P.