THE ART OF WRITING JUDGMENT

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INTRODUCTION

1. **A judgment is the statement given by the Judge, on the grounds of a decree or order.** It is the end product of the proceedings in the Court. The writing of a judgment is one of the most important and time consuming task performed by a Judge. The making and the writing of a judgment and the style in which it is written, varies from Judge to Judge and reflects the characteristic of a Judge. **Every Judge, of every rank has his own distinct style of writing.**

2. A judgment is distinct from a formal order as it gives reasons for arriving at a conclusion. **In United States it is called the 'opinion'; the explanation given by a Judge for the order finally proposed or made.** The backlog of cases has put a great pressure on the Judges. It is no longer prudent to write a long and verbose judgment, with uncontrolled expressions and citations. The pressure of work and stress on most of the Judges today, demands improving skills in writing judgment, which are brief, simple, and clear without compromising with the quality.

THE CODE OF CIVIL PROCEDURE

3. **In civil matters**, the judgments as the requirement of law goes, may be broadly classified into two categories, namely, **long and short judgments.** In original suits, the final decision of a case requires writing of a long and reasoned judgment. These includes suits for permanent or prohibitory injunction; possession and mesne profit; specific performance of contract; cancellation of documents; partition and possession; dissolution of firm and accounting; redemption or foreclosure of mortgage etc. As compared to it a Judge is required to write short judgments, in the matter of interlocutory orders; summary suits; preliminary issues; review; restoration; accepting compromise etc.

The Code of Civil Procedure, 1908 (the Code) defines **"Judgment" in Section 2 (9)** as the statement given by the Judge, on the grounds of a decree or order. **The "order" under Section 2 (14)** is defined as formal expression of any decision of a Civil Court, which is not a decree.

The "decree" in Section 2 (2) means formal expression of an adjudication, which, so far as regards the Court expressing it, conclusively determination the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. **The rejection of a plaint and determination of any question under Section 144 is also a decree.**

4. **Order XX of the Code, deals with "Judgment and Decree".** Rule 4 (1) provides that **judgment of Court of Small Causes** need not contain more than the **points for determination and the decision thereon**. Sub-Rule (2), provides for a judgment of other Courts to contain (i) **a concise statement of the case;** (ii) the points for determination; (iii) the decision thereon; and (iv) the reasons for such decisions. Rule 5 mandates that in suits in which issues have been framed, the Court shall state its finding or decision, with the reasons there for, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

THE CRIMINAL PROCEDURE CODE

5. In criminal matters, **Chapter XXVII of the Code of Criminal Procedure, 1973** provides for **'The Judgment'**. **Section 353** requires the judgment in every trial to be pronounced in open Court immediately after the termination of the trial, or at some subsequent time of which notice shall be given to the parties or their pleaders. The judgment as provided in **Section 354, is to be written in the language of the Court**, and **shall contain** (i) **the point or points for determination, (ii) the decision thereon; and (iii) the reasons for the decision.** The section further provides that the **judgment shall specify (iv) the offence (if any) of which, and the section of IPC, or other law under it, accused is convicted** and **(iv) punishment to which he is sentenced**. If the judgment is of acquittal it shall state the offence of which the accused is acquitted and direct that he be set at liberty. In case of conviction for an offence punishable with death or in the alternative with imprisonment for life, the judgment has to state; (iv) **the reasons for sentence awarded and special reasons for death sentence**. In case of conviction with imprisonment for a term of one year or more, a shorter term of less than three months, also requires the Court to record reasons for awarding such sentence unless the sentence is one of imprisonment, till the rising of the Court or unless the case was tried summarily under the provisions of the Code.

6. **For orders under Section 117** (for keeping peace and for good behaviour), Section 138 (2) (confirming order for removal of nuisance), Section 125 (for maintenance) and Section 145 or 147 (disputes as to immovable properties), the Code provides in sub-section (6) that order shall contain **the point or points for determination, the decision thereon and the reasons for the decision**. **Section 355** provides for a **summary method of writing judgment by Metropolitan Magistrate**, giving only (i) particulars regarding the case, name, parentage and residence of the accused and complainant, (ii) the offence complained of or proved; (iii) plea of the accused and his examination (if any); (iv) the final order and the date of order; and (v) **where appeal lies, a brief statement of the reasons for the decision**. The order to pay compensation where the Court imposes sentence or fine; order of compensation for groundless arrest and the order to pay cost in non-cognizable cases, may be made with the judgment under Sections 357,

358 and 359 of the Code. Section 360 provides for order to release on probation and special reasons in certain cases where the Court deals with accused person under Section 360 or Probation of Offenders Act, 1958.

7. The Code of Civil Procedure, 1908 and Code of Criminal Procedure, 1973 have provided sufficient guidelines for writing judgment. **These, however, are not exhaustive. There is a wide discretion left with the Judges to choose their (i)** style of writing, (ii) language, (iii) manner of statement of facts; (iv) discussion of evidence; and (v) reasons for the decision.

8. The judgment writing consumes the major part of Judge's work. Taking into account the mounting arrears, and the number of cases in the daily cause list, the burden in judgment writing sometimes becomes intolerable. **The Judges by their experience, find methods to reduce this burden, by writing brief opinions. The judgment, however should serve the requirement of law without compromising with the quality.**

THE STAKE HOLDERS

9. **A judgment is not written only for the benefit of the parties**. It is also written for benefit of **legal profession**, **other judges** and **appellate Courts.** The losing party is the primary focus of concern. The winner is not much interested in the reasons for success, as he is convinced of the righteousness of the cause, anyway. The looser, however, in the expensive litigation is entitled to have a candid explanation of the reasons for the decision. It is not only for exercise of any appellate right but also to uphold **the intellectual integrity of the system of law, impartiality and logical reasoning.** The lawyer is interested in the judgment as he understands the analysis and expositions of legal precedents and principles. The lawyers also examine the judgments for learning they provide, and for the **reassurance of the quality of judiciary**. They can easily distinguish, the lazy Judge, the Judge prone to errors in fact finding, the Judge having difficulty in understanding of laws of evidence, or the Judge, who has difficulties with complex propositions of law.

10. The other Judges lower in hierarchy, facing common legal problems or in the same Court are also interested in the decisions. The judge is also aware that his decision may be reported and that **it may establish a legal principle, binding, until it is set aside by the appellate Court**. The best Judges perform their reasoning opinion honestly to the best of their ability without undue concern that the appellate Court may find error or reach a different conclusion

11. The Judge must state the facts explicitly and consciously as they are found and the reasons for the decision.

12. **The judgment is also a reflection of the conscience of a Judge**, who writes it, and evidences his impartiality, integrity and intellectual honesty. **The judgment writing provides opportunities for judicial officers to demonstrate his own ability and his worthiness to be a participant in the high tradition of moral integrity and social utility.**

13. According to **Lord Templeton** as spoken by him in a BBC interview in 1979, the Judges and their judgments can be broadly divided into three categories; philosophers, scientists and advocates.[1] Mr. Justice V. Krishna Ayer falls in the category of philosopher, and Mr. Justice P.N.

1. Hon. Justice Michael Kirby : 'On the Writing of Judgments' based on a lecture to the First Australian conference on literature and the law, University of Sydney.

Bhagwati, Mr. Justice D.A. Desai and Mr. Justice Kuldeep Singh as social scientists. A Judge falling in the category of Advocate, leave traces of eloquences, in their judgments.

14. Before writing a judgment **a Judge must remember that he is performing a public act of communicating his opinion on the issues brought before him and after the trial by observing fair procedures.** He is required to tell the parties of the decision, on the facts brought before him, with application of sound principles of law, his decision, and what the parties are supposed to do as a necessary consequent to the judgment or to appeal against it. It is basically a communication to the parties coming before him for a decision.

THE OPENING STATEMENT

15. **A judgment must begin with clear recital of facts of the case, cause of action and the manner in which the case has been brought to the Court**. A Judge must have essential facts in mind, and its narration should be without any mistake. The facts must come from the record and not from the abstract and briefs without any partisanship or colour to its narration. **The importance of first paragraph of the judgment cannot be overemphasized. It must answer the questions as to how, when, where, what and why, which is an advise given to judicial cubs.** The readability of the opinion improves if the opening paragraph answers three questions namely what kind of case is this, what roles plaintiffs and defendants had in the trial, and what are the issues, which the Court has to decide and answer, giving sufficient information to the reader to proceed with reading the judgment.

16. **Ordinarily a brief statement of fact is sufficient if it indicates the context of the dispute so that legal principle chosen for decision can be understood.** At times, however, it may be necessary for judgment to record substance of factual context and the details of evidence placed before the Court. **If the complexity of the case requires, the Judge may choose to state the facts chronologically**, to understand what is decided. In such case the Judge may ask the respective counsel a chronological statement of facts to focus the attention of the parties to shorten the argument and make it easier to write the judgment. **It is easier to write short judgment where legal issues are involved. Where the facts are in dispute, the Judge may prefer to narrate the facts in greater detail**. The facts, which are part of the essential reasoning process of the Judge's decision should be indicated and recorded.

THE ISSUES/ CHARGES

17. The issues are settled between the parties before taking evidence. In criminal cases, charges framed by the Court lead to the trial. The judgment must quote the issues/ or charges as the case may be immediately after the narration of facts. It is always feasible to decide preliminary issues like jurisdiction of Court before going into the merits of the case.

18. The formulation of issues, should be initiated as early in the proceedings as possible. Once the parties are clear in their mind about the essential questions, they may shorten the proceedings. It also helps to focus the mind of the judge on the precise matters to be determined. When the essential questions of law are clear, the procedure becomes simplier. It is always helpful to quote the statute and the settled law, if it can be found in authority, to proceed further with discussing the evidence. The Hon'ble Dennis Mahoney. AO. QC. in 'Judgment Writing; Form and Function', has opined, with some wisdom:-

"In formulating the question, the judge will no doubt employ the assistance, which can be derived from the counsel. It is, I think, dangerous to attempt to impose the judge's formulation of the determinative question upon counsel. The form of that question must be drawn out by dialogue with counsel for each side. Unless counsels are involved in formulating the question, they are not committed to form of it. And dialogue with counsel is important. There is practical wisdom in the aphorism: "How do I know what I think untill I hear what I say."

THE EVIDENCE

19. The judge must give the details of the evidence led before it. However, only the relevant evidence must be narrated and that too very briefly giving the purpose for such evidence was led. The documents admitted in evidence after they are proved on record must find their mention along with oral evidence by which they were proved. A brief narration, however, will suffice if it is precise and is clearly stated.

THE CONTENTIONS

20. A Judgment must briefly state the contentions of the counsels on the points of determination. So far as possible all the contentions raised by the counsels except those, which are wholly frivolous must be mentioned on the record. After the Judge has met with all the contentions he must record, that no other point was pressed. This statement recorded in the judgment, will take care of challenge to judgment on the points, which were not raised before the Judge. **The Supreme Court has given sanctity to the statements given in the judgment and insist that where the lawyer challenges any incorrect statement, he should to first file a review petition**, to remind the Judge of any error, which may have crept in the judgment.

THE DISCUSSION OF EVIDENCE

21. Before deciding a issue or recording finding on a charge, **the relevant evidence must be discussed. Every Judge has his own style of discussing the evidence. It is, however, always better to discuss the evidence before giving an opinion to rely upon it.**

THE REASONS

22. **The soul of a judgment are the reasons for arriving at the findings.** These are also called 'the opinion' of a Judge. There is no rigid rule, as to how a finding may be recorded. The Judge, however, should give his reasons. It is not sufficient to say that he believes the evidence or agrees with the argument. The Judge must give his reasons for such belief and agreement. An elaborate argument does not always require elaborate answer.

THE LOGICAL REASONING

23. **A Judge is a human being**. He possesses the same strength and weakness in character as a common man. **Like all human being a Judge possesses personal preferences and pre-dispositions.** It is advisable for a Judge to follow settled norms and practice for writing judgment, in the beginning of his career. With experience he may take liberties of adopting new methods and innovate. The logical reasoning, however, must follow in reaching to a conclusion. **A Judge is not free from partiality and bias. There may be a lurking or sub-conscious bias, which may not be known to the Judge himself.** The bias may have arisen on account of any factor, which ordinarily affect the life of the human being. The Judge may be influenced by the subjective preferences or biases in an unacceptable way.[2] With experience a Judge may identify such bias and may win over it. The best way to overcome the judgment to be affected by such outside and unknown factor is to follow logical reasoning.

THE PROCESSES TO ARRIVE AT A CONCLUSION

24. The method of arriving at a conclusion is the most important part of judgment writing. The process by which the conclusion is arrived, and the statement in the judgment of that process, tests a Judge of his ability and integrity. It may either be by (I) **syllogistic or deductive process,** (ii) **inferential process,** or (iii) **intuitive process**. 'Syllogism' means, a deductive scheme of a formal argument consisting of a major and a minor premise and a conclusion. In syllogistic process the Judge adopts a deductive process in which he accepts an argument on a major premise, which over weighs the minor premise to draw his own conclusion. In case of inferential process the Judge relies upon the evidence and reaches to a conclusion. In the intuitive process, the Judge adopts psychological process by which the conclusion is arrived at more by intuition rather than reasons.[3] In such a method **the Judge may believe a witness in part or whole and then draw the conclusion by justifying it from the reasoning supplied by him either by belief or experience**. In both the methods, in case what is being done is to arrive at a truth, the method may be justified.

NEUTRALITY AND IMPARTIALITY

25. There is a difference between **neutrality** and **impartiality**. **Impartiality requires cool reason uncontaminated thinking without being influenced by personal commitments, biases and preconceptions. The neutrality on the other hand means the Judge is non-aligned. A Judge may begin being neutral and continue to be so in the process of the trial, but at the end he has to decide the case in favour of either of the parties without any partiality. Impartiality requires a Judge to rise above all values and perspectives.**

THE OPERATIVE PORTION

26. A Judge must clearly write the operative portion of the judgment, which pronounces his conclusion over the issues brought before him. **He must give clear and precise direction and the manner in which the directions have to be obeyed in conformity with the prayers made in the plaint.** The object of good judgment is to conclude the dispute and not to leave the

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2. Hon. Beverley Mclachlin PC, Chief Justice of Canada: A Judicial Impartiality: impossible quest?
3. The Hon. Dennis Mahooney AO. OC: Judgment Writing: 'Form and Function'.

matter undecided. **The judgment should leaving nothing to be brought back to the Court. The operative portion of the order should as far as possible self- executing and self-contained.**

THE SENTENCING

27. In criminal matters after recording conviction, the Judge has an important task of giving sentence, fine or compensation. The law requires the accused to be heard before awarding sentence. **The judge must give reasons for giving sentence, fine and apportion the compensation to the victim for the sufferance, commensurate with severity of the offence.**

THE LANGUAGE

28. Plain and simple language has always been appreciated in writing judgments. **Brevity, simplicity and clarity are the hallmarks of the good judgment. The greatest of these is clarity**. It is better to avoid invidious examples, unnecessary quotations, and lecture. A controlled judgment without any legalese, sharp criticism, pinching comments, and sarcasm invokes respect to the court. Short sentences and para phrasing, head notes and subheading, wherever it is necessary, is a recommended style of writing a judgment. A judge should keep a dictionary, preferably legal, a grammar book and a thesaurus close to him, when writing judgment.

29. The chief guidelines for using plain language are:

(1) Achieve a reasonable average sentence length.

(2) Prefer short words to long ones, simple to fancy. Minimise jargon and technical terms.

(3) Avoid double or triple negatives. No reader wants to wrestle with sentences.

The document need not be checked unless it is desired by a party.
The document may be checked, if it is desired by party.

He could not have created the trust, except for the benefit of the defendant.

He could have created trust only for the benefit of the defendant.

(4) Prefer the active voice; single verb- object- sentence. *Notice must be given* compares poorly with *The landlord must give notice.*

Passive Voice: He was acquitted by the Court.
Active Voice: The Court acquitted him.

Passive Voice: It was reported by the Court Commissioner that the disputed land was covered by water.

Active Voice: The Court Commissioner reported that the land was covered by water.

(5) Keep related words together, specially subject and verb, verb and object.
(6) Break up the text with headings and subheadings.
(7) Use parallel structures for enumerations.
(8) Avoid excessive cross references, which create linguistic mazes.
(9) Avoid over defining.
(10) Use recitals and purpose clauses.[4]
(11) Avoid legalism to make your judgment reader friendly.

THE BREVITY

30. Brevity is the virtue of a wise man and is familiarized by those, who have clarity in mind. No one likes to read long judgments. Brief opinions are comfortable in reading. Shri Gurcharan Das in his article published on 03.10.2003 in 'Times of India' said:-

> "Soon after he became prime minister,Winston Churchill wrote to the First Lord of the Admiralty to ask, 'Pray Sir, tell me on one side of the sheet of paper, how the Royal Navy is preparing for the war .' Churchill knew that if he did not qualify his request, he would have received a unreadable 400-page report. Brevity is a great virtue,and nowhere more needed than in India. Our judges write judgements that are too long; our lawyers ramble on ; our executives try to impress with lengthy memos; our politicians well try to get in a word.
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> That less can be more is specially true in good writings. I discovered this at Proctor and Gamble, a company as famous for its legendary one page memos as for its products. Its wondrous one page memo was created out of the same confidence in reason and technology that built America,and is as elegant as Paninis grammer or Euclids geometry. Based on the reasonable assumption that all managers suffer from an overload of paperwork and files, it is simple, factual, and logical. The reader can scan it in minutes and grasp its contents it has just enough data that a manager needs to make decision and no more. It is clear, precise, eschews hyperbole , and it actually improves the speed and quality of decisions, and hence it can be a source of uncompetitive advantage.
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> We Indians are verbose, and need to be reminded that humans were born with two ears and two eyes, and one tongue , so that we should see and hear twice as much as we say. Shakespeare too , I ,think ,must have had us Indians in mind, when he wrote in Richard III; ' Talkers are no good doers.' Hence he offers us this advice in Henry V ' Men of few words are best of men'.

THE DESIGN AND STRUCTURE

31. **The judgment must be designed and structured** so that readers find their way through it easily and quickly. **There is no such thing as good writing. There is only good rewriting.**[5] It is absolutely necessary to revise the judgment. A revised judgment takes care of errors and reassures the Judge of the correctness of his opinion. It also ensures to avoid silly

mistakes. It is advisable to the Judges, to read their judgments after a few years, to ensure that same mistakes are not repeated. There is always a room for improvement.

THE EXTEMPORE OR RESERVED

32. The judgments are either given extempore or reserved to be pronounced later. The practical experience shows that extempore judgments given at the close of the arguments, are addressed to the counsels and the parties. **The extempore judgments rarely attempt to decide important questions of fact or law**. The reserved judgments, on the other hand, survive longer in deciding the issues and in the memory of those for whom it is written.

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4. Byran A. Garner: "A Dictionary of Modern Legal Usage" , P.661.

5. E.N. Brandis, J., U.S. Supreme Court

33. The **Privy Council** adopted the style of tendering the advice of the Board to Her Majesty in which only one judgment was given. The form is no longer rigidly applied. However, the style of writing judgment namely using simple language with clarity of mind both in writing legal principles and conclusions, adds quality to the judgment.

THE HUMILITY AND CHARACTER

34. The language employed by a Judge speaks of his character. **A humble Judge with human personality avoids using intemperate and unparliamentary language.** It is always better to avoid using words **'I', 'can**' and **'must**' in the judgments. Some examples of temperate language are:

'He is *wrong* in saying ……..
He is *not correct* in saying …..'
'The plaintiff's case is *full of falsehood*……
Between the two I prefer the evidence of defendants….'
'I do not *believe* him…..
He is *not worthy of belief*……'
'The witness is *not telling the truth*……
The witness is *one step removed from being a honest* man…….'

THE MOOD

35. The judges disposition at the time of writing judgment is reflected in his opinion. A judgment delivered in anger allows him to loose restraint and poise and to reach at unfounded conclusions. Anger or tension contaminates the reasoning..[6]

THE DISPARAGING REMARKS

36. The primary purpose of pronouncing a verdict is to dispose of the matter in controversy between the parties before it. **A judge, however, is not expected to drift away from pronouncing upon a controversy, and to sit in judgment over the conduct of the judicial or quasi judicial authority, or the parties before him and indulge in criticism and commenting thereon unless such conduct comes, of necessity under review and the expression becomes part of reasoning to arrive at a**

conclusion necessary to decide the main controversy. So far as possible a judge should avoid derogatory and disparaging remarks. Nonetheless, suble irony, detectable only by the cognoscenti, is a useful in conveying a key point in the reasoning of a judge.

" *A Judge entrusted with the task of administering justice should be bold and feel fearless while acting judicially and giving expression to his views and constructing his judgment or order. It should be no deterrent to formation and expression of an honest opinion and acting thereon so long as it is within four corners of law that any action taken by a subordinate judicial officer is open to scrutiny in judicial review before a superior forum with which its opinion may not meet approval and the superior court may upset his action or opinion. The availability of such fearlessness is essential for the maintenance of judicial independence. However, sobriety, cool, calm and poise should be reflected in every action and expression of a Judge.*[7]

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6. State of A.P. Vs. G. Venkataratnam, (2008) 9 SCC 345
7. In the matter of : 'K' a Judicial Officer, In re (2001) 3 SCC 54, by Hon'ble Justice R.C. Lahoti.

THE STYLE

37. **The style of judicial writing is constantly changing.** The Latinism and legal clichés are the days of past. **It may not be wise to use metaphors and idioms, to prove a point. The judges avoid using words or expression showing gender-bias.** There is some difference of opinion regarding use of foot notes, appendices, and other adds to communication. The judges in America use foot notes, whereas Judges in Canada and Australia find them offending. Brevity, simplicity and clarity have always been the watch words for effective judicial writing.

THE EPILOGUE

38. Diversity of opinion in judgment writing is the strength of the common law judicial tradition. It provides never ending stream of ideas and ways of communicating them. The experimental variety helps to develop the law. It is the privilege of each succeeding generation of judges to nurture the proud heritage and advance this precious legacy.

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