

# Session 3 Art of Judgement Writing: Judicial Modesty & Moderation

# Why judicial modesty & moderation?

- A modest and moderate judgment is difficult to challenge in appeal
- Conversely, the absence of modesty and moderation makes a judgment easy to challenge.
- The more a judgment is immodest and extreme, the easier it is to challenge.
- The entire judgment need not be immodest or extreme. A single paragraph is enough to get an admission and a stay.

# Modesty & Moderation in judgments

- Writing with modesty and moderation requires thinking modestly and moderately
- Thinking modestly and moderately requires your being a modest and moderate person
- As you think so you are

# Another reason to be modest & moderate

- To live in good health to ripe old age
- Mind-body relationship is a medical fact. Your mind is a part of your body. Anything which affects your mind affects your body and vice versa.

# Humility: fast track to modesty & moderation

- If you are humble, you need not waste energy
- trying to defend yourself,
- trying to defend your learning or your competency

# 4 Hs for a High Court Judge

- Honesty
  - Hard work
  - Humility
  - Healthy
- All of these are non-negotiable

# How do you write judgments with modesty and moderation?

- What should be your aim?
  - to deliver judgments of high quality on a consistent basis

Writing judgments is difficult for  
judges across jurisdictions



# Writing Judgments: psychological and technical aspects

- Psychological: diffidence, doubts, lack of self-confidence, procrastination
- Consequences: delay in delivery of judgment, last moment effort, spelling mistakes, typos, shortcuts in reasoning
- an overall shabby output

# What should you do now?

- Do not wait for motivation or inspiration to write judgments. Take action first. Motivation will follow action.
- The five second rule and the five minute rule
- Focus on the process. Forget the output. The process will ensure that your output is of very good quality

# Three basics features of every good judgment

- BSc for judgments
- BSc stands for:
  - ✓ Brevity,
  - ✓ Simplicity and
  - ✓ Clarity

# Writing for whom?

- For whom are you writing your judgment?  
Who is the audience for your judgment?
- It is important to identify this first. The content of your judgment will depend on its audience

# Wrong reasons to write a judgment

- to show your legal knowledge, language skills, Knowledge of literature
- to impress the your fellow judges or the Supreme Court
- to get your name in the newspapers

# Writing judgments: before and during the hearing

- Identify difficult cases
- Plan your activities
- Read up before the hearing
- Start writing your judgment early
- Write down your notes ; cross reference pleadings, exhibits and depositions as the argument progresses
- Issue -wise notes
- Create a table for issues or points for determination
- Take help from the advocates; ask questions

# Writing judgments: after the hearing

- Set a schedule with time frames and stick to it
- Gather together your notes and other all the papers necessary for you to write your judgment.
- Set aside sufficient undisturbed time on a daily basis to write your judgment
- Take periodic breaks. Do not work at a stretch.
- Complete the first draft of your judgment

# Framework of a judgment

Write down a framework for your judgment

- Technical aspects (name of the court, case number, parties, provision of law)
- Introduction
- body of the judgment (detailed reasoning and analysis)
- operative portion (your disposition, the final result)



# Framework of a judgment contd.

- Introduction: be brief in your introduction. Deal with each party's case seamlessly. Do not reproduce the charge sheet or the pleadings in a civil matter do not write on contested issues in your introduction. Give an example where the time of the crime is contested
- Body of the judgment: start with the issues and address each issue in detail reproducing arguments of counsel is not recommended. This results in duplication.
- Operative portion: need for clarity

# Re-write your judgment

- Re-write your first draft;
- Re-write your second draft;
- Take a printout of your third draft and proof read for typographical errors. Keep aside the corrected third draft for at least 24 hours
- Attack your fourth draft as the losing side's lawyer in the appellate court
- The fifth revision will be your final version for release
- Hard writing: easy reading
- Easy writing: hard reading

# Quantity is the enemy of quality

- You cannot mass-produce judgments of good quality.
- You cannot write quality judgments if you have a target of 100 final hearing judgments every two weeks .
- Quality requires time. Since your time is limited, your output is also limited.
- Case management techniques, control long-winded arguments, learn to say no
- Lastly, talk less

# Improvement is a never ending journey

- Improve yourself every year and over the years
- Take your best judgment of 2022. Keep it aside
- When 2022 is over, take your best judgment of 2023. Compare this with you 2022 judgment. There must be an improvement