

# **NATIONAL JUDICIAL ACADEMY**



**WORKSHOP ON JUDGMENT WRITING**

**[P-1330]**

**4th & 5th February, 2023**

**Programme Report**

The National Judicial Academy, Bhopal organized a two day Workshop on Judgment Writing for District Judiciary on 4th and 5th February, 2023 which was attended by 47 participants from across India.

## **DAY I**

### **Session 1**

**Theme**–Art of Listening: Promoting Rational Discourse

**Panel** –Dr. Justice Anita Sumanth and Mr. Ramakrishnan Viraraghavan

It was stressed that the judges should always listen attentively to the counsels. Further, it was stated that the principles of natural justice should be followed at every stage and the parties should always be provided avenue of fair hearing. The purpose of hearing is to give the parties the satisfaction that they have been heard before the court of law. The Latin maxim - audi alteram partem was highlighted which denotes that hearing should be provided to the other side. It was highlighted that there is an inherent qualitative distinction between hearing and listening and it is important that judges listen to understand rather than to respond. It was stated that listening to the arguments closely may often change the outcome of the case. Thereafter, the limitations which impede effective listening were discussed which include physical limitations, intellectual limitations, short attention span etc. It was further opined that the judges should not be hesitant in asking repeated questions to the counsel if it is required. The judges should summarize the arguments of the counsels so that the advocates know that judge has understood their submissions. However, it was suggested that the judges should not be verbose and should refrain from making moralistic statements. It was also opined that the judge should undertake time management so that all the parties are provided appropriate time. It was suggested that judges should take regular breaks so

that they are able to refresh themselves since long hearings affect absorption capacity. The participants were also advised to employ certain breathing and relaxation techniques to alleviate stress. Furthermore, it was stressed that the district judiciary is the face of the justice delivery system for majority of the litigants and therefore it is imperative that proper hearing is provided.

## **Session 2**

**Theme-** Judgment Writing: Style and Language

**Panel-** Justice C. V. Karthikeyan

It was opined that it is important that minute details are provided in judgments/orders but they should not be superfluous. Further, it was advised the district judge should mentor the junior officers in the art of writing orders and judgments. In certain situations, the high court direct that the specific application should be disposed within a particular period and it is the duty of the Principal district judge to oversee that the particular order is delivered within the specified time period. Thereafter, Section 353 of the Code of Criminal Procedure, 1973 and Order 20 of the Civil Procedure Code, 1908 were briefly discussed. It was stated that before writing any order it is important to look through the entire case bundle and note papers to understand the flow of the case. Further, before writing orders/judgment the judge should have command over the pleadings. It was also stressed that a trial judge should inculcate the skill of focused listening during recording of evidence, and control the questions during the examination of the witnesses. The judge should listen carefully to the questions and understand whether they are contextual to the matter .The structure of a judgment was discussed which includes facts; issues; evidence of the parties; arguments advanced by the parties; marshalling of evidence, analysis of law and thereafter the adjudication by the court. The judgment of the Supreme court in Madan Mohan Singh v. Rajni

Kant AIR 2010 SC 2933 was highlighted to emphasize on strict scrutiny of evidence by judges. It was stated that for a document to be evidence it should be admissible, authentic and relevant. The participants were advised to exercise caution during marshalling and appreciation of evidence. It was highlighted that judges are assessed on the basis of their order and judgments. The writing of each and every order is important since it reflects the grasp of the facts and law by the judge. It was advised that the draft of the judgment should be revised repeatedly before delivering it so that there are minimum errors. It was stated that clear and concise reasoned orders are necessary since the reasoning will be assailed in appeal and the reasoned order will allow the appellate court to examine it more effectively. Thereafter, the judgment of the Supreme Court in Joint Commissioner of Income Tax Surat v. Saheli Leasing and Industries Ltd. (2010) 6 SCC 384 was also referred wherein the court laid out guidelines for writing judgments. The judges were advised to use plain language and to avoid excessive legalese. It was further opined that if the judicial officer is comfortable in the regional language then he should write the judgment in the regional language rather than English because he will be able to express himself in a superior manner.

### **Session 3**

**Theme**– Structure of Judicial Writing: Essential Tools for Judges

**Panel** –Justice C. V. Karthikeyan and Mr. Ramakrishnan Viraraghavan

It was highlighted that it is important that the judgment is well structured and simple because if it is not clear it would result in more litigation. It was stressed that it is important that issues and charges are framed properly. It was highlighted that the court has the power under Order 14 to amend and strike out issues. The essential elements of a judgment were also focused upon which

include the introduction, analysis of issues and lastly the operative portion of the judgment. The judgment should not be a mere duplication of the pleadings and the outcome of the case should be clearly discernable. The judgment of Lord Denning in *Miller v Jackson* [1977] QB 966 was discussed and it was advised that similarly small and simple sentences should be used in judgments. It was further stated that the judgment should be brief, simple and clear and not be verbose or prolix. The order should be written in such a manner that it does not give rise to another appeal. It was advised that it is essential that judges prepare a timeline for the preparation of the judgment. The judges were also suggested to undertake court management so that judgment writing can be accomplished within the timeframe. The judges were advised to take precaution that there are no typographical errors in the judgment. Further, it was emphasized that district judiciary are foundations of the temple of justice which cast an arduous duty upon them to write well-structured and reasoned judgments.

#### **Session 4**

**Theme** –Logic in Judicial Reasoning

**Panel** – Dr. Justice G. Jayachandran and Justice N. Sathish Kumar

The speaker enumerated that judicial decision must be supported by logic and reason. The process to reach a decision was emphasized such as syllogistic process, inferential process, and intuitive process. During the course of discussion various theories of decision making i.e. naturalist theory, realists theory and formalist theory were underlined. On the naturalist theory it was emphasized that the law ascertained by a judge carries the weight and force of a divine mandate. Subsequently, the views adopted by realist theory was accentuated upon that, inconsistencies in judicial decisions are the product of differing personalities, and not the changing manifestations. The importance of

the rule of law, facts of the case and decision of a judge were deliberated upon with reference to judicial decision making as propounded by the formalist theory. It was highlighted that the formalist theory, places great faith in the comprehensive coverage of both common and statutory law. It was underscored that rational decision-making process involves careful and methodical steps. The more carefully and strictly these steps are followed, the more rational the process is. It was opined that as far as judicial decision making is concerned, rationality and objectivity plays a significant role. It was emphasized that the decision must be clear, certain and unambiguous. Additionally, it should inform the parties reasons for the decision, it should demonstrate fairness and correctness and must be free from arbitrariness and bias.

During the course of discussion a reference was made to the case of *Union of India v. Raghubir Singh*, (1989) 2 SCC 754, wherein the Constitution bench of the Supreme Court observed that, it is no longer a matter of doubt that a substantial volume of the law governing the lives of citizens and regulating the functions of the State flows from the decisions of the superior courts. Subsequently, with regard to subjectivity and rationality, the case of *Om Prakash Chautala v. Kanwar Bhan*, (2014) 5 SCC 417 was emphasized upon, wherein it was held that the decision-making process expects a Judge or an adjudicator to apply restraint, ostracise perceptual subjectivity, make one's emotions subservient to one's reasoning and think dispassionately and expected to be guided by the established norms of judicial process and decorum. It was underlined that a judgment may be rhetoric but it to be dressed with reasons and must be in accordance with legal principles. With regard to art of judgment writing and decision making a reference was made to the following cases; *Shakuntala Shukla vs. State of Uttar Pradesh and Ors*[MANU/SC/0611/2021]; *State of Punjab v. Jagdev Singh Talwandi*, (1984) 1 SCC 596 ;*CIT v.*

*Saheli Leasing & Industries Ltd., (2010) 6 SCC 384; State Bank of India v Ajay Kumar Sood, 2022 SCC Online SC 1067 and; Shakuntala Shukla v State, 2021 SCC Online SC 672*

## **Session 5**

**Theme** –Gender Sensitivity in Judgments & Orders

**Panel** –Justice Roshan Dalvi, Justice P.T Asha and Justice Swarana Kanta Sharma

The session highlighted the need to address gender sensitivity among judicial officers and encourage a comprehensive understanding of sensitivity in all aspects. It was emphasized that all human beings are entitled to respect, and this should be reflected in judgments and orders. Judicial courtesy and reverence are essential elements to be observed. During the discussion judges were encouraged to be mindful of their language in judgments and to exercise caution, refraining from speaking what they cannot write. It was emphasized that the need to strike a balance between personal feelings and maintaining a professional demeanour while recording a witness's testimony. This requires careful consideration of the expressions exhibited during questioning and answering, while adhering to the provisions of the Civil Procedure Code (CPC) or the Criminal Procedure Code (CrPC).

The session emphasized the three key steps in addressing crimes against women and children: recognize, resist, and report. The need to acknowledge the existence of such problems in society, support victims in resisting further harm, and encourage reporting of incidents to bring the perpetrators to justice was stressed upon. The significance of awareness creation and victim protection through collaboration between sociological and legal sectors was also deliberated upon. It was highlighted that the sociological sector, consisting of parents, teachers, friends, and NGOs, plays a crucial role in creating awareness and providing victim support at the grassroots level. Reference was made to the relevant legislation such as the Protection of Children from Sexual Offenses (POCSO) Act and its amendments, which aim to prevent unlawful activities, combat exploitation and human trafficking, and protect the best interests of children. The importance of gender inclusivity, privacy, confidentiality, protection, and safety of victims was underscored. The

need for speedy trials, rehabilitation, compensation, and addressing the psychological impacts on victims was also reflected upon.

The session dwelt upon the necessity of sensitivity throughout the entire legal process, starting from the stages of remand and bail to the collection and evaluation of evidence. Additionally, the importance of displaying sensitivity during the decision-making stage, which includes sentencing, imposing fines, providing compensation, and facilitating rehabilitation was emphasized upon. It was pointed out that although parole is not yet prevalent in the Indian judicial system, its potential inclusion in the future requires sensitivity. It was opined that sensitivity toward victims' needs and their reintegration into society is crucial for effective rehabilitation programs. It was stressed that the process of recording evidence requires utmost sensitivity. It was mentioned that special courts, trained police officers, and identity protection measures, including the use of pseudonyms, are employed to ensure the victim's confidentiality and safety. Additionally, fixed dates for hearings and the absence of contact between the victim and accused are crucial aspects that demand sensitivity.

The discussion further explored the concept of courtroom climate and conduct. It was underlined that creating a conducive courtroom climate that fosters sensitivity is essential. It was suggested that judges should implement measures such as evidence recording in chambers, victim confidentiality, addressing questions in a non-intimidating manner, and facilitate communication between the court, victim, and advocates. It was advised that special consideration should be given to child victims, ensuring their comfort and participation. The approaches adopted by judges including maintaining privacy during proceedings, arranging private interactions with the victim, ensuring the accused observe the trial while protecting the victim's identity, and focusing on the demeanour and confidence of the witness during identification were also discussed during the session. Various landmark judgments referred during the discussion included, *Aparna Bhat and others Vs. State of Madhya Pradesh 2021 SCC Online SC 230*; *Manikandan Vs. State, Rep. By the Inspector of Police 2023-1-L.W.(Crl.)94*; *S.Sushma Vs. Commissioner of Police, 2021 SCC Online Mad 2096*; *Leelavathi and Another Vs.Kamala and Others, 2022 SCC Online Mad 5434*; *Hrishikesh Sahoo Vs. State of Karnataka by Women Police Station,2022 SCC Online Kar 371*

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