THE ART AND CRAFT OF WRITING JUDGMENTS/JUDICIAL AND QUASI JUDICIALORDERS

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INTRODUCTION

- A judgment is the statement given by the Judge, on the grounds of a decree or order. It is the outcome of the proceedings in the Court.

- The writing of a judgment is one of the most important and time-consuming tasks 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 style of writing judgment.

- 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 STAKE HOLDERS

- A judgment is not written only for the benefit of the parties. It is also written for benefit of the appellate court, members of legal profession, other judges, students of law, and civil society.
- 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 judgments and orders written by the courts also uphold the intellectual integrity of the system of law, impartiality, and logical reasoning.
- The Judges must give their reasoning honestly to the best of their ability without any fear, bias, prejudice or personal perceptions and any concern that the appellate Court may reach to a different conclusion.
- The Judge must state the facts explicitly, precisely, and consciously as they are found on record and give reasons with sufficient and honest reasoning without any bias, prejudices, or perceptions for the decision.
- The judgment is a reflects the conscience of a Judge, who writes it, and evidences his impartiality, integrity, and intellectual honesty. The judgment writing also provides opportunity to the judicial officer to demonstrate his ability and worthiness to be a participant in the high tradition of moral integrity honesty and social utility.

THE OPENING STATEMENT

- A judgment must begin with clear recital of facts of the case, cause of action and the way the case has been brought to the Court. A Judge must have essential facts in mind, and its narration should be brief but without any mistake.

- 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 advice given to journalist when she joins the profession.

- Ordinarily a brief statement of fact is sufficient if it indicates the context of the dispute so that legal principle/s 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.

THE ISSUES/ CHARGES

- The judgment must quote the issues/ or charges immediately after the narration of facts. It is always advisable to decide preliminary issues like limitation, valuation, or authority of Court before going into the merits of the case.

- 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.

THE EVIDENCE

- The judge must give the details of the evidence led before it. However, only the cogent relevant and admissible evidence must be narrated and that too very briefly giving the purpose for such evidence was led.

- The documents and exhibits admitted in evidence after they are proved on record must find their mention along with oral evidence by which they were proved.

THE CONTENTIONS

- A Judgment must briefly state the contentions of the counsels on the points of determination. As far as possible all the contentions raised by the counsels except those, which are 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.

THE DISCUSSION OF EVIDENCE

- Before deciding an 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

- "…The life of the law has not been logic: it has been experience. The felt necessities of the time the prevalent moral and political theories, institutions of public policy, avowed or unconscious, even the prejudices which judges share with their fellowmen, have had a good deal more to do than the syllogism in determining the rules by which men should be governed."

Justice Oliver Wendell Homes (Common Law, p.1)

THE FINDINGS

- The reasons are the soul of a judgment. The findings recorded by the Judge must be based on the reasons and reasoning to support or to explain such findings.

- 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.

- An elaborate argument does not always require elaborate reasons to accept or not to accept the point.

- The reasons even if they are brief must satisfy the logical mind.

THE LOGICAL REASONING

- 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 because any factor, which ordinarily affect the life of the human being.
- 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 factors is to follow logical reasoning.

THE PROCESS TO ARRIVE AT A CONCLUSION

- 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, impartiality, and integrity.

THE PROCESSES TO ARRIVE AT A CONCLUSION

- (i) **Analogical process** is a form of inductive process. It uses common sense, science, philosophy and humanities, but it is only an auxiliary method. It is also known as a case-based method.
- (ii) **Inductive process**, means following some degree of certainty. The conclusion contains more information then provided in the premises.
- (iii) **Syllogistic or deductive process**, means following a deductive scheme of a formal argument consisting of a major and minor premise and a conclusion.
- (iv) **Inferential process**, relies mostly upon evidence to reach a conclusion. It follows one valid conclusion to the other, forming an unbroken chain.
- (v) **Intuitive process**, is a psychological process by which the conclusion is arrived at more by intuition rather than reasons.

In all these methods, in case what is being done is to arrive as a truth, the method is justified.

NEUTRALITY AND IMPARTIALITY

- There is a difference between neutrality and impartiality.
- The neutrality means the Judge is non-partisan and non-aligned.
- Impartiality requires a Judge to rise above all values and perspectives. It requires a judge or adjudicator to be fair and give equal treatment in the proceedings to all rivals or disputants.
- Impartiality also requires cool reason, uncontaminated thinking, without being influenced by personal commitments, biases and preconceptions.

RATIONALITY

- Rationality is a term related to the idea of reason. It has dual aspects. One aspect associates it with comprehension, intelligence or inference drawn in an orderly way such as syllogism. The other aspect associates it with explanation, understanding and justification.

- A logical argument is rational if it is logically valid.

- Rationality is however, a broader term than being logical. It also includes uncertain but sensible arguments based on probability, expectation, and personal experience whereas the logic deals with provable facts and demonstrably valid relations between them.

THE OPERATIVE PORTION

- 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 way the directions must be obeyed in conformity with the prayers made in the plaint.

- The operative portion of the order should as far as possible be self-executing and self-contained.

THE LANGUAGE

- Plain and simple language has always been preferred and appreciated in writing judgments. Brevity, simplicity, and clarity are the hallmarks of the good judgment.

- It is better to avoid invidious examples, jargons, 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 of the language in which the judgment is written close to him, when writing judgment.

THE BREVITY

- Brevity is the virtue of a wise man and is familiarized by those, who have clarity in mind.
- No one likes to read long and verbose judgments.
- Brief opinions are comfortable in reading.

THE DESIGN AND STRUCTURE

- The judgment must be designed and structured so that readers find their way through it easily and quickly.

- There is no such thing as skillful writing. There is only good rewriting.

- It is necessary to revise the judgment. A revised judgment takes care of errors and reassures the Judge of the correctness of his opinion.

THE HUMILITY AND CHARACTER

- 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.

- Judges should see that their pronouncements are judicial in nature and do not normally depart from sobriety, moderation, and reserve. They should refrain from sarcasm, and factiousness.

HIDING/ MASKING PARTY NAMES

- With the growing enlightenment of the society the Supreme Court has in ***Bhupinder Sharma vs. State of HP (2003) 8 SCC 551 and State of Karnataka vs. Puttaraja (2004) 1 SCC 475***, keeping in view the object of preventing social victimization or ostracism of the victim of a sexual offence found it appropriate that in the judgments, be it Supreme Court, High Court or District Courts the name of victim should not be indicated. It is sufficient to refer to her as victim.

- Similarly, the victims of sexual harassment, molestation, children in conflict with law or victims of offences under POSCO Act or in divorce and custody cases it is advisable to hide party names.

- The software 'Case Information System 2.1' used by the courts in India also provides for hiding party names in public display of cases and in open domain and to mention them as XXX for public access of the websites.

THE DISPARAGING REMARKS

- The primary purpose of pronouncing a verdict is to dispose of the matter in controversy between the parties before it.

- A judge, 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.

THE STYLE

- 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, or to give examples to prove a point.
- The judges avoid using words or expression showing gender, caste or creed bias, and their personal preferences.

TIMELINES IN PRONOUNCING JUDGMENTS

- In ***Anil Rai vs. State of Bihar (2001) 7 SCC 318***, the Supreme Court took notice of the observations of the Arrears Committee constituted by Govt. of India on the recommendation of Chief Justices Conference. The Committee recommended that the reserved judgments should ordinarily be pronounced within a period of six weeks from the date of conclusion of the arguments.

ALTERATIONS/ ADDITIONS AFTER PRONOUNCEMENT

- The judgment once pronounces cannot be altered or added to, save as provided in law. Sections 114, in exceptional cases under Section 151 and under Section 152 and 153 A of C.P.C provides for the amendment of the judgments, decree or order. Such corrections are restricted to mistakes in spelling of words, arithmetic or ministerial and cannot be invoked to modify alter or add to the terms of the original order or decree to pass an effective judicial order after the judgment of the case. Order 20 Rule 3 C.P.C permits alterations and additions to a judgment so long as it is not signed.

THE EPILOGUE

- 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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