

THE ART CRAFT AND SCIENCE OF DRAFTING JUDGMENTS

By

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Judgment?

A judgment constitutes the **considered opinion of the Court** on the basis of the facts pleaded, points raised, evidence adduced, argument addressed and the law applicable to the facts of the case.

“A ‘judgment’ should be a **self contained document** from which it should appear as to what were the facts of the case and what was the controversy which was tried to be settled by the Court and ***the process of reasoning*** by which the Court came to the ultimate conclusion”

***S.C. in Balraj Taneja v. Sunil Mandan,
AIR 1999 S.C. 3381***

Why a Judgment ?

- “Judgments are intended to convey the reasoning and process of thought which leads to the final conclusion of the adjudicating forum.
- The purpose of writing a judgment is to communicate the basis of the decision not only to the members of the Bar, who appear in the case and to others to whom it serves as a precedent but above all, to provide meaning to citizens who approach courts for pursuing their remedies under the law.”

Why a Judgment ?

- Ensuring Transparency in Decision- enabling parties to understand what was decided and how.
- Court's Accountability to the Rule of Law.
- Promoting Public Confidence.
- Guidance for Lawyers, Judges, and Society.
- Framework for Appeals and Legal Analysis.

Judgment Writing -An Art

- Judgment writing is an art because it involves application of the intellect, intelligence, understanding, rational capacity, power of comprehension, power of expression and the power of communication of a judge.
- Being a work of art, it is bound to have an impression of the personality of the judge.
- However, it is expected to be **more objective than subjective.**

Judgment Writing - a Science

- Judgment writing is a science because it requires a systematic analysis of facts emerging from the conflicting pleas raised by the parties as well the law applicable to the facts found proved in the case.

Judgment Writing : a Craft

- Judgment writing is also a craft because it requires **systematic structuring**
- “In terms of structuring judgments, it would be beneficial for courts to structure them in a manner such that the '**Issue, Rule, Application and Conclusion**' are easily identifiable. The well-renowned '**IRAC**' method generally followed for analysing cases and structuring submissions can also benefit judgments when it is complemented by recording the facts and submissions.”
- **STATE BANK OF INDIA v. AJAY KUMAR SOOD, (2023) 7 SCC 282**

Judgment : Reasoning the Soul

- “A judgment is a manifestation of reason. The reasons provide the basis of the view which the decision maker has espoused, of the balances which have been drawn. That is why reasons are crucial to the legitimacy of a judge's work. They provide an insight into judicial analysis, explaining to the reader why what is written has been written. The reasons, as much as the final conclusion, are open to scrutiny.”

STATE BANK OF INDIA v. AJAY KUMAR SOOD, (2023) 7 SCC 282

Judgment-Preparation

- The process of structuring judgment pre-supposes a deep thinking on the part of the Judge not only about the **central issue** of the case but also about various **collateral points** which the judge must address before coming to the central issue.
- It also involves **legal research on legal issues** of the case.
- It may be quite useful to prepare a **brief synopsis** containing various points to be dealt with in the judgment and their logical order .

Key Principles of Judgment Writing :

- **Simple and clear Language for Accessibility:** The language should be straightforward and jargon-free understandable to both legal professionals and an ordinary person.
- **Precise Terminology:** Using accurate and specific terms minimizes ambiguity, helping readers grasp the judgment's intent.
- **Logical Structure & Flow :** Organizing content logically aids in presenting a clear line of reasoning that guides the reader through complex legal issues. Each section should connect seamlessly, building a coherent narrative from introduction to conclusion.
- **Connecting Legal Arguments Clearly:** Relating facts to legal principles in a logical sequence strengthens the persuasiveness of the judgment.

Simple and clear Language for Accessibility

- **A para from a judgment of a High Court-an example of complexity and inaccessibility-**

“5. The learned Tribunal, had, upon consideration, of evidence adduced, vis-a-vis, charges No. 2, 3, 4, 5, 6, 7, 8 and 9, hence concluded, qua theirs, not therethrough, becoming proven, rather it made a conclusion, vis-a-vis, their being lack, of, cogent evidence, or their being want, of, adduction, of, cogent evidence, qua therewith, by the employer, and, obviously, returned thereon(s) finding(s), adversarial, to the employer. Consequently, hence the appraisal, of, evidence, adduced by the department/employer, vis-a-vis, the afore charges, does not, merit any interference, as reading(s) thereof, obviously, unfold qua the appraisal, of, evidence, adduced, vis-a-vis, the afore drawn charges, hence by the learned Tribunal, hence not, suffering from any gross mis-appraisal thereof, nor from any stain, of, non-appraisal, of, germane evidence, hence adduced qua therewith, by the department/employer.”

Simple and clear Language for Accessibility

“9. The judgmentis incomprehensible. This Court in appeal found it difficult to navigate through the maze of incomprehensible language in the decision of the High Court. A litigant for whom the judgment is primarily meant would be placed in an even more difficult position. Untrained in the law, the litigant is confronted with language which is not heard, written or spoken in contemporary expression.”

- **The Supreme Court of India**

Clarity and Coherence in Narration for Enhanced Communicability- Few examples

- **Before (With Jargon):** “The defendant shall be apprised of the requisite legal ramifications ensuing from the breach of statutory obligations.”
- **After (Clear Language):** “The defendant will be informed of the legal consequences that result from breaking the law.”:
- **Before (Complex Sentence):** “It is incumbent upon the plaintiff to demonstrate, beyond a reasonable doubt, that the alleged acts of negligence are attributable to the defendant and have consequently resulted in substantial harm to him.”
- **After (Clear Language):** “The plaintiff must prove that the defendant’s negligence caused significant harm to him.”

Ensuring Brevity: Saying More with Less

- **Eliminating Redundancies:** Avoid repetitive language or unnecessary details that can detract from the main points.
- **Focusing on Key Issues:** Streamlining the judgment to cover only relevant facts and arguments keeps the reader focused on the essential elements.
- **Concise Language:** Using concise language allows the judgment to be both impactful and efficient, enhancing readability and comprehension.

Appreciation of Evidence: Objective Analysis

- **Objectivity:** Objectivity in a judgment is the idea that a judge should reach a decision based on an intellectual process that's **free from personal bias and values.**

Justice Benjamin N. Cardozo in his Book "*Nature of the Judicial Process*" has remarked that-

- ‘My duty as a Judge must be to objectify the law, not my own aspirations, convictions and philosophies, but those of men and women of my time.’

Objectivity vs. Subjectivity

- **Objective Judgment:**--"This restaurant serves dishes that meet health standards laid down by municipal laws and is licensed by the local food safety authority. The average wait time for a meal is 15 minutes, and prices fall within the mid-range for this area. The restaurant has a 4.5-star rating from over 1,000 reviews on popular review sites."-- **This is objective because it relies on verifiable facts like licensing, average wait times, price comparisons, and a rating backed by a large sample size.**
- **Subjective Judgment:**--"I found the food at this restaurant quite ordinary, and the ambiance didn't feel welcoming. The wait felt longer than expected, and I don't think the prices matched the quality of the experience. Overall, it didn't live up to the hype."-----**This is subjective because it reflects personal impressions and preferences, which vary from person to person.**

Gender Sensitivity in Judicial Decisions

- **Promoting Equality and Fair Treatment:** Gender sensitivity in judgments ensures that **decisions do not reinforce stereotypes or bias.**
- **Recognizing Gender-Specific Experiences:** Acknowledging that certain legal issues, like domestic violence or workplace discrimination, **may disproportionately affect one gender.**
- **Avoiding Stereotypical Language:** Judgments should avoid language that reinforces gender biases, striving for neutral and respectful terminology.

Gender Sensitivity in Judicial Decisions

- **Recognizing Implicit Bias:** Awareness of unconscious biases that may impact judgment and striving to mitigate them.
- **Avoiding Stereotypes in Reasoning:** Steering clear of assumptions based on gender, such as stereotypes about roles, behaviour, or credibility.
- **Equal Consideration in Remedies and Relief:** Ensuring that remedies do not perpetuate inequality, e.g., considering the unique impact of the decision on individuals of different genders

Gender Stereotype : Example

"As a mother, it is expected that the petitioner would prioritize the nurturing and caregiving responsibilities for her children, making her more suited for custody than the father, who is primarily focused on his career."

- **Assumes traditional gender roles:**, reinforcing the stereotype that women are more "nurturing" and men are more "career-oriented."
- **Ignores individual circumstances:** It fails to consider each parent's unique caregiving abilities, involvement, or personal situation.
- **Creates a biased framework for decision-making:** Such language can influence custody outcomes based on gender stereotypes rather than objective assessments of each parent's suitability.

Gender-Sensitive and Inclusive Language-An Example

- An example of gender-sensitive and inclusive language in a judgment related to a custody case:
- "In assessing the best interests of the child, the court has carefully considered the caregiving roles, emotional bonds, and availability of each parent, regardless of gender. Both parties have demonstrated a commitment to their child's well-being, and the court's decision reflects each parent's unique contributions and abilities."

Gender Sensitivity: Language Reflecting Societal Changes and Legal Developments:

- Example:
- "The court recognizes that parenting roles are no longer defined strictly by traditional gender norms .The court respects the importance of shared parenting responsibilities in today's diverse family structures. This court is also conscious of the fact that nurturing , caring and supporting a child are roles that any parent, regardless of gender, can fulfil with equal competence and commitment."

Presidents : Use of

"Precedents, when aptly applied, serve as the skeletal framework of justice; but **judicial wisdom must provide the flesh and blood.**"

While precedents provide a foundation, the judge must remain vigilant to ensure justice is served in the context of each unique case."

Justice Benjamin Cardozo

Timeliness & Impact of Delay

- An unreasonable delay between the hearing of arguments and delivery of judgment, unless explained by exceptional or extraordinary circumstances, is highly undesirable.
- It is not unlikely that some points which the litigant considered important might escape the notice of the court due to delay.
- But, what is more important is that litigants must have complete confidence in the result of litigation. This confidence tends to be shaken if there is excessive delay between hearing of arguments and delivery of judgments.

S.C. in R. C. Sharma v. Union of India, AIR 1976 SC 2037

Thanks