

JUDGMENT WRITING

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Writing a judgment is a fundamental judicial task that involves delivering a reasoned decision on a legal dispute. A well-written judgment not only resolves the case at hand but also contributes to the development of the law and fosters public confidence in the judicial process. A typical judgment begins with an introduction that outlines the nature of the case, the parties involved, and the key issues. This is followed by a summary of the relevant facts and the evidence presented. The judge then identifies the applicable laws and precedents, analyzes the legal arguments made by both sides, and applies the law to the facts.

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. **Hon'ble Mr. Justice M.M. Corbett, Former Chief Justice of the Supreme Court of South Africa**, recommended a basic structural form for judgment writing:

- (i) Introduction section:
- (ii) Setting out of the facts:
- (iii) The law and the issues:
- (iv) Applying the law to the facts:
- (v) Determining the relief; including costs;
- (vi) Finally, the order of the Court.

In **Halsbury's Laws of England, (4th Edition, Volume 26 P. 260)**, it has been said, "A judgment or order in its final shape usually contains in addition to formal parts:—

- A preliminary or introductory part, showing the form of the application upon which it was made, the manner in which and the place at which, the writ or other originating process was served, the parties appearing

any consent, waivers, undertakings or admissions given or made, so placed as to indicate whether they relate to the whole judgment or order or only part of it, and a reference to the evidence upon which the judgment or order is based and

- a substantive or mandatory part, containing the order made by the court.”

A judgment pronounced on the bench, regarded as an intellectual product, stands in a class by itself. The judge speaks with authority and what he says should therefore, be spoken with befitting dignity. He should not affect grandiloquence but he should be impressive. The strength of a judgment lies in its reasoning and it should therefore be convincing. Clarity of exposition is always essential. Dignity, convincingness and clarity are exacting requirements but they are subservient to what, after all, is the main object of a judgment, which is not only to do but to seem to do justice. In addition to these cardinal qualities of a good judgment there are the attributes of style, elegance and happy phrasing which are its embellishments. (**Hon. Lord Macmillan P.C.,K.C.V.O. The Writing of Judgments**).

The writing of a judgment is one of the most important and time-consuming tasks performed by a Judge. The writing of a judgment and the style in which it is written, varies from Judge to Judge and reflects the characteristic and conscience of a Judge. Every Judge, of every rank has his own style of writing judgment. A judgment is not written only for the benefit of the parties, but also for the members of legal profession, appraisal of the appellate court and for the society at large. A well written judgment upholds the intellectual integrity and impartiality of the judicial system.

Plain and simple language is to be 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, and unnecessary quotations. A judgment should not contain any harsh comments, and sarcasm.

The Judge must narrate the facts explicitly, precisely, and consciously. 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. The facts-narrating paragraph/s must answer the questions as to how, when, where, what and why the case has been come up before the court.

In Shakuntala Shukla Vs. State of Uttar Pradesh AIR 2021 SUPREME COURT 4384

The Hon'ble Supreme Court, observed :

“Judgment” means a judicial opinion which tells the story of the case; what the case is about; how the court is resolving the case and why. “Judgment” is defined as any decision given by a court on a question or questions or issue between the parties to a proceeding properly before court. It is also defined as the decision or the sentence of a court in a legal proceeding along with the reasoning of a judge which leads him to his decision. The term “judgment” is loosely used as judicial opinion or decision. Roslyn Atkinson, J., Supreme Court of Queensland, in her speech once stated that there are four purposes for any judgment that is written:

- i) to spell out judges own thoughts;
- ii) to explain your decision to the parties;
- iii) to communicate the reasons for the decision to the public; and
- iv) to provide reasons for an appeal court to consider.

The Hon'ble Supreme Court of India in **State Bank of India Vs Ajay Kumar Sood Civil Appeal No 5305 of 2022 (Arising out of SLP (C) No 4038 of 2021) dated 16.08.2022 through Hon'ble Justice D.Y.Chandrachud** observed as under :

The purpose of judicial writing is not to confuse or confound the reader behind the veneer of complex language. The judge must write to provide an easy-to-understand analysis of the issues of law and fact which arise for decision. Judgments are primarily meant for those whose cases are decided by judges. Judgments of the High Courts and the Supreme Court also serve as precedents to guide future benches. A judgment must make sense to those whose lives and affairs are affected by the outcome of the case. While a judgment is read by those as well who have training in the law, they do not represent the entire universe of discourse. Confidence in the judicial process is predicated on the trust which its written word generates. If the meaning of the written word is lost in language, the ability of the adjudicator to retain the trust of the reader is severely eroded.

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.

Thereafter, relevant and admissible portion of the evidence is to be narrated briefly giving the purpose for such evidence was led. The documents and exhibits admitted in evidence are to be referred along with oral evidence by which they were proved.

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 the frivolous in nature, should be mentioned.

While deciding an issue or a charge, the relevant evidence must be discussed. There may be cases where there are lengthy pleadings, scores of witnesses, voluminous documents and elaborate arguments. A judge is therefore, not only expected to remember the facts but also the law on the subject and the precedents which are placed before the Court. To make the task easy for rendering a judgment, a judge should maintain a minute note book or a note pad to jot down points during the course of hearing.

While rendering judgments in criminal cases, the following are to be observed as required under Section 354 Cr.PC. The judgment should contain the point(s) for determination, the decision and the reasons for the decision, the Section of IPC or other law under which the accused is to be convicted or acquitted, and punishments to which he/ she is sentenced (on conviction). The judgment should also indicate: (1) whether the sentence is to run concurrently or consecutively; (2) whether the accused is entitled for set-off or not; the period of detention, if any, undergone by him/ her as under trial (Sec. 427 and 428 Cr.PC). In case of acquittal, the Judge should state the offence of which the accused is acquitted and direct that he/ she be set at liberty.

A Judge must clearly write the operative portion of the judgment, which pronounces his conclusion over the issues brought before the court. The judge should give clear and precise direction and the way the directions must be obeyed in conformity with the prayers made in the pleadings. The operative portion of the order should as far as possible be self-executing and self-contained.

It is always better to maintain a check list of the things to be mentioned in a conviction judgment so that the crucial aspects of the result portion of the judgment should not be missed. The trial court judges, particularly the junior judges, shall take care in giving finding on each charge separately and in case of conviction care should be taken to impose sentence on each charge / section distinctly. Care to be taken in some special cases such as offences against women and children etc., to see that all the mandatory provisions of such offences are to be complied with. It is to be kept in mind that the name of the victim should not be disclosed / displayed in part of the judgment. Further the judges should keep in mind the aspect of granting of compensation in all appropriate cases as per Section 357 Cr.P.C. which corresponds to Section 395 of BNSS. While writing the result portion of the criminal case the judge should go through the provisions of Chapter XXVII of Cr.P.C. and now Chapter XXIX of BNSS, so that no essential element is missing. Care should be taken in respect of final disposal of case properties as per Chapter XXXIV of Cr.P.C. which corresponds to Chapter XXXVI of BNSS.

A Judge may not be free from partiality and bias. There may be a lurking or sub-conscious bias, which may not be known to the Judge him/herself. Such bias may have arisen because any factor, which ordinarily affects the life of the human being. But, the Judge should identify such bias and should win over it. The best way to overcome the judgment to be affected by such outside and unknown factors is to follow logical reasoning. Judgment should be concise, lucid and clear. The worst judgment is the one in which neither the result is just nor can it be understood by anyone. A better one, is

the one, which at least can be understood by others though the result is wrong. Of course the best judgment is, when the result is just and everyone can easily understand it.

The Right Hon. Lord Wright of Durley in his Legal Essays and Addresses." (1939) Cambridge University Press. XXXV and 442 pp (15s. Net.) mentioned the following basic rules to be kept in mind while writing a judgment:

- (a) Reasoning should be intelligible and logical.
- (b) Clarity and precision should be the goal. Prolivity and verbosity should be avoided. At the same time, brevity to an extent where reasoning is the casualty should be avoided.
- (c) Use of strange and difficult words and complex sentences should be avoided. The purpose of a judgment is not to showcase the Judge's knowledge of language, or legal erudition, but to decide disputes in a competent manner, and state the law in clear terms.
- (d) A judge cannot use his personal knowledge of facts in a judgment.
- (e) If a judge wants to rely on precedents or decisions unearthed by the Judge by his own research, he has to give an opportunity to the parties to comment upon or distinguish the same.
- (f) In civil matters, the judgment should not travel beyond the pleadings or the issues. Recording findings on issues or matters which are unnecessary for disposal of the matter should be resisted.
- (g) Findings of fact should be based upon legal testimony. The decision should rest upon legal grounds. Neither findings of fact nor the decision should be based upon suspicion, surmises or conjectures.

(h) All conclusions should be supported by reasons duly recorded. The exceptions are where an action is undefended or where the parties are not at issue, or where proceedings are summary or interlocutory or formal in nature.

(i) The findings and directions should be precise and specific.

(j) A judge should avoid use of disparaging and derogatory remarks against any person or authority whose conduct arises for consideration. Even when commenting on the conduct of the parties or witnesses, a judge should be careful to use sober and restrained language. It should be remembered that the judge making the remark is also fallible.

(k) While exercising appellate or revisional jurisdiction, unnecessary criticism of the trial court's conduct, judgment or reasoning should be avoided.

(l) Before making any adverse remarks, court should consider: (i) whether the party or the person whose conduct is being discussed has an opportunity of explaining or defending himself against such remarks; (ii) whether there is evidence on record bearing on the conduct justifying the remark; (iii) whether it is necessary to comment or criticize or censure the conduct or action of the person, for decision of the case.

The Brevity :

Brevity is the virtue of a wise man and is familiarized by those, who have clarity in mind. Usually readers do not like to read long and verbose judgments. The judgment must be designed and structured so that readers find their way through it easily and quickly. It is necessary to recheck and revise the judgment.

Reasoning : "Ces-sante Ratione Legis Cessat Ipsa Lex" which means "Reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself." -- Broom's Legal Maxims (1939 Edition, page 97). In the words of Chief Justice Sabyasachi Mukharji, "The supreme requirement of a good judgment is reason. Judgment is of value on the

strength of its reasons. The weight of a judgment, its binding character or its persuasive character depends on the presentation and articulation of reasons. Reason, therefore, is the soul and spirit of a good judgment.”

Provisions of Law which say about mentioning of the reasons: Order XX of the Code of Civil Procedure deals with “Judgment and Decree”. Order XX 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 a concise statement of the case, the points for determination, the decision thereon, and **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 of, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

In criminal matters, Chapter XXVII of the Code of Criminal Procedure provides for ‘the Judgment’. The judgment as provided in Section 354, is to be written in the language of the Court, and shall contain the point or points for determination, the decision thereon and **the reasons** for the decision. In case of conviction for an offence punishable with death or in the alternative with imprisonment for life, the judgment has to state the **reasons for sentence awarded** and **special reasons for death sentence**. In almost all provisions of procedural law where discretion is given to court by using the words such as “**if it appears to the court**” reasons are required to be written.

Significance of mentioning reasons: Justice is not only done, but is seen to be manifestly done”. Transparency is essential part the judicial system. We communicate to the public through the judgments that we write. In order to communicate, a judgment must be clear, precise, and say everything that needs to be said as to why a decision was reached. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial power. A pretense of reasons or ‘rubber-stamp reasons’ is not to be equated with a valid decision making process. It is not a sufficient reasoning just to use

the phrase: “having seen all facts and the law the court decides...” 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.

Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence.

The winner may not have much interest in knowing the reasons for success, as he won the case. The loser, 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. A judgment without a reason would make it impossible to file a well-founded appeal against the judgment. Therefore, the right to appeal includes the right to know the reasons of a judgment.

The Hon’ble Supreme Court in **M/S Kranti Asso. Pvt. Ltd. & Anr. vs Masood Ahmed Khan & Ors., 2011 (2) ALD(SC) 54** has highlighted the importance of giving reasons while passing a judgment and held:

“A litigant has a legitimate expectation of knowing reasons for rejection of his claim/prayer. It is then alone, that a party would be in a position to challenge the order on appropriate grounds. Besides, this would be for the benefit of the higher or the appellate court. As arguments bring things hidden and obscure to the light of reasons, reasoned judgment where the law and factual matrix of the case is discussed, provides lucidity and foundation for conclusions or exercise of judicial discretion by the courts. Reason is the very life of law. When the reason of a law once ceases, the law itself generally ceases (Wharton’s Law Lexicon).”

Recording of reasons in support of a decision on a disputed claim ensures that the decision is not a result of caprice, whim or fancy but was arrived at after

considering the relevant law and that the decision was just (**M/s. Mahabir Prasad Santosh Kumar vs. State of U.P and others, AIR 1970 SC 1302**).

Hon'ble Supreme Court in **Joint Commissioner of Income Tax, Surat vs Saheli Leasing and Industries Ltd. 2010 AIR SCW 3167** laid certain guidelines in respect of writing a judgment:

"We, therefore, before proceeding to decide the matter on merits, once again would like to reiterate few guidelines for the Courts, while writing orders and judgments to follow the same. These guidelines are only illustrative in nature, not exhaustive and can further be elaborated looking to the need and requirement of a given case :-

a) It should always be kept in mind that nothing should be written in the judgment/order, which may not be germane to the facts of the case; it should have a co-relation with the applicable law and facts. The ratio decidendi should be clearly spelt out from the judgment/order.

b) After preparing the draft, it is necessary to go through the same to find out, if anything, essential to be mentioned, has escaped discussion.

c) The ultimate finished judgment/order should have sustained chronology, regard being had to the concept that it has readable, continued interest and one does not feel like parting or leaving it in the midway. To elaborate, it should have flow and perfect sequence of events, which would continue to generate interest in the reader.

d) Appropriate care should be taken not to load it with all legal knowledge on the subject as citation of too many judgments creates more confusion rather than clarity. The foremost requirement is that leading judgments should be mentioned and the evolution that has taken place ever since the same were pronounced and thereafter, latest judgment, in which all previous judgments have been considered, should be mentioned. While writing judgment,

psychology of the reader has also to be borne in mind, for the perception on that score is imperative.

e) Language should not be rhetoric and should not reflect a contrived effort on the part of the author.

f) After arguments are concluded, an endeavour should be made to pronounce the judgment at the earliest and in any case not beyond a period of three months. Keeping it pending for long time, sends a wrong signal to the litigants and the society.

g) It should be avoided to give instances, which are likely to cause public agitation or to a particular society. Nothing should be reflected in the same which may hurt the feelings or emotions of any individual or society.

Conclusion :

In conclusion, judgment writing is both an art and a discipline that lies at the heart of judicial responsibility. A well-crafted judgment reflects the judge's understanding of the law, fairness in evaluating facts, and clarity in reasoning. It serves not only to resolve the dispute before the court but also to provide guidance for future cases and uphold public trust in the legal system. By ensuring transparency, coherence, and adherence to legal principles, judges contribute to the integrity and effectiveness of the justice delivery system.