

Judgement Writing Tools

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What is a judgement

- The word 'Judgement' is of general import and means judicial determination of a court.
- This determination by the court is the declaration of rights to be recognized, and the remedies to be awarded to the parties, upon facts found by the court or admitted by the parties in course of proceedings instituted for the redress of a legal injury.
- The static definition of judgement in CPC defines it as: "judgement means the statement given by the Judge of the grounds of a decree or order" (S. 2(9)).
- Unlike the CPC, CrPC does not define 'Judgement'.
- In the context of criminal law, Chapter 27 of CrPC prescribes various standards for the judgement, including that it should be pronounced in open court (S. 353) and that it should be in language of the court (S. 354).
- However, a statute cannot explain the thought process of a human being by which we are required to be engaged in the process of writing a judgement.
- Therefore, it is necessary to identify the tools that may be relevant for writing a good judgement.

A brief overview

Art rather than a science

- Judgement writing is more of an art rather than a science. Like every art form, it depends on the subjectivity and individual style of the creator, i.e., the judge in the present context. However, despite of the subjectivity in judgement writing, there are well-recognized objective standards that must be followed to make a judgment achieve its purpose.
- Judgement writing is akin to fiction writing. Similar to fiction, the narrative of judgement should keep the reader engaged and eager to know what comes next in the judgement.
- While writing judgement, take the vantage point of how you would begin if you were telling a neighbour or a friend about the case.
- The factual narration in the judgement should be so interesting that even a person who does not belong to the field of law, can understand it, and compare you with a professional story teller.

Fundamental principles of Judgement Writing

Principles suggested by SC cases

CIT v. Saheli Leasing & Industries Ltd., (2010) 6 SCC 384 (Para 5)

- Nothing should be written in the judgment, which may not be germane to the facts of the case.
- The ratio decidendi should be clearly spelt out from the judgment.
- After preparing the draft, it is necessary to go through the same to find out if anything important has escaped discussion.
- The ultimate finished judgment should have sustained chronology. It should have flow and perfect sequence of events, which would continue to generate interest in the reader.
- Citation of too many judgments creates more confusion rather than clarity. One should only mention leading judgments, the evolution that has taken place ever since the same were pronounced, and thereafter, latest judgment, in which all previous judgments have been considered.
- Language should not be rhetoric and should not reflect a contrived effort on the part of the author.

Board of Trustees of Martyrs Memorial Trust v. Union of India, (2012) 10 SCC 734 (Para 22)

- Brevity is a virtue in judgment writing.
- What is required of any judicial decision is due application of mind, clarity of reasoning and focused consideration.
- A slipshod consideration or cryptic order or decision without due reflection on the issues raised in a matter may render such decision unsustainable.
- Hasty adjudication must be avoided. Each and every matter that comes to the court must be examined with the seriousness it deserves.

Fundamental principles of Judgement Writing

Principles suggested by SC cases (cont.)

Union of India v. Jai Prakash Singh, (2007) 10 SCC 712 (Para 7)

- Reasons introduce clarity in an order which indicate application of mind. Reasoning substitutes subjectivity with objectivity.
- Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.
- Reasons are all the more necessary when an order is amenable to further avenue of challenge. Absence of reasons renders it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision.
- Another rationale of a reasoned order is that the affected party can know why the decision has gone against him.

Structure of legal analysis in a judgement

- A judgement contains several aspects:
 - Overview of relevant facts;
 - Succinct statement of issues;
 - Position of parties on each issue and a composite fact narrative which is directly relevant for taking the final view;
 - Any other point of analysis that, if omitted, would create a good ground in favor of the party to agitate in appeal;
 - Evidence on material facts;
 - Reference to law/rules/regulations/policies/any other relevant factor on which you are inclined to rely upon in the judgement; and
 - Case laws.
- Hence, for being coherent, it is important for the judgement to have a structure.
- FIRAC method: Facts, Issue, Rule, Analysis, and Conclusion.

Facts

- Identifying material facts is important because ratio decidendi of a case is the material facts of the case plus the ruling of the court.
- 6 important questions
 - what (i.e., the factual genesis of dispute),
 - who (i.e., the parties involved and the allied facts relevant for the question of locus standi),
 - where (i.e., the place of dispute, which might be relevant for questions regarding jurisdiction),
 - when (i.e., the timeline of dispute and approaching the court, which would be relevant from the standpoint of limitation law),
 - why, and how (which are more particularly relevant in criminal cases for gauging the motive and methodology of crime)
- Facts that should be left out for brevity:
 - (a) details that are irrelevant to the outcome;
 - (b) formal findings that are not disputed.

Issues

- As per Order 20 Rule 5 of the CPC:

“Court to state its decision on each issue—In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issue is sufficient for the decision of the suit.”

- However, this rule should generally be followed in all kinds of cases. Advantages:

- Ensures that every aspect is given due attention

- Different issues may have different standards (i.e., ex facie, prima facie, preponderance of probability, and beyond reasonable doubt). Demarcation ensures proper standard is met.

- Issue-wise heading helps the reader to understand long judgements.

- Material issues such as the following shall be laid out first:

- Questions on expiry of limitation period;

- Jurisdiction of the court; and

- Locus Standii of the Parties, etc.

- The issues shall be arranged in a logical chain, where each issue is dependant on the other for its viability and analysis.
- If the issues are completely independent of each other, then we may arrange such issues chronologically
- Questions of law and questions of fact should be identified separately, since the appellate court might be constrained from deciding the questions of fact again
- The analysis of each issue should be self contained like stanza in a poem.

Statute / Rules

- The judgement should then mention the relevant statute/rules that apply to the situation.
 - Binding precedents must be followed.
 - In case there are more than one statute/rules, the reasons to follow one set of statute/rules and also the reason not to follow the others should be assigned.
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Analysis

- Since “easy” cases are either settled outside court or disposed of in early stages, only “hard” cases reach stage of judgement. Hence, analysis is very important.
- Opposite Party ‘s Position (OPP)/Flaw in Opposing Party’s Position (FLOPP) approach: .
 - First, you should provide impartial assessment of the position taken by the party against whom you are deciding, as if you are representing that party. Then, you should identify the flaw in the position of the losing party with surgical detachment.
 - Apart from ensuring that the judgement covers all the vital points, this will also ensure that if the judgement is challenged in a higher forum, that court will know what contentions were raised before the lower court and what are the new grounds taken by the aggrieved party.
- Each issue must be analyzed separately. Analysis of each issue must be self-contained.
- Provide case-specific sub-headings under each issue to create a proper roadmap.
- In Analysis, you should ensure that all the settled principles of law are considered. For instance, while sentencing the accused, the court shall consider the principle of proportionality and give sentence based on gravity of offence. Further, court must consider other facts such as modus of crime, role of accused, age, gender, economic status and social conditions of the accused, possibility of reformation, etc.

Conclusion of the Judgement

- Conclusion should play a different role than a mere summary. While summary is the concise view of all the points, the conclusion binds all the arguments together and states the final outcome of the case.
 - Brevity is essential in conclusion.
 - Conclusion exceeding one page is likely to seem like a new argument.
 - Review the entire judgement once it is complete.
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Language of the Judgement

- The language should be as simple as possible.
- Write plain English which enables the parties to understand the contents and subjects.
- You should read your draft from the perspective of a person who has no legal background, and circle those words and phrases which could not be understood. That is the benchmark to improve the use of plain language.
- Concentrate on punctuation and grammar as they are invisible elements of art of judgement writing.
- Since one of the important stakeholders of judgement are also the parties, brevity and simplicity is the key.

Language of the Judgement (cont.)

- The reasoning should be unequivocal, logical, coherent, and systematically organized.
- Sentences in the judgement should not be very long and complicated.
- Prefer the active voice.
- Avoid double/triple negatives. For instance, avoid lines like: "It cannot be said that I do not disagree with parties".
- Paraphrase large paragraphs and avoid block quotations.
- Avoid emotionally charged language.
- Don't add separate sentences with commas.
- Use definite, specific, concrete language.
- Do not overstate: "if something goes without saying, let it go unsaid".
- Avoid such verbs which might create doubt on the facts quoted.

Examples of lucid language in judgement

Hinz v. Berry (1970) 2 QB 40 (pg. 42)

In this case, Lord Denning gives a very lucid and simple narration of the entire factual scenario:

“It happened on April 19, 1964. It was bluebell time in Kent. Mr. and Mrs. Hinz had been married some 10 years, and they had four children, all aged nine and under. The youngest was one. Mrs. Hinz was a remarkable woman. In addition to her own four, she was foster-mother to four other children. To add to it, she was two months pregnant with her fifth child.

On this day they drove out in a Bedford Dormobile van from Tonbridge to Canvey Island. They took all eight children with them. As they were coming back they turned into a lay-by at Thurnham to have a picnic tea. The husband, Mr. Hinz, was at the back of the Dormobile making the tea. Mrs. Hinz had taken Stephanie, her third child, aged three, across the road to pick bluebells on the opposite side. There came along a Jaguar car driven by Mr. Berry, out of control. A tyre had burst. The Jaguar rushed into this lay-by and crashed into Mr. Hinz and the children. Mr. Hinz was frightfully injured and died a little later. Nearly all the children were hurt. Blood was streaming from their heads. Mrs. Hinz, hearing the crash, turned round and saw this disaster. She ran across the road and did all she could. Her husband was beyond recall. But the children recovered.”

Examples of lucid language in judgement

State of W.B. v. Anwar Ali Sarkar, (1952) 1 SCC 1 (Para 45)

In this case, Justice Vivian Bose used very simple and easy language to discuss the complex question of meaning of equality in the Indian constitution:

“Then, again, what does “equality” mean? All men are not alike. Some are rich and some are poor. Some by the mere accident of birth inherit riches, others are born to poverty. There are differences in social standing and economic status. High sounding phrases cannot alter such fundamental facts. It is therefore impossible to apply rules of abstract equality to conditions which predicate inequality from the start; and yet the words have meaning, though in my judgment, their true content is not to be gathered by simply taking the words in one hand and a dictionary in the other, for the provisions of the Constitution are not mathematical formulae which have their essence in mere form. They constitute a framework of the Government written for men of fundamentally differing opinions and written as much for the future as the present. They are not just pages from a textbook but form the means of ordering the life of a progressive people. There is consequently grave danger in endeavouring to confine them in watertight compartments made up of readymade generalisations like classification. I have no doubt those tests serve as a rough and ready guide in some cases but they are not the only tests, nor are they the true tests on a final analysis.”

Brevity in Judgement

An often quoted example for understanding the importance of brevity is the following holding by Lord Diplock (in *Freeman & Lockyer (A Firm) v. Buckhurst Park Properties (Mangal) Ltd*, (1964) 2 QB 460:

“An "apparent" or "ostensible" authority...is a legal relationship between the principal and the contractor created by a representation, made by the principal to the contractor, intended to be and in fact acted upon by the contractor, that the agent has authority to enter on behalf of the principal into a contract of a kind within the scope of the "apparent" authority, so as to render the principal liable to perform any obligations imposed upon him by such contract.”

Instead of this, the idea can be captured briefly as:

A person is not liable for the acts of another person, unless he/she himself holds out that he/she is so bound. In doing so, he/she is said to grant apparent/ostensible authority.

What should a judgement avoid for brevity

- Redundant synonyms of words. For e.g., instead of saying “null and void” say “void” .
- Such facts which are not likely to influence your ruling.
- Extensive quotation of statutes/rules/precedents if that could be paraphrased.
- Repetition of case law on the same point.
- Dates and details on which nothing turns and which do not influence the ruling.
- Repetition of facts.
- Words with overlapping meaning in a sentence. For e.g., instead of saying “On appeal, appellant argues that...” say “Appellant argues that”

Sensitivity and fairness in judgement

- The judgements should use such language that is sensitive to all sections and inspires public confidence.
- Judge must ask the 'woman question', i.e., we must analyze the gender implications of rules and practices that might appear normal or neutral.
- Feminist legal method in judgement writing
 - Vocabulary used in the judgement is sensitive and is not objectifying or belittling the women
 - Inclusive and gender-neutral language that acknowledges women and their diverse experiences.
 - SC Handbook on Combating Gender Stereotypes
 - Recognizes that *"words are the vehicle through which the values of the law are communicated"* and that *"stereotypical language may reinforce ideas contrary to our constitutional ethos"*
 - Judgement must not be very quick to pass any moral value judgement. Moral judgements and comments are usually grounded in the prevailing social norms, which have been prejudicial against the freedom of women.
 - Hence, for instance, the courts must not pass value judgements on the victims in rape cases and attribute blame to them.
- The same principle, i.e., being cognizant of the effect of the form and substance of the judgement on women, should also be extended to other social groups.
- Our society suffers from chronic inequalities and injustices, and the language of the judgements hold immense power.

Objectivity in judgement

- “Never did two men make the same judgment of the same thing” - Michel de Montaigne’s essay on “Of Experience”
- What does it mean to have a judgement that is objective? If judgements were to be objective, why would different judges reach different conclusion for the same question of law?
- Owen Fiss: legal interpretation is an intersection of objectivity and subjectivity, where after following the same objective rules of adjudication, judges can reach their different subjective outcomes.
- Hence, what objectivity requires is following the established norms of say purposive interpretation (such as understanding the legislative history, paying attention to the text of the statute, etc.), and what subjectivity allows is one’s own conclusion after following these norms.
- This entails two aspects: one, that the judgement should be fair and should not be biased; and second, it should follow the due procedure of law.
- While being in the chair of judge, we all must detach ourselves from our ideologies and approach the case in a non-partisan way.
- Further, statutory procedure must be followed. While procedure has been held to be handmaid of justice, violating the procedure flagrantly also leads to unjust outcome. This is all the more true in criminal cases, where, achieving truth and securing rights of the parties require the court to follow the procedure prescribed by the statute.

Conclusion

- Judgment writing is an art that requires the delicate weaving of legal expertise with eloquence, precision, and fairness.
 - The judge must ensure that the structure is proper and coherent. The language must be simple and equitable to all sections of the society. The judgement must not create any doubts regarding biasness and must follow due procedure of law.
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