

If you can't understand a judgement?

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IT

is not every judge who can write a good judgement and judges are rarely taught how to write judgements. Though we have a large number of good judgements, we also have our good share of bad judgements and the ones which we can't simply understand, for the simple reason the good judge is simply incapable of expressing his judicial thoughts in an understandable language.

A judgement should contain four basic elements:

- (i) statement of material (relevant) facts,
- (ii) legal issues or questions,
- (iii) deliberation to reach at the decision and
- (iv) the ratio or conclusive decision.

What is a judgement?

The Supreme Court in *Shakuntala Shukla vs State Of Uttar Pradesh* on 7 September, 2021 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.

It is not adequate that a decision is accurate, it must also be reasonable, logical and easily comprehensible. What the court says, and how it says it, is equally important as what the court decides.

A judgment should be coherent, systematic, and logically organised. It should enable the reader to trace the fact to a logical conclusion on the basis of legal principles.

The judgment replicates the individuality of the judge and therefore it is indispensable that it should be written with care and caution. The reasoning in the judgment should be intelligible and logical. Clarity and precision should be the goal. All conclusions should be supported by reasons duly recorded. The findings and directions should be precise and specific. Writing judgments is an art, though it involves skilful application of law and logic.

The Supreme Court in a recent case in ***State Bank of India Versus Ajay Kumar Sood***

on August 16, 2022, 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.

The Supreme Court observed,

Judgment writing of the genre before us in appeal detracts from the efficacy of the judicial process. 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.

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.

In the earlier ***Shakuntala Shukla*** case, the Supreme Court had observed,

We are conscious of the fact that the judges may be overburdened with the pending cases and the arrears, but at the same time, quality can never be sacrificed for quantity.

Unless judgment is not in a precise manner, it would not have a sweeping impact

. There are some judgments that eventually get overruled because of lack of clarity. Therefore, whenever a judgment is written, it should have clarity on facts; on submissions made on behalf of the rival parties; discussion on law points and thereafter reasoning and thereafter the ultimate conclusion and the findings and thereafter the operative portion of the order. There must be a clarity on the final relief granted. A party to the litigation must know what actually he has got by way of final relief.

We have come across many judgments which lack clarity on facts, reasoning and the findings and many a time it is very difficult to appreciate what the learned judge wants to convey through the judgment.

Are we bothered about the result or the reason?

In the recent ***State Bank of India*** case, the Supreme Court observed,

Amidst an overburdened judicial docket, a view is sometimes voiced that parties are concerned with the outcome and little else. This view proceeds on the basis that parties value the outcome and not the reasoning which constitutes the foundation. This view undervalues the importance of the judicial function and of the reasons which are critical to it.

Each judgment is a brick in the consolidation of the fundamental precepts on which a legal order is based. Courts are as much engaged in the slow yet not so silent process of bringing about a social transformation. How good or deficient they are in that quest is tested by the quality of the reasons as much as by the manner in which the judicial process is structured.

A judgment culminates in a conclusion. But its content represents the basis for the conclusion. A judgment is hence 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. A judgment is written primarily for the parties in a forensic contest. The scrutiny is first and foremost by the person for whom the decision is meant - the conflicting parties before the court. At a secondary level, reasons furnish the basis for challenging a judicial outcome in a higher forum. The validity of the decision is tested by the underlying content and reasons. But there is more. Equally significant is the fact that a judgment speaks to the present and to the future. Judicial outcomes taken singularly or in combination have an impact upon human lives. Hence, a judgment is amenable to wider critique and scrutiny, going beyond the immediate contest in a courtroom. Citizens, researchers and journalists continuously evaluate the work of courts as public institutions committed to governance under law.

Judgment writing is hence a critical instrument in fostering the rule of law and in curbing rule by the law.

Many judgments do decide complex questions of law and of fact. Brevity is an unwitting victim of an overburdened judiciary. It is also becoming a victim of the cut-copy-paste convenience afforded by software developers. This Court has been providing

headings and sub-headings to assist the reader in providing a structured sequence.

It is also useful for all judgments to carry paragraph numbers as it allows for ease of reference and enhances the structure, improving the readability and accessibility of the judgments. A Table of Contents in a longer version assists access to the reader.

The well-renowned **"IRAC"**

method generally followed for analyzing cases and structuring submissions can also benefit judgments when it is complemented by recording the facts and submissions. 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.

Incoherent judgments have a serious impact upon the dignity of our institutions.

Justice M.M. Corbett, Former Chief Justice of the Supreme Court of South Africa, in a lecture at an orientation course for new judges, observed:

Lucidity should be the prime aim of any judgment-writer. At the same time, certain aspects of style have a bearing on lucidity. In this connection, my advice (for what it is worth) is to keep your language and your sentence construction simple. Write in short sentences and do not try to pack too many ideas into a single sentence. Particularly in setting out facts, try to maintain a simple, straightforward flow to your narrative. Try to avoid the repetition of words or phrases and observe the normal rules of grammar.

Brevity, simplicity and clarity. These are the hallmarks of good judgment writing. But the greatest of these is clarity.

Here is an extract from a judgement of the CESTAT:

In view of aforesaid depiction of law and rules of justice, it has become inevitable necessity for the Registry to place the matter before the Hon'ble President of the Tribunal to consider as to whether the larger Bench shall proceed further in the matter or the matter shall revert back to the Division Bench for hearing of the appeal in entirety or any other proposition that the Hon'ble President may consider just and proper in the fitness of the circumstances of the case and pass appropriate order to meet the end of justice.

What a sentence - to meet the **end** of justice!

Until Next week