Rendering Judgments — Some Basics
(Decision-making & Judgment-writing)

by

Justice R.V. Raveendran

Cite as: (2009) 10 SCC J-1
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What is a judgment? In its broader sense, it is defined as the faculty of being able to make critical distinctions and achieve a balanced viewpoint. In law, it refers to the verdict pronounced by a court of law; a judicial determination or decision of a court; an adjudication of rights and obligations; and the reasons in support of an order or a decree. Rendering judgments is deciding the rights and obligations of parties, or the guilt or innocence of an accused, and in many cases, the fate of persons.

The real power of the courts is the trust and confidence of the people. It can be said that the courts and judges have earned the trust and confidence of the people, only when—

- Citizens unhesitatingly and automatically think of courts as providers of legal remedies and solutions whenever they have any complaints, disputes or grievances.
- The conduct of the Judges is above suspicion.
- Every litigant, complainant, accused or the victim is confident that justice will be rendered without fear or favour, irrespective of social, political, or economic status of the parties.
- Justice is not only done, but is seen to be manifestly done.
- Judges render speedy and effective justice in an impartial manner, maintaining exemplary standards of integrity, rectitude and humility.
- The people believe that judgments are rendered by the courts honestly and impartially, after due consideration, purely on the merits of the case.

A Judge renders justice through his decisions. The decision-making culminating in the judgment, is the heart and soul of the judicial process. Good judgments enhance the prestige of the Judge and eventually the prestige of the judiciary. Bad judgments, obviously, have the opposite effect. Therefore, there is a need for the Judges to make a constant and continuous effort to render good judgments. Rendering a judgment involves two processes. The first is arriving at the decision. The second is giving expression to such decision in the form of a written opinion supported by reasons.

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**Decision-making**

Four things belong to a Judge—
to hear courteously; to proceed wisely;
to consider soberly; and to decide impartially ....

Socrates

A good and sound decision is not possible unless the Judge has good and sound qualities—absolute integrity and impartiality, sound knowledge of legal principles, deep understanding of human psychology and society’s problems and needs, keen perception of what is right and wrong, and lastly readiness for hard work—to study and analyse the facts, apply the law and write well-reasoned judgments. Experience, of course, is an additional advantage. That is why Pluto said that knowledge, integrity, experience and wisdom lead to a correct and just decision. Felix Frankfurter, J. added “humility” as a crucial factor for a Judge’s functioning. He described that quality thus:

“... his general attitude towards law, the habits of mind that he has formed or is capable of forming, his capacity for detachment, his temperament or training for putting his passion behind his judgment instead of in front of it. The attitudes and qualities I am groping to characterise are ingredients of what compendiously might be called dominating humility.”

Decision-making is not about writing a judgment. Nor does it begin when a Judge starts hearing final arguments. It pervades every stage of the case — in making interim orders, in framing issues or charges, in allowing or disallowing questions in oral evidence, in admitting or rejecting documents, in hearing arguments, in analysing the material and reaching a decision, and even in granting or refusing adjournments. In short, it is the way the Judge hears, behaves, conducts and decides a case.

I do not propose to deal with the philosophical, ethical or moral aspects of decision-making. Nor do I propose to go into theories and concepts relating to decision-making. For those having the inclination, I would commend—*Nature of the Judicial Process* by Justice Benjamin N. Cardozo, and *A Judge on Judging* by Justice Aharon Barak. It will be impertinent and presumptuous on my part to think that Judges need to be told about the basic concepts of decision-making and judgment-writing. My endeavour is only to remind the Judges, and in that process remind myself, to keep the principles of decision-making and judgment-writing constantly in view so as to render justice and maintain the trust and confidence of the general public.

**Do not treat cases as mere statistics**

Cases are not disposable commodities to be treated as mere statistics. Their purpose is not to provide a livelihood for lawyers or provide monthly disposal quota to Judges. Each case that comes before a Judge, has an element of a human problem concerning the life, liberty, livelihood, family, business, profession, work, shelter, safety and security of the citizen. Many of the litigants belong to the downtrodden and weaker sections of society
who are defenceless, poor and ignorant. Their silent cry for a civilised human solution to their grievances and problems, and for a level playing field is a call for justice, to be felt and heard by the Judge, and never to escape his attention.

Play an active role in rendering justice

There has been much debate on the role of a Judge during the course of a proceeding. A Judge in India does not traditionally take an active or positive part in moulding the shape of a case. The British system, where the Judge is considered to be a neutral umpire who does not participate in the investigation into truth, but merely records the evidence, reads the documents, hears the arguments and then decides the matter on the basis of the record, by weighing who has a better case, is ingrained into the Indian judicial mindset. Of course, in an ideal adversarial litigation, where the parties are “litigation-capable” and are represented by competent lawyers, it may be appropriate for the Judge to merely sit, listen and watch as a neutral umpire. But should that be the Judge’s role when the litigation is between a rich and powerful person on one side and a poor, oppressed and downtrodden person on the other? Or where the litigation is between the mighty State on one side and the ordinary citizen on the other? What should be a Judge’s response when the person who comes knocking at the doors of his court is a woman, child, aged, infirm or disabled, who does not have the resources to fight? Or when an innocent or illiterate tribal who does not know what his rights and obligations are, is pitted against treacherous and scheming land sharks or loan sharks? Should he sit and play the role of a neutral passive umpire when the interests of the socially or economically downtrodden are being destroyed by inept handling, or when he finds that in the trials of the rich and the powerful accused, even the basic evidence is not presented by the prosecution and sabotaging the trial begins from the stage of recording FIR?

The old British concept that a Judge is a neutral passive umpire has undergone a perceptible change. In S.P. Gupta v. Union of India1 Bhagwati, J. (as he then was) found that the British approach was not suited to Indian conditions and attempted to define the role of a Judge thus: (SCC p. 222, para 27)

27. ... Now this approach to the judicial function may be alright for a stable and static society but not for a society pulsating with urges of gender justice, worker justice, minorities justice, dalit justice and equal justice, between chronic unequals. Where the contest is between those who are socially or economically unequal, the judicial process may prove disastrous from the point of view of social justice, if the Judge adopts a merely passive or negative role and does not adopt a positive and creative approach. The judiciary cannot remain a mere bystander or spectator but must become an active participant in the judicial process ready to use law in the service of social justice through a proactive goal-oriented approach. But this cannot be achieved unless we have judicial cadres who share the fighting faith of the

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1 1981 Supp SCC 87.
Constitution and who are imbued with the constitutional values.... What is necessary is to have Judges who are prepared to fashion new tools, forge new methods, innovate new strategies and evolve a new jurisprudence, who are judicial statesmen with a social vision and a creative faculty and who have, above all, a deep sense of commitment to the Constitution with an activist approach and obligation for accountability, not to any party in power nor to the opposition nor to the classes which are vociferous but to the half-hungry millions of India who are continually denied their basic human rights. We need Judges who are alive to the socio-economic realities of Indian life, who are anxious to wipe every tear from every eye, who have faith in the constitutional values and who are ready to use law as an instrument for achieving the constitutional objectives.

More recently, in Zahira Habibulla H. Sheikh v. State of Gujarat\(^2\) the Supreme Court reiterated:

55. ... The court is not merely to act as a tape recorder recording evidence, overlooking the object of trial i.e. to get at the truth. It cannot be oblivious to the active role to be played for which there is not only ample scope, but sufficient powers conferred under the Code. ... (SCC p. 192, para 55)

54. ... When an ordinary citizen makes a grievance against the mighty administration, any indifference, inaction or lethargy shown in protecting his right guaranteed in law will tend to paralyse by such inaction or lethargic action of courts and erode in stages the faith inbuilt in the judicial system ultimately destroying the very justice-delivery system.... (SCC p. 192, para 54)

Every Judge should acquaint himself with the constitutional goals and imbibe constitutional values. He should become an active crusader in the cause of justice and truth. He should provide a level playing field for the weak, downtrodden and disadvantaged. A fair trial, a fair hearing and a fair decision should be his motto.

**Be impartial: Fight against bias, prejudice and pressures**

Cases have to be decided purely on merits. A Judge should remain impartial. He should shun bias or prejudice. He should not be affected by pressures — either external or internal. External pressures are those which lead to bias or prejudice on account of friendship, hostility, enmity, relationship, caste, community, religion, political affiliation, or promised or expected financial benefits. Internal pressures arise on account of a Judge’s ideology or philosophy or attitude. A Judge should not allow these to cloud his judicial impartiality. Many a Judge whose honesty and integrity are not doubted, give room for being branded as Judges with recognised disposition or ideology. Depending on his ideology or leaning, he ends up earning the sobriquet: a “landlord Judge” or a “tenant Judge”; or as a “convicting Judge” or an “acquitting Judge”; or as a “pro-government Judge”, or an “anti-establishment Judge”; or as a “pro-rich Judge” or “pro-poor Judge”; or as a “pro-labour Judge” or a “pro-management Judge”; or as a “relief-

oriented Judge” or a “technical Judge”; or as a “liberal Judge” or a “negative Judge”. Of course each Judge, as a human being, is bound to have convictions, prejudices, notions, philosophies and views which may unconsciously influence and mould his decision and reflect upon the manner in which he administers justice. I may recall Benjamin N. Cardozo’s celebrated passage (Nature of the Judicial Process: p. 12):

“We are reminded by William James in a telling page of his lectures on pragmatism that everyone of us has in truth an underlying philosophy of life, even those of us to whom the names and the notions of philosophy are unknown or anathema. There is in each of us a stream of tendency whether you choose to call it philosophy or not, which gives coherence and direction to thought and action. Judges cannot escape that current any more than other mortals. All their lives, forces which they do not recognise and cannot name, have been tugging at them—inherted instincts, traditional beliefs, acquired convictions; and the resultant is an outlook on life, a conception of social needs, a sense in James’ phrase of ‘the total push and pressure of the cosmos’, which, when reasons are nicely balanced, must determine where choice shall fall. In this mental background, every problem finds its setting. We may try to see things as objectively as we please. Nonetheless, we can never see them with any eyes except our own. To that test they are all brought—a form of pleading or an act of Parliament, the wrongs of paupers or the rights of princes, a village ordinance or a nation’s charter.”

We may as well add at the end of the above statement the words: “or a decision of a Judge”. The following equally celebrated statement of Justice Oliver Wendell Holmes (Common Law, p. 1) made in a different context, can equally be applied to judicial decision-making:

“The life of the law has not been logic: it has been experienced. The felt necessities of the time, the prevalent moral and political theories, intuitions 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.”

But a Judge cannot justify his foibles or leanings by explaining it by saying “that is the way I am” or “that is my nature”. There should be a constant effort and endeavour on his part to identify and eliminate the “pressure” causing factors, to achieve an open and impartial mind. When a Judge ceases to have an open and impartial mind, he ceases to be fair and just. In short, he ceases to be a Judge. When a Judge puts on his judicial robes, he should put off not only friendships, relationships, caste, community, religion, political sympathies, but also put off his prejudices, pet notions, and personal philosophies. He cannot owe any kind of allegiance to anything other than impartiality, truth and justice. Impartiality is a virtue, which is not easy to achieve, acquire or maintain. It requires constant effort and sacrifice.

You may notice that I have not referred to integrity as an independent virtue in this context. That is because, impartiality which we are discussing,
cannot be achieved without integrity. Integrity is one of the building blocks which makes up impartiality. When you emphasise on impartiality, you impliedly emphasise on integrity, perseverance, humility, equanimity, patience and an open mind.

**Apply different methodologies to different types of cases**

Litigation is diverse—civil, criminal, family, commercial, tort, administrative, constitutional, labour, taxation, etc. Judges will have to adopt different approaches for different types of cases. An understanding of human feelings may be necessary in family disputes. Sympathy and compassion may be necessary for dealing with cases relating to victims of catastrophes, accidents or abuse. Logic and common sense may play a crucial part in deciding criminal law. Equity and sympathy may find no place in taxation law. Terms of contract may reign supreme in commercial law, but not in industrial law. The social awareness and public interest may be of great relevance in constitutional and administrative law. Proof beyond reasonable doubt may be necessary in criminal law. Preponderance of probability may be sufficient in civil law. General emphasis may be on putting an end to the lis by adjudication. Encouraging a negotiated settlement and counselling, are obligatory for a Family Court. Having recourse to alternative dispute resolution processes before trial is now a statutory requirement in civil cases. A Judge should develop the appropriate attitude needed for the particular type of case handled by him. Of course, there are some common qualities required for all types of cases—broad familiarity with the law, thorough study of the facts and sound knowledge of procedure.

**Put questions to clarify doubts**

Some Judges are brilliant. Some are experienced. A brilliant or experienced Judge can grasp the issue involved in a case immediately. But all are not brilliant and experienced. Some have encyclopaedic knowledge in all fields of law. Some Judges may have high degree of specialisation in some subjects, but lack exposure in other subjects. Many require detailed arguments and explanations depending upon the extent of their acquaintance with the subject. A little home work by reading the files helps. Undivided attention and concentration in court also helps. But what helps most is seeking clarifications from lawyers during arguments. No Judge should feel embarrassed to put questions to clarify his doubts. When you seek a clarification, you are not showing ignorance. You are showing your commitment to justice and thirst for knowledge. Many have become tongue-tied, when the media and the Bar started interpreting their questions and observations as indications of the trend of decision. It is better to ask questions, understand the issue and then decide rather than attempting a decision without fully grasping the issues or the finer nuances of law involved. The object of your questions and observations, of course, should be to elicit relevant clarifications and not to exhibit your knowledge and learning.

**Remember: hard work and commitment can equal brilliance**

Judges who are quick on the uptake and with sound knowledge of law need not necessarily be better at dispensing justice. Many a time plodding
hard work and patience may yield better results than brilliance. I am not against brilliance. I am only trying to drive home the point that lack of brilliance need not be an impediment for being a good Judge, if he has an open mind, willingness to learn and is ready to read thoroughly the facts and law. Commitment and hard work are good substitutes for brilliance and experience. A Judge can get over inexperience, ignorance and diffidence by developing discipline and thoroughness, self-confidence and humility. While things will become easier with experience, a Judge should be wary of overconfidence which invariably leads to ego, judicial arrogance and errors. A Judge’s function is not to show off his intellectual brilliance and legal erudity, but to do justice.

**Give a patient hearing**

A lawyer, having spent more time on studying the case, would normally know more about the facts and the relevant law than the Judge, at the hearing of a case. Giving a proper hearing enables a Judge to absorb all that is needed to arrive at a proper decision in a short span of time. Even at the stage of interim orders, a Judge should allow the lawyer to have his say, at least briefly. This is all the more necessary, if he intends to reject the interim prayer. Justice should not only be done, but should seem to be done. Counsel should not be denied the satisfaction of having put forth their viewpoints to the Judge. When a counsel feels that the Judge has rejected his case, without understanding the issue, or worse, without bothering to understand the issue, the frustration is high. I am not saying a Judge should give unnecessarily lengthy hearing. But a Judge has to give that minimum hearing which makes the lawyer realise that the Judge has understood the issue.

**Be careful in granting interim orders**

The duty of a Judge is to render justice and not to win popularity. The temptation to gain easy popularity by being liberal in granting admission and interim orders will ultimately damage the credibility of the judiciary as an institution, apart from causing undue hardship and loss to those who are unnecessarily drawn into the litigation or unjustly subjected to the interim order. Please remember that every ex parte interim order is an operative judgment against a party, without hearing so long as it continues to operate. Some Judges have an erroneous perception that in cases against the Government, one can be more liberal in granting interim orders or even final relief as there will be no personal hardship. But what should not be lost sight of, is the fact that while in a private litigation, the sufferer on account of an unwarranted interim or final order may be only an individual, the entire public interest suffers where the interim or final order is against the Government.

**Ensure uniformity and consistency**

Different decisions in similar cases lead to agitation, heartburn and loss of faith. Counsel find it difficult to advise clients as to how they should regulate and conduct their affairs. Public feels confused. Result is chaos.
Decisions and justice should not depend on who the Judge is and what his personal views are, nor should they depend upon who the litigant or lawyer is but on what the law is and what the facts are. A Judge should not only maintain uniformity and consistency in his views and decisions, but also maintain uniformity and consistency with the prevalent view expressed by binding precedents.

Of late, there is a disturbing tendency to ignore or avoid binding precedents. Some distinguish a binding precedent on unsubstantial or trifle reasoning. Some tend to totally avoid, sidestep or ignore a binding precedent. This leads to two different lines of authorities on the very same issue, each failing to acknowledge the other. Such inconsistent views result in uncertainty and confusion.

**Dealing with civil cases**

In civil cases the decision-making process starts from the stage of recording admissions and exercising the power under Section 89 CPC. The Judge plays a significant role in the pre-trial stage (admissions, reference to alternative dispute resolution process, framing of issues, ordering discovery, interrogatories, inspection, etc.) as also during trial (recording evidence and hearing arguments). He is required to expedite the hearing at all stages, without being hasty. As detailed procedural and substantive laws govern virtually every facet of decision-making, a Judge is required to work within the statutory parameters and confine himself to the facts, to the law and the application of law to the facts. There is no place for sympathy. The scope for judicial discretion is limited. Equitable principles apply only in specified circumstances. There is no question of a Judge moulding the law or applying any personal philosophy. There is no question of rendering “justice” contrary to existing law.

**Dealing with criminal cases**

Common sense, logic, respect for moral values and an understanding of human psychology, are necessary for a Judge to render effective justice. The Judge faces several obstacles in arriving at a fair decision. He has to deal with witnesses who are ready to tell the truth outside the precincts of the court, but lie when they step into the witness box; police officers who prefer third degree methods to scientific investigation, to arrive at an “adjusted or extracted truth” instead of real truth; and prosecutors who do not present the evidence properly or leave loopholes for the accused to escape. Apart from defective investigations, slipshod prosecutions, manipulative defences, and false and fabricated cases foisted to settle scores, he has to deal with rich and powerful accused trying their best to delay the trial until all or some of the material witnesses are pressurised, persuaded, purchased or won over, to turn hostile. It is in this difficult terrain that the trial Judges are required to search for the truth and render justice. Sound common sense, perception as to what is right and wrong, and commitment to justice are the tools that
would assist in criminal cases. In *Zahira Habibulla H. Sheikh* the Supreme Court held thus:

18. ... When the investigating agency helps the accused, the witnesses are threatened to depose falsely and the prosecutor acts in a manner as if he was defending the accused, and the court was merely as an onlooker and when there is no fair trial at all, justice becomes the victim. (SCC p. 178, para 18)

53. ... the underlying object which the court must keep in view is the very reason for which the courts exist i.e. to find out the truth and dispense justice impartially and ensure also that the very process of courts are not employed or utilised in a manner which give room to unfairness or lend themselves to be used as instruments of oppression and injustice. (SCC p. 192, para 53)

Section 165 of the Evidence Act provides that the Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he deems fit, in any form, at any time, of any witness, or of the parties, about any fact, relevant or irrelevant; and may order production of any document or thing. Section 311 CrPC empowers a court, at any stage of an inquiry, trial or other proceeding, summon any person as a witness, or examine any person in attendance or recall and re-examine any person already examined. In fact, it casts a duty on the Judge to summon and examine or recall and re-examine any such person if his evidence appears to be essential to the just decision of the case. Every trial being an effort to discover the truth, the Judge should play an active role within the parameters defined by the procedural law.

In *Mohanlal Shamji Soni v. Union of India* referring to Section 165 of the Evidence Act and Section 311 of the Criminal Procedure Code, the Supreme Court stated that the said two sections are complementary to each other and between them, they confer jurisdiction on the Judge to act in aid of justice. Referring to a situation where best available evidence is not brought before the court for one or the other reason by either of the parties, it was observed thus: (SCC p. 277, para 10)

10. In such a situation a question that arises for consideration is whether the Presiding Officer of a court should simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost or is there not any legal duty of his own, independent of the parties, to take an active role in the proceedings in finding the truth and administering justice? It is a well-accepted and settled principle that a court must discharge its statutory functions—whether discretionary or obligatory—according to law in dispensing justice because it is the duty of a court not only to do justice but also to ensure that justice is being done.

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Special features of decision-making by High Court Judges

I may next refer to some special features of decision-making by the High Courts. Primarily they relate to the exercise of extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India and public interest litigations (PILs).

Glance through the admission files

Some Judges have a very good memory and have no need to make notes. Even without reading the admission files, or by merely hearing the counsel briefly or by just glancing through the operative portion of the impugned orders, they will be able to identify and focus on the point at issue. Their memory also enables them to remember relevant citations and legal principles, without effort. Other Judges have to read the admission files thoroughly, look up law, make detailed notes both of facts and law, to cope up with “admissions” or “preliminary hearing” work. Without such study and notes, they will be at sea at the time of motion hearing. Judges falling in the second category need not feel embarrassed. They constitute the majority. One of my colleagues in the High Court would pompously say — “Justice Chagla was never reading the case files. If a Judge reads the file, he tends to pre-judge the issue. I therefore do not read the files.” As a result, he ended up admitting the maximum number of writ petitions, most of which deserved to be dismissed at the admission stage. That apart, all Judges cannot measure up to Justice Chagla, who was unique. Further, the nature, quantum and profile of work have changed considerably from Justice Chagla’s days. Number of laws have increased. Number of filings has increased. A Judge can no longer afford a leisurely hearing at the preliminary hearing stage. With the enormous increase in the workload, varied subjects and innumerable new laws, there is nothing wrong in reading, or at least glancing through the files. Of course, such reading should be only for knowing what the case is and not for prejudging the matter. A Judge is required to always keep an open mind.

Be cautious in PIL and policy matters

A Judge, while hearing or issuing directions in public interest litigations, affecting governmental policy and finances, should remember that, more often than not, only partial facts and limited dimensions of the cause are placed before the court. The petitioners in PILs, many a time, have their own axes to grind. Even the Government or the statutory bodies may not come out with the full facts, to cover up some skeletons in the cupboard. In several PILs, neither side may be interested in truth, justice, public good or development of the country. Courts are not equipped to gain access to all facts, views, aspects and angles necessary for taking an appropriate decision in important public interest issues. Whether it does it properly or not, the executive is at least equipped to deal with issues relating to policy. Therefore, before interfering with executive policy in PILs, a Judge should be satisfied that there is absolute need for interference. When a Judge is compelled to interfere with the functioning of the executive in public interest
litigations, he should also consider the practicality and implementability of his directions before issuing any direction. He should also visualise and comprehend the consequences of his directions. Once he issues a direction, he should endeavour to monitor the implementation of what has been directed. Judges should not end up issuing orders which sound grandiose but are impractical or useless or incapable of being implemented. Judges are not divine. They cannot say “let there be light” and have light. Judges should avoid passing orders like “let everybody be provided with drinking water”; or “let every one be provided with food”; or “let every one be provided with education”. There are several well-known examples as to what happens when courts take on the work of other organs with the best of intentions, but ultimately get bogged down by the magnitude of the recurring problems and the unwillingness of the stakeholders to cooperate in the implementation of the directions.

There is need for self-imposed judicial restraint, not only in public interest litigations, but in any judicial review of decisions involving policy. In Directorate of Film Festivals v. Gaurav Ashwin Jain⁵ the Supreme Court summed up the well-settled principles relating to judicial review of policy, as follows: (SCC p. 746, para 16)

16. The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as appellate authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review.

The need for care is all the more relevant while passing interim orders ex parte in public interest litigation. Arun Shourie in his book Courts and Their Judgments gives an example. He estimates the loss sustained by the country, on account of the Supreme Court staying the raising of the main spillway blocks of Narmada Project on 5-5-1995 and subsequently vacating the stay in September 2000, as being somewhat in the range of Rs 3900 crores, apart from the loss of production and economic activity that would have ensued if the power and irrigation had been available five years earlier. Every new Judge, in fact even older Judges, should read Courts and Their Judgments. Judges may not agree with many of the conclusions or comments therein. But if Judges only read what they find “agreeable”, then they will be missing a great opportunity to improve themselves. Judges should read books and articles which offer constructive criticism of judgments and decision-making process, which will help them to render justice, with their feet firmly planted on the ground.

⁵ (2007) 4 SCC 737.
Be aware of the consequences of your orders and directions

The advice, that is normally given to a Judge, is that he should not be concerned about or swayed by the consequences of his judgment, and decide the matter strictly in accordance with the facts and law. This principle is applicable only when a Judge is discharging the pure and simple traditional judicial function of adjudicating a civil litigation between two private parties or conducting a criminal trial. It will not apply to public interest litigation, non-adversarial litigation and cases relating to administrative law, environmental law, industrial law and service law. Judges may not realise that their orders may cast an enormous financial burden on the State or the employer; or that as a consequence of their orders, a lower division clerk may be catapulted to a managerial position without the required experience or knowledge for the job; or that the implementation of the orders may lead to administrative chaos.

I remember a case where a government servant claimed that when he joined service 25 years ago, his pay was wrongly fixed in the pay scale of Rs 80-120 and that the pay ought to have been fixed in the next higher scale. The case was not effectively defended on behalf of the State. A Judge not very familiar with service law granted the seemingly innocuous relief, of refixation in the higher scale with all financial benefits, thinking that the relief granted would involve a few thousand rupees. When that writ petition was allowed, hundreds of persons claiming to be similarly placed, filed writ petitions seeking the same relief. All those petitions had to be allowed in view of the binding precedent. The resultant financial liability on the State exchequer ran into several crores. The Judge later told me that if he had known the consequences, he might not have entertained the belated claim at all or at least would have examined it in more detail or moulded the relief properly. I remember another case where a person employed on daily wages for a couple of months in 1980, filed a writ petition in 2003, claiming reinstatement and absorption. Though the Judge was not inclined to grant relief and wanted to dismiss it, the counsel persuaded him to dispose of the writ petition, with an observation to sympathetically consider any representation made by the petitioner in accordance with law. Once the order was made, it was followed by hundreds of cases claiming similar “disposals”. They were also disposed of with a similar observation. Either on account of wrong interpretation of those orders, or collusion between the officers and petitioners concerned, hundreds of persons were given backdoor entry into government service without facing competitive selection, flouting reservation policy, that too after a gap of 25 years. Let me hasten to clarify that in deserving cases, relief should not be denied even if it involves a financial burden or inconvenience. The problem arises only where unwarranted relief is granted on grounds of sympathy, without comprehending the consequences to gain the tag of “relief-oriented Judge”, opening the floodgates for undeserving claims resulting in administrative chaos and enormous financial burden on the State.
**Judgment-writing**

The main functions of a reasoned judgment are: (i) to inform the parties (litigants) the reasons for the decision; (ii) to demonstrate fairness and correctness of the decision; (iii) to exclude arbitrariness and bias; and (iv) to ensure that justice is not only done, but also seen to be done. The very fact that a Judge has to give reasons that will have to stand scrutiny by the Bar and the public as also by the higher courts, brings in certain amount of care and caution on the part of the Judge and transparency in decision-making. Unless the evidence placed by the parties and the contentions urged by them are considered and dealt with in the judgment, the litigant and the world at large cannot know whether the decision is based on facts or law, or whether it is a result of prejudice or ulterior motives. The judgments of the Supreme Court, the High Courts and statutory tribunals serve an additional purpose, that is, to declare the law for the benefit of the public, the Bar and lower courts.

Judgment will have to be understood by: (a) the parties and their counsel; (b) the authorities who are required to comply with it or implement it; (c) the members of the Bar and public who may like to rely on it, where it has a precedential value; and (d) the appellate/revisial court which has to find whether it is right or wrong. Therefore, a good judgment, apart from being fair, reasonable and correct on facts and law, should be self-contained, precise, clear and analytical. The relief granted or directions issued should be specific and not vague. The judgment should be capable of being easily understood and demonstrate fairness in trial and decision.

There are differences in the manner in which judgments are written by courts exercising different jurisdictions. There is a marked variation in the manner in which judgments are written in civil cases, criminal cases, writ proceedings and summary proceedings. Similarly, there are differences in the manner in which judgments are written in original, appellate and revisional proceedings. There are also differences in the manner of writing final judgments and interlocutory orders. There are also differences in the manner in which reportable and non-reportable judgments are written.

A judgment in a civil action, briefly refers to the plaintiff’s case as disclosed from the plaint, the defendant’s case as disclosed from the written statement, the issues framed, oral and documentary evidence led by the parties, consideration of issues with reference to facts and law, reasons for the findings on the issues, and the conclusions drawn from the findings recorded on the several issues and an operative portion containing the final decision and the reliefs, if any, granted. Section 2(9) CPC defines “judgment” as the statement given by the Judge on the grounds of a decree or order. Order 20 Rule 4(2) requires “judgments” to contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision. Rule 5 of Order 20 requires that in suits where 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 issues is sufficient for the decision of the suit. On the other hand, sub-rule (1) of Rule 4 of Order 20 makes it clear that in a summary proceeding, it is sufficient if the “judgment” contains the points for determination and the decision thereon with brief reasons therefor.

In a criminal trial, the format and contents of a judgment are different. There are no pleadings. Section 354 CrPC requires that every judgment shall contain the points for determination, the decision thereon and the reasons for the decision. It also requires that the judgment should specify the offence for which the accused is being convicted and the section under which he is being convicted and the punishment to which he is sentenced. If the judgment is one of acquittal, it has to state the offence of which the accused is acquitted and direct that he be set at liberty. The judgment should set out the particulars of the offence, the prosecution case, the plea of the accused, the evidence of the prosecution witnesses, the case of the defence, discussion of the evidence and conclusions. The judgment should show whether the evidence shows proof beyond reasonable doubt as contrasted from civil cases, where the decision is based on preponderance of probabilities.

Appreciation of evidence and application of law to the findings of facts, leads to a decision. The large number of filings, huge pendency and enormous workload put a tremendous pressure on the Judges, making it very difficult to write elaborate judgments. But that is no justification for disposal of cases by one line orders or brief one para orders which neither discuss the issues, nor refer to facts. I have also come across several lengthy judgments which purport to be reasoned judgments but do not contain any reasons. They extract the pleadings, catalogue the documents, refer to the evidence in detail, set out the arguments, and then proceed to, or rather jump to a conclusion or decision, without analysis or reasons for the conclusion. A judgment, howsoever detailed or lengthy, will be unintelligible or “non-speaking”, if it fails to disclose the reasons for the decision. The tendency to dispose of cases with vague observations, but without any specific directions, is also to be deprecated. Interim orders, particularly status quo orders, vague in nature and content and capable of multiple interpretations, should be avoided. Judges should not resort to long orders suitable for final judgments, on interlocutory matters or bail matters.

Repetition should be avoided. High-sounding and complicated words should be avoided. Unwarranted use of legalese, hackneyed phrases and clichés should be avoided. There should not be a need for a dictionary or a law book, to understand a judgment. Simple words, short sentences, brief statement of relevant facts, thorough analysis of the evidence, clear enunciation of the legal position, proper application of the law to the facts and grant of appropriate reliefs warranted by the case in clear terms, are the hallmarks of a properly written judgment or order. In short, soundness of reasoning, clarity in expression and brevity in style, make a judgment, good and sound. Prof. Strunk (see, Strunk, Elements of Style) states that a sentence should contain no unnecessary words and a paragraph should contain no
unnecessary sentences. I may further add that a judgment should contain no unnecessary paragraphs. It is not that the judgment should be shorn of all details, but that every sentence should be meaningful, relevant and unambiguous.

It is worthwhile to keep the following basic rules in mind while writing a judgment:

(a) Reasoning should be intelligible and logical.

(b) Clarity and precision should be the goal. Prolixity 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 English knowledge, 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 on suspicions, 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 specific and precise.

(j) A judgment 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 courts’ 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 criticise or censure the conduct or action of the person, for the decision of the case.
An additional word for High Court Judges whose decisions have a precedential value

A High Court Judge will have to draw a fine balance between the need for disposing adequate number of cases to bring down pendency, and at the same time write appropriate judgments which are thorough, precise and well researched. It is easy to dictate a long, loose, imprecise and rambling judgment. But to write a clear, precise and thorough judgment laying down the law, requires considerable effort, attention, editing and re-editing. Either for want of time or pressure of work or aversion to editing, many Judges give only a cursory glance after the judgments are typed. Failure to edit judgments, gives scope for mistakes and ambiguity. Revision and editing are an integral and unavoidable part of judgment-writing. He should be more careful with regard to reportable judgments and ensure that they are precise, well researched, and self-contained, apart from enunciating the correct legal position. The tendency to mark all judgments for reporting should be curbed. Only decisions which decide a point of law which is not covered by any decision of the Supreme Court or of the respective High Court, or which bring out a new facet of the existing legal position, are worthy of reporting. Of late, a large number of decisions which do not warrant publication, are reported. This puts an unnecessary strain on the Bar and lower judiciary. It is necessary to regulate and restrict the number of decisions reported.

For example, in United States, DC Circuit Rules provide that a decision is suitable for reporting, only if the answer to any of the following questions is in the affirmative:

(i) Is it the first case to resolve a substantial issue of law?
(ii) Does it alter, modify or significantly clarify a principle of law previously enunciated by the court?
(iii) Does it specifically call attention to an existing rule of law that appears to have been overlooked and forgotten?
(iv) Does it criticise or question or express any doubt about any existing principle of law?
(v) Does it resolve an apparent conflict between two divergent decisions or viewpoints?
(vi) Does it reverse a reported decision or affirm a reported decision on grounds different from those set forth in such decision?
(vii) Is it of general public interest or importance in the light of other factors warranting publication?

Such self-regulating guidelines will make precedents more meaningful and useful.

I am conscious that there may be different perceptions in regard to some of the views expressed by me. My object is to provoke you to think, discuss and debate, and to improve the process of judicial decision-making and judgment-writing, so as to render justice and serve the people. The National Judicial Academy will provide you the forum and opportunity for such debate and discussion.