

JUDGMENT ---- WHAT AND HOW TO WRITE

Mr. Justice Shafiur Rahman

Judgment is an expression of final opinion in a case by a Judge. It is the verdict of the Judge, a decision which sets at rest according to law the controversy between the parties agitated before the Court. A judgment may confer a right or status concludes a controversy, decide a claim or convict or acquit a person accused of an offence.

But before entering upon the subject I would first like you to realize what is the role and function of a judge. Unless you are cognizant of your own duties, jurisdictions, functions, responsibilities and the importance and impact which a judgment may create on the stability and progress of the society, it may not be possible to realise what enormous task has been assigned to you as a member of judiciary.

Judiciary is one of the most important organs of the State. Its function is to maintain balance between various functionaries of the State and the citizen. It is a shock absorber for all the jolts and shocks, turmoils and twisting which arise from application and interpretation of statutes and administrative actions bringing about difference, dissention, claims and counter claims.

A judge is authorised under law to decide disputes, which may be between State, Corporation, Authority and citizen or citizen and citizen. The real strength of a judge lies in the jurisdiction and the manner in which he exercises it; the character, neutrality, and discipline the exhibits in the proceeding and judgment. In an article entitled 'Judges and Judicial Power' published in a book with the same title, Lord Denning observed:

"So far as judicial power is concerned, it is a mistake to think of a judge as having power. He has jurisdiction to decide cases, but he has no power of his own. His only power is to decide according to law: and the law is to be found in the statutes or in the doctrines laid down by his predecessors over the years."

"Judicial power rests on the combined wisdom of the judges. Their jurisdiction is more restrictive than creative. Their principal function is to restrain the abuse of power by others in the State. If the government does anything beyond its power, it acts ultra vires. Its action is void. It has no legal effect."

It is further to be noted "Justice can only be administered by Courts in aid of the law and to further and develop the law and not to defeat the law." (Jalal Din Vs. Mst.Noor Sian PLJ 1892 S.C.413)

Before approaching the subject we should have in our mind the clear concept of Administration of justice in Islam. Justice is the corner stone of Islam. It preaches justice to all rank and file, makes every accountable and subservient to law and casts a heavy duty on the judge to discharge his duties honestly, faithfully, without fear or favour. "The Quran and Sunnah are full of injunctions emphasising undiluted justice, with its much more pronounced importance in our polity, as compared to Western Jurisprudence. It is one of the main pillars of Islam after Tauhid and Risalat like Taqva in one sense". (Abdul Wajid Vs. Federal Government of Pakistan) PLD 1988 S.C. 167). In Islam Right to justice cannot be abridged (Federation of Pakistan Vs. General Public PLD 1988 S.C. 643).

Section 2(9) of Code of Civil Procedure define judgment as "the statement given the judge of the grounds of a decree or order" and section 2(2) C.P.C. defines decree as "the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final". Judgment is a judicial decision in the Courts. (Ghulam Husain Shah Vs. Ghulam Muhammad PLD 1974 S.C. 344). The judgment comes into existence after it has been signed by the Judge (Order 20 Rule 3). The law requires the judgment to be in writing and signed by the judge. Oral judgment is not a judgment in law. (Nisar Ahmad Vs. Presiding Officer, Punjab Labour Court No.2 Lahore and another 1976 L. 1162). It should be pronounced, signed and dated in open Court. (Order 20 R.3; Lachmandas Vs. Central Government of Pakistan, PLD 1973 S.C. 379). The judgment should be pronounced at once after completion of the hearing or on some future day after due notice to the parties or their advocates. (0.20 R 1). The judgment should contain a concise statement of the case, the points for determination, the decision thereon and the reason for such decision' (0.20 R 4). When issues have been framed decision on each issue should be given separately unless the finding on one issue decides the entire suit. (0.20 R 5). In Criminal cases judgments are to be prepared as provided by section 367 of the Criminal Procedure Code. They must contain the facts alleged by the prosecution and the accused, the points for determination and decision on those points with reasons thereof. In criminal cases judgment means an order in trial, which results in conviction or acquittal of the accused (Hari Ram Singh Vs. Emperor AIR 1939 FC+3). Therefore whether the judgment is in a Civil or Criminal case, it expresses final opinion of the judge on the merits of the case after consideration of evidence, facts and law involved in it and finally terminates the proceedings.

The Judgment usually opens with introductory sentences to describe the nature of the case. But it is not necessary to describe the nature of the case. But it is not necessary to make this introductory expression and it can be opened by straight away stating the facts. The introduction, if any, should be brief consisting of one or two sentences. The Statement of fact is then to follow.

The judgment expresses the final opinion therefore it should be written in a clear, simple, and lucid language. One should write judgment in sober and temperate language. Keeping in view the solemnity of the office, a judge should express his opinion with dignity, moderation, sobriety and reserved ness. He should not be sarcastic or funny, nor there is any scope to show wit and humour as in a literary essay. The language used should not give the impression that the judge has predetermined the issues or is biased and partial. The judge should not identify himself with the case nor write judgment give the impression that it lacks proper reasoning and impartiality. You can achieve these objects if you have command over the language.

At the time of stating facts, it should be kept in mind that it is not necessary to narrate them in detail. It would be sufficient if important facts are mentioned leaving details to be dealt with at the time of discussing the issues. In certain cases I have noticed that in judgment while stating facts the plaint and written statement are reproduced. This is a bad practice and should be avoided. After stating the facts concisely, issues should be taken up. This is the stage when facts should be narrated and reference be made to the evidence of the parties. The conclusion should be supported by reasoning and reference to the evidence. The finding should be recorded after discussing evidence, questions of law and explaining all such points and flaws, which require explanation. In appraising and appreciating the evidence of the parties the judge should be balanced, composed and deal with all aspects. The practice of stating the summary of evidence and concluding that in my opinion the case is proved or not proved should at no cost be adopted. Unless the facts, evidence and law are discussed and reasoned out in support of the conclusion the entire judgment can be assailed. A judgment should be a speaking document in which conclusions should be supported by well-balanced reasoning with reference to the facts, evidence oral and documentary and principles of law applicable to the case. Justice should not only be done but it should be shown to have been done. Unless the judgment is clear, balanced, and well reasoned how can by reading it one can understand what and how the case has been decided.

At this stage it is necessary to point out that the judgment should not be based on conjectures, surmises, whims and caprices. Any finding based on these grounds can be easily set-aside by the higher Court where it is challenged. The judge should avoid dealing of raising hypothetical or imaginary questions, which have not arisen. He should restrict himself to the issues on the questions for determination.

A judgment is always based on the provisions of law which are applied to the facts of the case. Therefore before preparing judgment a careful study of such law should be made. It would not be enough to read some sections of the Act. One has to examine the judgments of the Supreme Court and High Court if available. If it is felt that proper assistance has not been rendered at the bar then it is the duty of the judge to study himself. Omission to do so has been termed as dereliction of duty (Rox Vs. Ram Dayal AIR 1950 All 154). A judge of the subordinate Court is bound by the Judgment of the Supreme Court and the High Court to which he is subordinate, unless it has been over ruled. It is the duty of the Judge to apply the correct law and he is presumed to know it including the notifications issued from time to time.

While quoting the authorities full reference of the judgment should be made. If necessary and proper even the observations may also be quoted. There is a growing tendency to quote the judgments by reproducing the head notes of the law reports. These head notes are disjointed and sketchy. The head notes should never be quoted or reproduced in judgment. At times they are misleading and do not convey what actually has been decided. Such quotations adversely reflect upon the quality of judgment and the judge himself. It gives an impression that the judge has not taken the trouble to even read the relevant portion of the authority, shown lethargy and has not attempted to apply his mind.

While discussing evidence at times the conduct and character of the witnesses come under discussion. The judge can criticise only to the extent it is relevant to controversy. Such criticism should be made in sober and dignified language. Disparaging remarks without violating decency of language can be made provided it is warranted by evidence. But it should not be expressed in strong or superlative terms. Nor should sweeping and general remarks be passed against any

witness or party.

Some times remarks about the demeanour of the witnesses are also made. Such remarks should be made when the witness is being examined or at the close of his evidence. It is proper to make remarks about the demeanour of the witness after the examination of the witness and such remarks be made known to both the parties. To make such remarks in the judgment alone is not approved.

The judgment should be unbiased, clear, lucid, straightforward and honest. It should not be muzzled, charred, confused or incoherent. One should proceed step by step by giving reasons logically in such a way that its perusal must give a clear-cut idea about the claim, controversy and dispute and the decision, which concludes or decides the case. It should not be ambiguous resulting in every party thinking it is in his favour or against him. Repetition of facts and law should be avoided. Verbose language and lengthy judgments do not create good impression. However it should not be so short and laconic that the very purpose of judgment is frustrated. It should be precise, concise, balanced, clear and intelligible. Such judgments decided the controversy conclusively and score out possibility of multiplicity of litigation. If the judgment/order is brief but it clearly indicates the points urged before the Court and the ratio of the decision is also evident then it is not necessary to record unnecessarily a long judgment as long as it is intelligible and to the point. (Mehdi Hasan Vs. Addl. District Judge, Rawalpindi; 1981 S.C.M.R. 1127 Mst. Baigan Vs. Abdul Hakeem and another 1982 S.C.M.R. 673).

These are the basic principles for preparing judgments in Civil Suits. In Civil Appeal Order XLI Rule 31 C.P.C. provides that the judgment should mention the points for determination, the decision thereon and the reasons for the decision and if the decree is reversed or varied then the relief granted by it. The appellate judgment is basically on the same lines and principles as stated above.

For judgments by the Court of Small Causes Order XX Rule 4(1) C.P.C. provides that it should contain points for determination and the decision thereon. It need not be elaborate containing discussion of evidence and reasons for arriving at the conclusion. However the observations regarding facts and decision must be to the minimum which is intelligible for determination by the Revisional Court that it is according to law.

A judge has to be just, firm, polite, serene, possess good moral character and integrity. The judgments reflect the qualities of a judge and unless you have these qualities you can not produce a good judgment. Complaints are made of outside interference but it is universally accepted without fear of contradiction that so long a judge is upright, honest and God fearing with intellectual honesty no one can dare to interfere with his duties. He has nothing to fear except God to whom he is accountable. At this stage I will quote the following observation of L. Staffer Oliver an American judge, from his book "The Bench IS A Hard Seat":

"My firm conclusion is, that if any judge has character and a reasonable degree of courage, all parties respect it. He is rarely bothered by any one."

" On the whole I will conclude that a judge has to be fair but firm and will have no trouble from political or any other sources."

This is a universal truth and is equally applicable to all of us.

There are many instances in our judicial history which serve as land marks and torch bearers for our guidance. I may relate an instance in the day of President Ayub Khan when Justice Abdul Aziz Khan was sworn in as the Chief Justice of the High Court of West Pakistan a move was made that President would address the Judges of the High Court of West Pakistan Late Mr. Justice A.S. Faruqui objected to this move and ultimately it was decided that the President would have with the judges. During this meeting the President started a sort of discourse and when he said that some of the judgments of the court are obstructing his newly introduced reforms, a frail but firm, dignified and sober, calm and self composed judge stood up and objected to such remarks and observed that the judges perform their duties in faithful discharge of their oath and according to law without fear or favour, affection or ill will and the moment they feel that they are unable to fulfil their oath they would not hesitate to lay down their robes. He was late Justice A.S. Faruqui the embodiment of courage, character, honesty, integrity, dignity and learning. His viewpoint was vociferously supported by late Justice Wahiduddin Ahmad another model judge known for learning, uprightness, firmness, caliber and courage. These are the judges who are living monuments for our guidance.

I am also reminded of an instance when during Martial Law days Martial Law Authorities wanted a District Judge to send him the file of a case which was pending before him. The District Judge resisted the attempt and immediately reported the matter to the Chief Justice M.R. Kayani who ordered that file would not be sent to Martial Law Authorities, instead it should be sent to the Chief Justice. The order was obeyed. This was the strength of character and courage, which emboldened him not to yield to any power while discharging his duties as a judge. These are some of significant memorable instances of historical importance, which show a path of glory which should be followed by the members of the judiciary. In the book entitled "The Lawyer and Justice" a collection of addresses by Judges and Jurists edited by Brian W. Harvey, Lord Denning in his presidential address dealing with the topic "Independence of Judges" observed as follows:

"This independence of the Judges carries with it, of course great responsibilities ----- the responsibility of deciding without fear or favour, affection or ill will -- but also the responsibility of being wise and discreet in all they say. But this does not mean that they must say nothing. If matter comes before them where injustice is being done, they are entitled to point it out so that the public may know of it and form opinion upon it".

This is the correct and ideal role of a judge in a democratic independent society. A Judge has to be natural, principled and disciplined. He has to use wisdom, learning and discretion. The judgment delivered by him is the cumulative effect and outcome of these abilities and qualities combined together. The Judge always speaks through his judgments. If he keeps the stream of justice unpolluted and undiluted results are bound to be just and honest. The legal effect of a judgment may be far reaching at times affecting social, economic and political fabrics. It is in such cases that the quality of the judge is at trial. He has to consider the problem and interpret the law judiciously with wisdom and proper discretion. Considering all these consequences, which may flow from a judgment Lord Denning, pointed out to the problem as follows:

"In the end there is this problem before us.

As the great historian Lord Act-on said:

'all power tends to corrupt. Total power corrupts absolutely.'

Who is to control the exercise of power? Only the judges. Some one must be trusted. Let it be the judges."

This is what you have to keep in mind while writing judgment.