

The Art and Craft of Writing Judgments

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I never had the opportunity of writing a judgment. Therefore, I have no locus to write on this. I hasten to add. I have been a consumer of judgments for the last 50-years. As a student of Law, Parliamentary Fellow, Law Teacher, Lawyer and Judicial Educator. I have read and dissected hundreds of judgments. Reading the judgments, many a time, I felt happy. Sometimes, very happy. Sometimes, unhappy. Writing of a good judgment is both an art and craft. This comes to Judges by way of experience. To some, gradually. To some, naturally. Judges make living contribution to the growth and development of Law and Jurisprudence. They speak their mind. They unfold their mind. Through their judgments. Judiciary is a highly productive organ. They do justice. They render justice. They remove the sense of injustice. Judges are engaged in the best kind of service to humanity. Justice is divine. Few are fortunate to belong to this coparcenary.

Indian judges are second to none. Their contribution is highly matchable. Comparable with the best. I have had the opportunity of inter-acting with the judges across the country. At all levels. I also had the opportunity of meeting judges in Canada, U.K. and USA. Indian judges and their judgments are being cited around the globe. For laying down good law. The judicial brethren in black robes have played their role innovatively.

As a consumer, I would like to share what a good judgment is. Its language must be easy. Easily communicable. Understandable. Digestible. Justice V.R. Krishna Iyer and Lord Denning, both have made rich contribution to legal literature through their judgments and writings. Probably, the richest. The generations to come would remember them. For the flavour of their language. For making law and literature inseparable. No judicial separation is possible. How-so-ever hard the judges may try.

Justice Iyer used difficult language. A fertile mind, sound, knowledgeable and versatile. Could speak and write on any topic or issue. And yet, link the same with law. He was a blend of many disciplines. The difficulty with him was his language. Both spoken and written. Difficult. He had no ending vocabulary. He coined words. In order to understand Justice Krishna Iyer, one needed to keep the company of a good dictionary. He would use not only difficult words but also write long sentences. It was so difficult to understand him correctly and accurately. One had the feeling that sometimes even a simple idea / principle / thought would be conveyed in such a manner which would be difficult to comprehend. One would get lost in his language. It would be apt to quote a few lines from one of the writings of Justice Iyer:

“Moderation is a fatal thing; nothing succeeds like excess – wrote Oscar Wilde, good for literary lampoon, not for forensic praxis. And yet, the elation of elevation to the high Bench seduces some robed brethren to imitate, simian fashion, the Oscar dictum; and in this ‘excess’ process, intemperately indulge in pejorative denunciation of brethren of the lesser

Judiciary and thereby caricature the Judicature.” [From The Bench To The Bar – page 140].

This may be compared with what Justice K.T. Thomas wrote in his judgment (AIR 1997 SC 1157)

“Judges of higher courts must, therefore, exercise greater judicial restraint and adopt greater care when they are tempted to employ strong terms against lower judiciary”

It would be equally beneficial to refer to what has been written by Chief Justice of India, Justice S.R. Das:-

“It has been recognized that judicial pronouncements must be judicial in nature and should not normally depart from sobriety, moderation and reserve.”

The simple language reflects the clarity of mind. A sound thought if not couched in easy language would not have the desired effect. Therefore, effective language is the foundation of a good judgment.

I had the occasion of meeting Justice Iyer personally. I did not hesitate to ask him, why such language? His response was spontaneous. Language is a tool. Once you get used to using a particular kind of a tool, you cannot help it. It becomes a habit. It comes automatically. Justice Iyer’s language tool was his own. He used it throughout his life. He died 99 and plus. This does not mean that he has not made rich contribution in the domain of law and justice. It would be difficult to surpass him. Equally, difficult to by-pass him. He would be remembered for the richness of his substance and equal richness of his

language. One only wished, his language could be more communicable. He could render justice in common man's language.

Lord Denning was totally different. He was Judge for 38 years from 1944 to 1982. He nurtured the art of simple language. Short sentences. Sometime even one word. Effective. Would convey in a most natural manner the meaning and the context. His style was sue generis. Even most complex factual canvas would read like a story in his judgments. Gripping. Each word matching the situation. He cultivated a style which commanded attention. He would never let the judgment be dull and difficult. He believed in maintaining the attention of his readers. The judgments need to be interesting. Denning believed that style was the dress of thought. He used to gather the threads together to weave the judgment. Simple writing is reflective of superior mind. In order to show the style of writing. It would be good to refer to a small para from Lord Denning's, *The Family Story*:-

"To go from the Court of Appeal to the House of Lords is like going into retirement. It is rather like the senior partner retiring and becoming a consultant. In the Court of Appeal you are under continuous pressure. In the House of Lords you are relaxed and at ease. You sit four days a week. Sometimes less. Sometimes short days. You reserve every judgment, with ample time to think it over and to write it."

I recall my university days as a teacher of Law. I used to commend to the students of English literature, Denning style of writing English. Some professors of English literature were my students of Law. To them, I commended Lord Denning. I also commended that they should work on law

and literature. What a blend it would be. This mix needs to be explored and exploited fully. This mix makes the Judgments more readable. Understandable. Literature helps in connecting to the situation. Explaining the situation. The two lines of Tennyson's poem, *The Brook* read: "For men may come and men may go. But I go on forever". How well it makes clear the concept of corporate separate entity. The flavour of literature makes the Judgment 'wholesome'. You cannot divorce one from the other. It would be apt to quote Denning:

"Judges do not speak, as do actors, to please. They do not speak, as do advocates, to persuade. They do not speak, as do historians, to recount the past. They speak to give Judgment. And in their judgments, you will find passages, which are worthy to rank with the greatest literature...."

Justice P.B. Gajendragadkar (as he then was) met Lord Denning who had come to New Delhi to deliver some lectures. During the meeting, Justice Gajendragadkar told Denning that he liked to read his judgments because they were crisp, lucid, path-finding and, in one sense, essentially his own. They both had good long meeting. While parting, Denning told Gajendragadkar, "Judge, I have learnt quite a lot from you this morning". Gajendragadkar responded, "Lord Denning, it is just like you to say that".

I was still not a student of law when Denning was commissioned to conduct the *Profumo Inquiry* in June, 1963. He completed the work in three months. Submitted the report in September, 1963. Denning records in his *Due Process of Law* that it was the best seller. In the *Family Story*, Denning has quoted paras from the Report to demonstrate his style of writing. Interestingly, the Report came to be used by a Britisher as a passport for having entry to

Canada. He happened to forget his passport in his hotel room. The cabin people told him, he will not be allowed entry into Canada. At the immigration counter, he opened his brief case. Took out the copy of the *Profumo Report*. The report that had just been published. He gave the copy. The Chief gave him the permit for 24-hours. He attended the meeting. Got back. The Report did the trick.

Justice M.C. Chagla was Chief Justice of Bombay High Court from 1947 to 1958. It has been recorded that his Judgments bear the impress of a great and cultured mind. Quick in perception. Broad in vision. Fresh in approach. He believed that judgments should be founded on first principles. He illuminated justice. He humanized the law. His judgments reflected his burning desire to do 'real' or 'complete' justice. His judgments had no dark corners. Reasoned. Balanced. Both parties knew – why he has won and why he has lost. That is the beauty of a good judgment. His extempore judgments dictated on the spot were lucid. Complete in all respects. Facts. Law. Application and Interpretation. Dictating of extempore judgments is a skill most needed. Our judges are hard pressed for time. Magna Carta in 1215 ordained, not to sell justice, not to deny justice and not to delay justice. This recipe holds good till to-day. Even to-day, one has to wait for long, many years for the turn of one's case. Even after the case is heard, judgments are kept pending. This is double jeopardy. There are some judges who keep their judgments pending. Once if the judgment is kept pending, it remains pending. The best is to dictate the judgment when it is fresh in mind. Let this be the habit. Your out-put would be far more. Normally, It should be the norm to dictate the judgments in open court. In any case, without

delay. When there are no pending judgments, one is relaxed. One is able to render real justice. Moreover, when the judgment is delayed, it creates doubts in the minds of litigants. This is still worse. Let us not over-look the pressure of work on our judges. In complex cases, judgments need to be reserved. Reserved judgments should not be delivered in haste. At the same time, they be not delayed. Unduly.

A good judgment is one which is readable. Covers all aspects. Reasoned. The parties must know the reasons for winning or losing. Men of law should know clearly what is the law laid down. So that they can advise their clients in future with clarity and certainty. No doubts and no gaps be left. A good judgment should be able to satisfy all stake-holders. The judicial coparcenary at every level will do its very best to make judgments as the real vehicle of justice.