THE ART OF JUDGMENT

Rt. Hon Sir. Harry Gibbs, former Chief Justice of Australia, in an article: *"Judgment writing"* stated:

For a retired judge to lecture about Judgment writing is to provide proof, if it were needed, of the truth of the assertion by a seventeenth century French moralist (Francois de La Rochefoucauld - in his, Maxima, 1665*) that men give good advice when they are no longer capable of setting bad examples.*

Some judges, I have known in the past would have regarded it derogatory of their dignity, to have to listen to a talk on a subject which they considered themselves to have mastered, and perhaps there are judges today who may justifiably take the same approach. But the subject goes to the very heart of the exercise of the judicial function and for that reason, it seems worth discussing. Therefore, are we here.

The Art of judgment:

A judgment is the ultimate asset of the court as an institution. It is the most important document for the parties to the dispute. For the parties what is critical to their concern is the ultimate decision and not so much the reasons for the decision. Reasons assume importance [as far as trial and lower appellate courts are concerned] only when an appeal or revision is filed against the judgment. For

the concerned judge however, reasons are crucial. They indicate the working of his mind, his approach, his grasp on the issues of facts and law involved in the case, his analytical skills, the depth and breadth of his knowledge of law; and his capacity to record a cogent narrative.

The judgment is the clearest index of the personality of the judge. The judgment must therefore be written with care, after mature reflection.

Judgment writing is an art. Only to a select few is it a natural gift. For the vast many of us it is the product of long practice and persistent perseverance. The first requirement of a good judgment is an adequate command over the language in which it is written. However correct a judgment is on facts and law, it conveys a poor impression if the structure is amorphous, the language inaccurate and ungrammatical or the process of reasoning incoherent. Even a poor judgment written in concise or impressive language will compensate to a small extent logical or forensic imperfection. The language of the judgment must be simple yet elegant. It should contain phrases and expressions which convey clearly the analysis of law and fact and the process of reasoning. The usage of legal terms, expressions or maxims improve the quality of the judgment. Care should however be taken not to use a legal phrase or a maxim because you like the sound of it, though it be inappropriate to the occasion.

The language should not be equivocal, vague or capable of multiple interpretations. Care should be taken not to dramatize the circumstances of the case. A judgment is not a novel, though it is a narrative. You should avoid

repetition of facts and law. Brevity is the soul of a good judgment and prolixity a vice. Brevity must however not be at the cost of clarity. Citation of unnecessary precedents or long and irrelevant quotations from judgments should be avoided. Only relevant and the most striking and appropriate passages from a precedent should be incorporated, where it supports your decision. At all times avoid quoting from headnotes. The headnote is not a part of a precedent.

The judgment should notice and record every argument at the Bar. But you are not required to deal with every argument in excessive detail. If an argument is entirely irrelevant and extraneous, you may briefly mention the argument and summarily reject the same, with the observation that it is irrelevant or not in point. Before you do this however carefully consider whether the argument is wholly irrelevant.

Before proceeding to draft a judgment, you should be clear about your conclusions on facts, the law and the outcome. Never commence writing or dictating a judgment before making up your mind about the conclusions. An exceedingly long judgment (prolixity unjustified by the issues involved), is invariably the product of a confused mind.

At the start of one's judicial career, it is advisable to adopt the traditional model of judgment writing. This involves, briefly referring to the pleadings, the rival submissions, setting out the issues or points that arise for consideration and then proceeding to analyses seriatim. I have not seen a Judge who has missed a single point or omitted to give findings on all the issues/points by following this

method. By and by, as you gain in experience and skill in drafting and analytical skills you may innovate the crafting of judgments. I shall now discuss the core elements of a judgment, in civil and criminal cases.

Civil Cases:

The first portion of the judgment and if possible, the opening sentence must indicate the nature of the case, for example: *this is a petition by the husband for restitution of conjugal rights*; *this is a suit for declaration of title and recovery of possession*. In the next paragraph admitted and undisputed facts of the case which are material should be stated, such as the relationship of the parties and the background of the case. Further, all previous transactions which are not disputed and have a material bearing on the case may be stated so that the person reading the judgment will have a comprehensive view of the case before focusing his attention on the points and controversies. If there are no admitted facts worth mentioning, it is not necessary to say so in the judgment.

In succeeding paragraphs, the case of the plaintiff and of the defendant should be set out in brief. While stating the case of the defendant it should clearly be stated who is the main contesting defendant and who the *pro forma* or *ex parte* defendant(s) and who, if any, is supporting the case of the plaintiff. To avoid confusion in the mind of the reader and in your own mind as well you must decide beforehand whether you would like to refer to a plaintiff or a defendant as plaintiff/defendant No. …, or by name. Stick to the same description throughout

the judgment. For example, do not use '*the first plaintiff'* in the 2nd paragraph and '*Mr. Pradip'* (the first plaintiff) in the 6th paragraph; you will create all round confusion including for yourself.

While drafting the judgment ensure that the narration of facts, the framing of issues, the analysis of the evidence issue-wise; and the flow of the language is clear, logical and coherent. The judgment must present a coherent narrative and must be balanced not only in presentation and analyses of the issues involved, but in the arrangement of the different parts of the judgment.

Emotions and sentiments must be avoided in a judgment. A judge is not a moral arbitrator and neither rewards virtue nor admonishes vice. He merely administers even-handed justice between the litigants, dealing with concrete facts and applying established legal principles.

Some judgments are considered imperfect since the judge fails to deal with, account for or analyse certain pieces of evidence, fact situations, principles of law or judgments cited at the Bar. Remember, every point whether of fact or law has to be decided one way or the other, if in issue. When you take a view of the case and support your conclusions by analysing the evidence in support thereof or advancing reasons on questions of law, do not ignore other pieces of evidence, relevant facts or applicable principles of law because they do not accord with or fail to support your general conclusions. Even awkward points, difficult factual aspects; legal principles or precedents which do not support your overall view must be noticed, analysed and reconciled. Even where reconciliation is not

possible satisfactorily you must give some indication why despite the evidence, the fact situation, the precedent(s) cited or the principle of law that you have noticed, you have come to a conclusion which is contrary to the direction pointed by such fact, evidence, judgment or legal principle.

Issues:

Framing of issues is a critical step in the trial of a case. Framing of appropriate issues ensures efficient trial and a right conclusion. Issues are framed at the first hearing of the suit from out of the following:

i) allegations by the parties or by any person present on their behalf or by the counsel of the parties; ii) allegations in the pleadings or any answer to interrogatories delivered in the suit; and iii) contents of documents produced by either party.

Before proceeding to frame issues, the parties to the suit must invariably be examined to narrow down the points in controversy as far as possible (Order XIV Rule 1 and Order X Rule 2 of the Indian CPC mandates this process). This is a salutary general principle.

You must yourself consider the pleadings carefully and frame issues instead of relying wholly on draft issues filed by the counsel for the respective parties.

Issues arise when a material proposition of fact or law is affirmed by one and denied by the other; material propositions being those propositions of law or fact which a plaintiff must allege in order to disclose a right to sue or a defendant

must allege in order to constitute his defence (Order XIV Rules 1 and 2, CPC). Material propositions are to be distinguished from the relevant facts on which the parties would be entitled to lead evidence at trial. Material propositions of fact comprise one or more relevant facts. However, each relevant fact by itself does not form a part of the material proposition. Issues must relate to the main questions in the suit and is calculated to direct attention of the parties to those questions. The issues should be specific and related to the material facts. Subsidiary matters of fact on which the parties might be at variance need not be made the subject matter of an issue.

Issues are of two kinds: of fact and of law; sometimes there are mixed issues of facts and law as well. While framing issues however, care must be taken to clearly delineate the facts and law on which the parties are at issue; and as far as possible distinct issues must be framed on propositions of fact and law.

While framing issues regard must be had to the question of the initial burden of proof and the issues should be framed so as to indicate, as far as possible, which party would be required to lead evidence thereon.

Issues of facts should be framed in precise, accurate and specific language in respect of circumstances, time, place or persons wherever material; and issues of law so that the issue is capable of being understood and resolved without further explanation.

Where pleas relating to estoppel, *res judicata*, limitation or jurisdiction are involved, there would be certain background or underlying facts based on which

such pleas are raised. Unless those facts are admitted the issues should not be framed generally; for instance, as to whether the suit is barred by *res judicata.* When there are disputed facts on which such pleas arise, the relevant issues should also be framed for resolution of facts leading to the pleas of estoppel, limitation etc.

Issues should be arranged in logical sequence. Issues of facts are generally to be recorded first, then mixed questions of facts and law and thereafter pure questions of law. Issues of fact should also follow a logical sequence and where it is necessary to rely on the finding on one issue for discussing other issues, issues of the former type should find place earlier than the later issue. If you do not follow such logical sequence your judgment will be incoherent and you will be jumping back and forth, leading to confusion.

Recording of evidence and findings:

The judgment must record the evidence on each issue adequately and succinctly. The recording and analysis of evidence should disclose the general nature of the case; what the evidence proposes to establish; and its credibility. In case you consider it appropriate to discuss and analyse two or more issues together, you may do so but record separate findings on each of the issues considered, or at any rate with such clarity of treatment as would enable comprehension of your conclusions on each of the issues involved.

While recording findings on the facts pleaded, the issues arising therefrom and the evidence in respect of the issues together with the relevant law in

connection with each issue must be discussed cogently and clearly and specific findings must be recorded on each issue. Evasive or ambiguous conclusions either on questions of fact or law relevant to any issue, must be avoided. Unless an issue is one of law and may be heard and decided as a preliminary issue (O.15 R. 2 C.P.C) a trial court should generally hear and decide all the issues in the decision of the case. This is to avoid a possible remand, if the appellate court comes to a contrary conclusion of any one of the issues.

Drawing up the relief:

Since the decree is required to be drawn up so as to be self-contained and in accordance with the judgment one must exercise proper care and attention in drafting the operative portion of the judgment.

In many cases, writing of the operative portion would be a simple affair and if the plaint drafts a relief in clear, cogent and simple words, it would be enough to say: *that the suit is decreed for the relief as prayed together with costs*; and where you are rejecting you may say *that the suit claim is dismissed and costs are awarded to the defendant(s) in such and such manner or proportion*.

Where the relief claimed in the plaint is complicated or has been drafted in language which would cause confusion; lead to avoidable further litigation; cause avoidable harassment to the defendant; or might be difficult to execute; or where you decide not to grant the whole of the relief claimed in the plaint, you have to draft the operative portion without relying on the language in the relief portion of

the plaint and by formulating the relief consistent with the analysis and conclusions in the substantive portion of the judgment.

Where a number of issues pertaining to facts and law are analysed and adjudicated, for lending clarity and character to the judgment it is better to sum up the different findings on facts and the conclusions drawn as a result of the cumulative effect of such findings. The general issue that is normally framed such as: '*to what relief, if any, the plaintiff is entitled*' provides a useful heading under which the summing up could be done.

Criminal Cases:

The general framework of a judgment in a criminal case is substantially similar to a civil case. The judgment must contain (i) the facts asserted by the prosecution and by the accused; (ii) the point or point for determination; and (iii) the decision on the points, with reasons therefor. The judgment in a criminal case must also set out the offence and the section of the Bharatiya Nyaya Sanhita, 2023 (BNS) or other law under which the accused is convicted and must specify the sentence and or the fine imposed, as the case may be. Where the judgment is one of acquittal, the offence in respect of which the acquittal is recorded should be specified and the judgment should direct that the accused be set at liberty. Where conviction is for an offence punishable with death or in the alternative with imprisonment for life or imprisonment for a term of ten years, the judgment should state the reasons for the sentence awarded; and in case of a sentence of

death, special reasons for such sentence must be carefully recorded (Section 393 in Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)).

The critical judicial process in a criminal case commences with framing of charges. A charge is intended to inform accurately and with certainty, the exact nature of the offence of which an accused is charged. He is entitled to be informed precisely what act he is alleged to have committed and under what provisions of the BNS or other law he is culpable. The charge should include: (i) a statement of offence(s) with which the accused is charged [Sec. 243(1) BNSS]; (ii) if the law that creates that offence gives such offence a specific nomenclature, that name [Sec.243 (2) BNSS]; (iii) if the offence is not given any specific nomenclature, so much of the definition of the offence as to give the accused notice of the offence of which he is charged [Sec. 243 (3) BNSS]; (iv) the law and the specific provision under which offence is alleged to have been committed [Sec.243 (4) BNSS.]; (v) particulars of the time and place of the alleged offence and the person(s) (if any) against whom or the thing (if any) in respect of which, it was committed [Sec. 235 (1) BNSS]; and (vi) if the particulars mentioned above do not, in your view, provide the accused sufficient notice of the matter in respect of which he is charged, such particulars of the manner in which the alleged offence was committed as would be sufficient for that purpose. [Sec. 236 BNSS].

In framing the charge all necessary allegations and important aspects must be included except those which are not necessary for the prosecution to prove.

The charge should be precise and complete and should include particulars of all acts done and the law infringed. Expressions such as ***etc*** must be clearly avoided.

The Judgment:

A judgment must commence with the narration of facts pointing towards the offence(s) in respect of which the accused is charged and tried. The opening part of the judgment may also indicate whether the accused is prosecuted by the police or tried pursuant to a private complaint. Thereafter the facts leading to the prosecution should be stated succinctly; but in sufficient detail to disclose the case of the prosecution. You should thereafter state whether the accused did or did not plead guilt and later set out in brief the facts offered by or on behalf of the accused as to indicate the case of the defence, where one is pleaded.

Before proceeding to discuss the evidence, the points of determination in the case should be set out. It would involve to an extent, an analysis of the facts alleged by the prosecution and the defence if any, and the charges framed. The points for determination should be formulated so as to give a clear impression that nothing material has been overlooked.

Reasons and Analysis:

In criminal, as in civil cases, reasons must be recorded for findings. Absence of reasons render the conviction invalid and the judgment vulnerable to invalidation. Reasons should be recorded with clarity and precision, to enable the appellate court to judge the sufficiency of the material before the trial court to

support a conviction. The decision should be based on the evidence and not speculations or assumptions as to probabilities. A conviction based on surmises not supported by the evidence and which is neither the case of the prosecution nor of the defence, would be illegal. Therefore, the evidence on the basis of which the conclusion is recorded must be set out in the judgment.

While discussing the evidence and recording final conclusions, the judgment must reveal the judge's awareness, that in criminal cases normally, it is for the prosecution to prove the case and the accused is not to be convicted merely since he offers an implausible explanation or fails to tell the truth in defence.

Where the accused claims to be tried, the judgment should note whether witnesses were examined in defence; if witnesses were summoned for the defence but not examined and the reasons if any for not examining witnesses. Where the defence is disbelieved, the reasons why the defence was disbelieved, and the prosecution evidence preferred must be recorded. A judgment leading to conviction should not be based on a discussion of the defence evidence alone and must discuss the prosecution evidence as well.

In discussing the evidence and expressing a final opinion on the evidence a consistent case throughout must be made out. There must be no confusion in the analysis of evidence and in drawing conclusions therefrom. Where on some aspects of the prosecution case and the evidence led thereon, adverse comments are recorded as to improbability, absence of veracity or probity, the judgment

should clearly set out why despite the improbabilities of those aspects of the prosecution case the court is coming to the conclusion warranting a conviction.

The benefit of the doubt:

Where the evidence is ambiguous and inadequate to record a conviction or there are circumstances which do not clearly (beyond a reasonable doubt) indicate that the accused might have committed the offence, he is entitled to the benefit of doubt. This expression is however not a magic formula for abdicating the obligation of analysing the facts and recording clear and definite conclusions. Where there is a volume of acceptable evidence and which is sought to be rebutted by the defence, you must apply your mind to those facts, analyse the evidence to ascertain whether the prosecution has affirmatively proved its case while juxtaposing the defence, for testing whether the prosecution's case could be true. Only thereafter and if there is a reasonable doubt that the offence has not been established and by the accused, the benefit of doubt could be recorded in favour of the accused.

Identification evidence:

Identification proceedings constitute an important aspect in the proof or disproof of guilt. The value of identification however depends on two critical factors: (a) that the witnesses who identified an accused did not have an opportunity of seeing him after commission of the offence; and (b) no mistake was made by these witnesses in the identification, or such errors are negligible.

The evidence of identification must be subjected to close and critical scrutiny. It must be ascertained whether the accused was previously known to the witnesses or were complete strangers at the time of the occurrence. The state of light and visibility, the opportunities which the witnesses had to identify the accused, and the range and distance from which they saw the accused, are critical factors to the scrutiny. Where the accused was the only person presented for identification, the evidence on such identification is worthless. The lesser the number of persons who were present for identification along with the accused, the greater and more rigorous should be the scrutiny to ascertain whether proper standards for identification were maintained.

Identification of property:

Where the question of guilt or otherwise of the accused turns upon identification of property, the substance of the evidence on this aspect must include the facts upon which witness(es) base their conclusions as to the identity of that property.

The Sentence:

Where a judgment records a conviction, it must be followed by the sentence. This last portion of the judgment is as important as the earlier parts. The judge must bear in mind the provisions of law under which the punishment is prescribed for the offence, the maximum and minimum sentence permissible under the law and where the legal provision provides for a spectrum of

punishments you must record reasons why the quantum of sentence has been imposed. There are several types of punishments which could be inflicted for offences. These are: death; imprisonment for life; imprisonment for various terms - rigorous or simple; forfeiture of property and/or fine. Combination of the punishments are therefore numerous. You must therefore invariably and carefully look at the appropriate provisions of the law under which the accused is being convicted, to ascertain what the law mandates to be the punishment.

There are several provisions in the Code of Criminal Procedure and in other special enactments which circumscribe or describe the jurisdiction of the court to award a particular punishment. There are limitations to jurisdiction as well. You must acclimatize yourself with these substantive provisions relating to jurisdiction while awarding the punishment. The objects of recording of a punishment are several. It is as a just retribution for the culpable conduct; for protection of the society; and for the reformation of the offender. Reformation and rehabilitation of the offender is the current policy of penal legislation and not merely deterrence. Where the law provides a discretion to the judge to choose among the range of various punishments, you must remember that the discretion of the judge is the discretion of the law and not your personal and subjective discretion. It is not to be exercised arbitrarily, whimsically or fancifully. The sentence, within the authorized range of punishments, should be proportional to the nature and gravity of the culpable conduct established.

If the punishment is determined on a lenient view, the judgment must record the extenuating circumstances of the case which were considered for taking a lenient view. Similarly when a serious view of the offence is taken, the gravity of the circumstances must be recorded to justify a severer punishment. In short, all extenuating and aggravating circumstances of the case must be considered and recorded as the reasons for the sentence imposed. A sentence must be recorded in plain language and should be complete so that the concerned official who has to execute the warrant is clearly informed as to how and for what period the sentence is imposed.

Fine is a lenient form of punishment. For some offences only a fine may be imposed while in many other cases the offence is punishable with imprisonment or fine or both. In some cases a fine is compulsory and must be imposed in addition to other sentences.

The judge must therefore carefully study the provision(s) of law under which the accused is convicted before passing the sentence. In imposing a fine the court must have regard to the fact that the fine should be proportionate to the means of the offender while duly considering the gravity of the offence established. A fine should not be inflicted vindictively. A substantial fine could be awarded where it is intended to compensate the complainant or the victim or where the accused has financially benefitted by the culpable conduct. If there are more than one accused the fine should be imposed separately on the accused and in proportion to the gravity of their culpability and in proportion to their means.

In estimating the proper term of imprisonment due regard must be had to the period during which the accused has remained in custody as an under-trial. Where the accused is tried for two or more offences and convicted and sentenced for imprisonment separately for different offences, the sentence would run consecutively unless the judge specifies to the contrary. Therefore whenever it is intended that the different sentences must run concurrently and not consecutively, the judgment should make it clear that the sentence should run concurrently, in the operative portion of the judgment. Whether the sentence should run concurrently or consecutively is left to the discretion of the court, but as in all judicial discretion it should be exercised judiciously and not whimsically. One must not blindly order the sentence to run concurrently as though there was no alternative. In determining the appropriate punishments/sentences, within the range of various punishments, the nature of the offence, the gender of the accused, the age, the motive and other surrounding circumstances, the degree of deliberation shown by the accused, the provocation he received, should all be considered, judiciously.

Note:

Where more than one accused are involved in the trial, the judgment must analyse the individual case of each accused separately and findings must be recorded as regards the act(s) proved to have been committed by each accused.

The judgment must disclose that the evidence has been analysed with care and thoroughness. Reasons must be recorded why you believe or disbelieve a particular witness. The judgment must contain intelligent and intelligible discussion on the pros and cons of the case with a summary of the evidence of the material witnesses. Do not ever attempt to make out a case against the accused stronger than it is justified by the evidence, merely to ensure that your judgment is upheld in appeal.

It is often noticed in several judgments that a summary of the evidence or of the oral testimony recorded at trial is passed on as a discussion or analysis of the evidence. This is a wrong, inelegant and wholly avoidable method of drafting a judgment. You must not record a mere summary of evidence or furnish a catalogue of the documents filed in evidence. This would amount to mere collection in the judgment of the statement of witnesses who give evidence at trial or of the documents marked if any. A proper judgment must disclose a careful and critical analyses and appraisal of the evidence. Mere copious or elaborate quotations from evidence of witnesses without complete and detailed comments on the testimony is useless and illustrates demonstrable non-application of mind.

While considering the evidence as a whole to arrive at certain conclusions on the basis of such evidence, there are three aspects which are to be borne in mind: the volume of evidence, the weight of the evidence and the probability of the evidence. It is the cumulative effect of all these three aspects of evidence that

eventually determines a certain question of fact, though the extent to which each one of these aspects may influence a decision may be materially different.

In assessing the weight of the evidence it is not the weight of the witness or the volume of the testimony that is important. Mere quantity of the evidence is irrelevant. The judge must not be overwhelmed by the number of witnesses or what is called the quantity of evidence. It is the judge's task to go behind the volume and discover the quality or what is called the weight of the evidence. A useful illustration on this aspect is where there is an expert medical evidence of the doctor who attended to the deceased and was with him around the time of his demise. This sole witness whose testimony is otherwise unimpeachable deposes that the death was caused on account of an injury to the head. As against this testimony a dozen lay persons testify that the death occurred on account of pneumonia. In the absence of any supervening or special circumstances appearing from the evidence, clearly, the evidence of the doctor though the sole witness, must outweigh the testimony of the dozen lay witnesses, as to the cause of the death. This is a simple illustration of quality prevailing over quantity. You must remember that Section 139 in Bharatiya Sakshya Adhiniyam, 2023 (BSA) does not insist on any particular number of witnesses. For a useful discussion this aspect see *Vadivelu Thevar vs State of Madras* [AIR 1957, S.C 614).

The entire evidence in criminal cases may usefully be considered under four different heads; (i) direct; (ii) circumstantial; (iii) technical; and (iv) formal. In discussing the evidence relating to any particular instance you may deal first

with the direct evidence and then refer to circumstantial evidence which goes to strengthen the conclusions drawn from the direct evidence or to indicate the weaknesses thereof. Technical or expert evidence in the shape of injury report, statement of the doctor who examined the injured or conducted a post-mortem examination of the corpse, report of the chemical examiner or the serologist, report or the deposition of a handwriting or thumb impression expert etc, form one class of evidence and should be discussed at the proper place in the judgment and the effect indicated. The formal investigation such as of the I.O. generally comes last and should be indicated in brief, to the extent necessary for filling up the gap in the story taken as a whole. It should never be allowed to occupy more than the minimum place in the judgment.

General comments:

Neither the sheer length or weight of a judgment nor its brevity is an index of its quality. There are some judgments which after reproducing the entire pleadings copiously and often repeatedly, extracting the oral and documentary evidence in exasperating detail and cataloguing or extracting the precedents cited in painful and avoidable detail, simply conclude that some evidence is accepted and other not; some judgments are relevant and others not; and proceed to record the conclusion(s) without independent analysis. This is an example of a long and useless judgment, a waste of judicial time, avoidable waste of paper and a huge burden on appellate resources.

Some judges are highly technical and others excessively “liberal”. Neither approach is proper. The function of a judge is not to craft the social policy. That is the concern of the legislature in a democracy. Judges merely administer the policy as revealed by the rules framed by Legislature. Personal predilections of the judge as to assumed social pathologies are inappropriate in the normal task of judging. Attitudes such as a pro-landlord, pro-tenant; pro-industry or pro-worker; pro-assessee or pro-revenue; pro-women/children and the like are not the function of the judge. These are policy choices made by the people through legislative instruments. Where the Law takes a curve or indicates a policy choice, the judge must follow that guidance and not innovate policy at will.

The great American jurist and an Associate Justice of the US Supreme Court, Justice Benjamin Cardozo in his essay *Law and Literature* observes that in matters of the literary style in the writing of judgments, the sovereign virtue is ‘clarity’. Cardozo identifies six styles in judgments. These are:

a) *magisterial or imperative;*

b) *laconic or sententious;*

c) *conversational or homely;*

d) *refined or artificial, smelling of the lamp, verging at times upon precocity or euphemism;*

e) *demonstrative or persuasive; and*

f) *tonsorial or agglutinative, so called from the shears and the pastepot which are its implements and emblem.*

If you wish to learn more about the six categories of judgment styles categorized by Justice Cardozo, you might refer to his 1925 essay on *Law and Literature*. The Australian Jurist Justice Michael Kirby in an article on the writing of judgments - [(1990) 64 Austr. L.J. 691] pointed out the critical value of a judgment from the point of view of the litigant, the legal profession, the subordinate courts/tribunals, the brother Judges, and the Judge's own conscience. He observes that to the litigant, the duty of the Judge is uphold his own integrity and let the losing party know why he lost the case. The legal profession is entitled to have it demonstrated that the Judge had the correct principles in mind, had properly applied them and is entitled to examine the body of the judgment for the learning and precedent that they provide and for the reassurance of the quality of the judiciary which is still the centre-piece of our administration of justice. It does not take long for the profession to come to know, including through the written pages of published judgments, the lazy Judge, the Judge prone to errors of fact, etc. The reputational considerations are important for the exercise of appellate rights; for the Judge's own self-discipline; for attempts at improvement; and the maintenance of the integrity and quality of our judiciary. From the point of view of other Judges, the benefit that accrues to the lower hierarchy of judges and Tribunals is of utmost importance - see Hindustan Times Ltd. vs. Union of India: (1998) 2 SCC. 242.

Drafting of judgment is essentially an art. We are not appointed to the judicial office in recognition of our skills in this area. We must acquire this skill by constant effort, refinement, reflection and by setting goals and standards for judgment writing. Constant reading of superior court judgments,; and if possible, of judgments of superior courts in other jurisdictions would greatly improve our quality; and quality once internalized stays for the duration of the office.

Thank you, for your patience and your abiding concern for qualitative dispensation of justice.

RAGHURAM GODA

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