**1 Drafting of petition under Article 226/227**

The importance of the drafting vis a vis oral arguments has been vividly discussed by the Supreme Court in P N Eswara Iyer v. Registrar AIR 1980 SC 808 while considering the constitutional validity of the exclusion of oral arguments in the context of the review jurisdiction;

1. **For good drafting one should possess:**

• Good command of language

• Clarity of facts • Clarity of law

• Ability to arrange facts in sequence of time or date

• Ability to arrange bare facts (without mixing the facts and legal submissions) • Ability to discard or exclude the facts that are not remotely relevant to the controversy, however, at the same time taking care of not suppressing material facts • Ability to frame the prayer clause succinctly- what your client wants and what is absurd to demand.

**2. Importance of drafting skill: ¬** Drafting of petition is a skill on which the fate of your case depends to a large extent. One must, therefore, possess the skill of drafting the petition. It is like painting a picture. One must take as much care in drafting of a petition which an artist takes while painting a picture. 2 ¬ Most of the judges in High Courts and the Supreme Court read on the previous day the cases/petitions to be listed for admission/hearing on the next day. Good drafting helps them in understanding the problem/legal issues involved in the case. ¬ You might feel that judge is not going to read your entire petition so why should you take much care in drafting a petition, but you must remember that your every oral submission of the fact and law in court room should be part of the petition. If relevant facts and legal submissions do not form part of the petition, the court will not be able to help you and your petition might be dismissed for the want of sufficient facts. Your opponent will also raise an objection that the petitioner should not be allowed to travel beyond his pleading. ¬ The prayer clause must be meticulously drafted since the court will refuse to grant any relief not prayed for in the petition. ¬ If relevant facts are not stated or legal submissions are not made in the petition, it gives an opportunity to the opponent to get your case dismissed on such grounds.

**3. Pre-Drafting Stage (Discussion with client and collection of information)** ¬ Drafting of a plaint or petition depends on the effective collection of facts and information from the client. 3 ¬ Treat your client with your curtesy -ask your client to tell his problem in brief – allow him to open up and vent his grievances for some time. ¬ Ask questions to your client for gathering facts of his case and tell him to show relevant documents – try to ascertain correct facts and all important details. ¬ Ask your client whether he had taken out any legal proceeding in the past in respect of the problem he has brought before you. ¬ Arrange the facts and relevant documents in chronology ¬ Don’t jump to any conclusion – don’t give your judgment – you are a lawyer not a judge. ¬ Find out which is the most appropriate remedy [civil suit, criminal complaint, approaching special tribunal, filing appealrevision or review etc] for the redressal of the problem brought before you. ¬ Find out whether it is advisable to bypass the alternative remedy and approach the high court directly - discuss this aspect clearly with your client. ¬ Ask your client if he was missing any relevant fact to be mentioned and relevant documents to be produced – explain him the consequences of suppression of material fact or documents from the court – opponent will expose your suppression when he is called upon to answer your petition.4 ¬ Finally ask your client what he wants from the court – note down the relief clearly which your client wants- arrange the relief in sequence in anticipation that if the court is not to grant the first relief prayed for what is the next relief by which your client would be satisfied – lastly discuss the minimum relief which you might get for your client – never tell your client that he has no case – he comes for the solution of his problem and not to hear from you that his case is worthless- you can broadly say to your client that he has a legally strong case or a little weak case or not a very strong case. ¬ After the aforesaid discussion if your client is willing to file a petition, you may start drafting the petition. Else, charge your client for the consultation and for giving a true advice. Be truthful and honest to your client. Never give guarantee of success in the case to your client.

**4. Difference between plaint and petition: ¬** Civil Procedure Code does not apply to petition under Article 226/227 of the Constitution of India [Refer to S.141 CPC] ¬ Civil Procedure code serves as a guide (State of Punjab Vrs. Puran Singh AIR 1996 SC 1092). ¬ Pleading and Plaint are governed by Order VI and Order VII of the Code of Civil Procedure. Your petition must also be in tune with these rules not strictly but as far as possible. ¬ In the petition before high court you are entitled to quote the relevant statutory provision, extract from relevant case 5 law, legal submissions etc. which is not permitted in drafting a plaint. ¬ There is no specific format provided for petition under Article 226/227 except PIL. You are free to evolve your own style of drafting keeping in mind the parameters discussed above.

**5. Parts of Petition and reply: ¬** Index ¬ List of Events ¬ Memorandum of Petition ¬ Affidavit ¬ Annexures-Documents ¬ Reply affidavit to the petition ¬ Rejoinder, if any 6. Petition has following parts: General Title of petition “In the High Court of Gujarat At Ahmedabad” INDEX List of Events ¬ Title of the Petition “In The High Court of\_\_\_\_\_\_\_ at\_\_\_\_\_\_\_\_” ¬ “District” is relevant to ascertain the fact from which district the case has come to the high court-service of court process is done through the District Court- the reference of the district would also help the Registry of the High Court in 6 finding out whether there is any caveat against a particular decision. ¬ Nature of proceeding: Special Civil Application No:\_\_\_\_\_\_ of 2016,

Writ Petition (PIL) No:\_\_\_\_\_\_ of 2016 or Special Criminal Application No:\_\_\_\_\_ of 2016 ¬ In the matter of :

1. Articles of the Constitution of India
2. Relevant laws to be stated
3. Relevant rules to be stated

iv) The decision under challenge in the petition The part is very relevant for deciding before which bench the case will be listed. You as a lawyer can do some planning in deciding this part within the framework of law. ¬ Details of petitioners:

1. Individual petition [CPC O.1 R.1]
2. Petitioner by more than one person [ CPC O.1 R.1] Chandubhai Patel v. State of Gujarat 1975 GLR 368, Umesh Chand v. State of UP AIR 1984 ALL 46(FB)

iii) Petitioner by partnership firm or a proprietary firm or HUF

**[O.30 R. 1,10]**

iv) Petitioner by Company, Association person or Cooperative Society [ CPC O. 29] 7

v) Petitioner by Trust or other Society [ CPC O.31] vi) Suit by or against minor or unsound person [CPC O.32]

vii) Petition in representative capacity [ CPC O.1. R.8, Rule 175 GHC Rules,1993] A separate application to be filed.

viii) Intervention application

**[ CPC O.1 R.8A]** ¬ Details of respondents: i) The State Government or Central Government as the case may be is required to be joined as respondent no: 1 usually. The description of the State Government should be for example “The State of Gujarat”. The description of the Central Government should be “The Union of India”. This description is sufficient under Section 79 of the Code of Civil Procedure Code. [Refer to also O.27 and O.27A of CPC] ¬ The litigants are not supposed to know the department which is concerned with the case. A copy of the petition to be served upon the Government Pleader or the Central Government Counsel as the case may be. ¬ When writ in the nature of Mandamus is prayed for, the concerned authority or officer is also required to be joined as a respondent. 8 ¬ When writ in the nature of certiorari or prohibition is prayed for, the authority or tribunal is required to be joined as a respondent. [now in view of the judgement of SC in Sh. Jogendrasinhji Vijaysinhji v. State of Gujarat (2015) 9 SCC 1 and M.S.Kazi v. Muslim Education Society, SC Judgment dated 22/8/2016 (para 8,9) the tribunal is not required to be joined as party respondent] ¬ When writ in the nature of Habeas Corpus is prayed for, the person who has illegally confined the person is required to be joined as a respondent. ¬ When writ in the nature of Quo Warranto is prayed for, the person who has usurped the public office is required to be joined as a respondent. ¬ Where allegations of mala-fide are made against any officer or person, such a person or officer is also required to be joined as a respondent. To, Hon’ble Chief Justice and other Hon’ble Judges Of The High Court of\_\_\_\_\_\_\_\_ The petitioner(s) most respectfully submit(s): 1. Challenge in the petition 9 2. Facts to be divided in to small sub-paragraphs- if violation of the fundamental right given to citizens of India only is alleged- make statement that the petitioner is a citizen of India. 3. Legal Grounds/Submissions

4. Prima facie case, balance of convenience and irreparable loss

5. No other alternative remedy

6. Details of the legal proceeding, if already undertaken on the subjectStatement to be made that no other case filed on the subject matter in any other forum and how it was disposed of. [Rule 174 GHC Rules,1993] 7. No delay and laches/ Give reasons for delay-details of the cause of action 8. Statement about territorial jurisdiction only when there is any doubt about the High Court’s jurisdiction

9. Prayer clause

10. Affidavit- Oath/affirmation-facts based on the personal knowledge, facts based on information and belief – no material fact or document concealed.

11. Documents-Annexures ( Annexures to the petition should be given consecutive cardinal numbers prefixed by word ”P” as P-1, P2,…., annexures to the reply should be given cardinal numbers prefixed by the word ”R” as R-1, R-2….. and annexures to rejoinder should be given cardinal numbers prefixed by the word “RJ” as RJ-1, RJ-2 ….) 10 12. The Gujarat High Court Rules, 1993 Chapter XVII Rule 174 to 194 for petition under Article 226 and 227 and Chapter XXVIII Rules 378 to 386 (Petition for Habeas Corpus) 7. Broad analysis of Article 226 and Article 227: ¬ Article 226 is invoked for the enforcement of the fundamental rights; or ¬ For seeking judicial review; or ¬ For enforcing the rule of law in all governmental actions. ¬ Article 227 can be invoked against judicial orders of subordinate courts and tribunals- for correcting jurisdictional errors only-power of superintendence- no other 8. The following types of cases are filed before high court usually: ¬ Judicial review of executive/administrative action or decision; ¬ judicial review of a quasi-judicial decision or judicial decision; ¬ Judicial review of legislative action and vires of law or constitutional amendments; ¬ Judicial review of prerogative power; ¬ Judicial review in contractual matters; ¬ Judicial review of policy decision While drafting the petition you must keep in mind the nature of the order which you are challenging before the high court. Your pleading must make out a case for high court’s intervention. 11 • Administrative decision can ordinarily be challenged on the ground of Wednusbary unreasonableness as also on the doctrine of proportionality. • Quasi-judicial or judicial decision can ordinarily be challenged on the ground of jurisdictional error, error apparent on the face of the record, perversity, violation of substantive or procedural law or principle of natural justice. • Legislative action can be challenged on the ground of violation of any fundamental right or legislative competence. Subordinate legislation can in addition to above grounds be challenged on the ground of it being contrary to the parent law or beyond the permissible limit. • Constitutional amendment can be challenged on the ground of violation of the basic structure doctrine only. • Policy decision, prerogative powers and contractual matters can be judicially reviewed on very limited grounds only. 9. Drafting of petition also depends the nature of direction or order sought for in the petition: ¬ Order/Direction in the nature of Certiorari ¬ Order/Direction in the nature of Prohibition ¬ Order/Direction in the nature of Mandamus ¬ Order/Direction in the nature of Habeas Corpus ¬ Order/Direction in the nature of Quo Warranto Your pleading must contain necessary averments for invoking the powers of the High Court. 12 10. Drafting of petition under Article 227: While drafting the petition under Article 227 one must bear in mind that this article confers simply the power of superintendence and empowers the High Court to correct the jurisdictional errors only. Therefore one must make an averment as to how the judgment or order of the subordinate court or tribunal is without jurisdiction so as to call for the interference by the High Court. Please refer to Waryam Singh V. Amar Nath AIR 1954 SC 215, Mohmmad Yunus v. Mohd. Mustaquim AIR 1984 SC 38. In the petition under Article 227 the subordinate court or tribunal should not be joined as respondent. In the petition under Article 227 you cannot ask for any of the prerogative writs. Asim Pandya Advocate, High Court of Gujarat