



# Surviving the Legal Jungle

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*Dedication*

Dedicated to (power of) the Public

## *Acknowledgments*

To “*White Fang*” for sharing the perspective of an advocate on how the legal system works

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## **Ch. 1 Introduction**

### ***How this book came about***

This book is written from perspective of common man and woman on how to survive (and maybe thrive?) if one has to deal with the legal system in India.

The personal reasons for writing have come from my experiences of having had to deal with the Indian legal and judicial system for almost ten years now. In 2006, I was forced to file a civil court case for recovery of dues, which is still pending but it is now in its final stages and I am hoping for a judgment soon. Somehow things did not stop just there after I filed my first court case. Destiny maybe had plans that my interest in things legal should get more exposure and real-world experience so to speak, and over the years I was got exposed to more courts including criminal, family, and consumer courts. Out of the four types of courts mentioned above, I myself had filed petitions/complaints only in civil and consumer courts. For the criminal and family courts, I have had the experience of being a respondent/defendant or an accused. So I have had a mix of experience of being a complainant (consumer court) as well as being a respondent/defendant/accused (family, criminal courts). While all these terms like respondent, defendant etc may seem like gobbledygook to a layman, I will try to keep things very simple in this book so even a person with zero legal background can get something out of it.

## *Motivation*

The chief motivation for this book is to pen down (or less metaphorically - type on a keyboard) my thoughts, experiences, learnings, rants, grouses, and ideas for improvement for the Indian legal system and judiciary. In general someone's personal experiences may be of little value or interest unless they reflect and are informed by wider public's perceptions and experience too — to which I can claim to have got decent exposure due to listening to and guiding people on men's rights issues, consumer complaints, as well as RTI related queries over last many years.

Some motivations for this book are:

1. Talk about common myths and misconceptions in mind of public about law, legal procedures, justice system etc.
2. Inform people on basic principles of law and justice, without knowing which one could go on a wild goose chase within the legal system.
3. Give basic procedure of trial within various courts - criminal, civil, consumer, and family courts.
4. Share basic practical knowledge and experiences of how various types of courts work in India - criminal, civil, consumer, and family courts etc.
5. Share basic knowledge on how to hire a lawyer/advocate and how to manage his/her services during the case.
6. Share my thoughts on problems faced by public in legal system, police, judiciary, consumer affairs, etc and some ideas on improving them.
7. Hopefully create a base of knowledge and a common ground and understanding, on top of which socially active citizens can generate ideas and further discussions on how judicial system and law processes including police procedures can be improved.
8. Disseminate the book to create awareness in wider public on above. For

this particular reason, this book is intended as a free resource. The only major disadvantage I see of giving away a free book is that many people download free stuff but then don't read it or read it only partially because they get distracted by some more free stuff available on the internet! And a few of them may give negative comments without reading the whole book, which will cause confusion and misunderstanding for others, but that is a risk I am willing to take. In the worst case, I can make the book into a paid one so only a few serious readers will read it, even if one of the original purposes of wider dissemination may not get fulfilled.

### ***Disclaimer***

The intended audience of this book is common man and woman, or public, or citizenry of India. I am not a lawyer and do not hold myself to be an expert on law either. The book is a practical guide to law, justice, courts, legal issues but my views on any topic discussed in the book should not be held as the final authority on that topic. The idea behind the book is to remove myths, misconceptions, and fear of the legal processes (not fear of law itself!), and give basic practical knowledge so that people can think and decide for themselves how best to handle a legal issue they have to deal with. You can send your suggestions and feedback to me at [vivek@deveshwar.in](mailto:vivek@deveshwar.in).

### ***Terms and Glossary***

Following are some terms commonly used in the book which will be given in abbreviated form after their first usage in text:

- **CPC**: Code of Civil Procedure: Similar to CrPC, this is the equivalent

set of procedures to be followed for filing a civil suit in court.

- **CrPC:** Code of Criminal Procedure: The set of procedures to be followed in crimes starting from reporting of crime, conduct of police investigation, conduct of criminal trial, and sentencing of convicted persons or acquittal of accused.
- **IO:** Investigation Officer. The police officer in charge of investigation of an alleged crime.
- **IPC:** Indian Penal Code. The set of offences considered a crime as per Indian criminal law.
- **OP:** Opposite Party. An omnibus term to mean the person/party on other side of dispute/complaint whether criminal, civil, consumer, family court etc. The term OP is used in civil cases mainly but I am using this simple term because otherwise using terms like accused, respondent, defendant depending on type of case and court will make it sound very legal, and will not add a lot to the meaning for purpose of this book.
- **Vakalatnama:** Vakalatnama is the Urdu term which means a person signs a document which gives authority to an advocate of his choice to plead and argue his case on his behalf. The advocate and his associates/juniors can also plead the case.

## **Ch. 2 Myths, misconceptions, wrong idea about law**

### *Arrest means guilty*

One of the most common myths in minds of public is that if a person is arrested, that is a cause of huge shame and humiliation presumably because people think that only people who are guilty get arrested. People don't realize that only upon conviction in criminal court, someone is deemed guilty of that crime. Until then, he/she may be an accused but is considered innocent as per law.

The truth is that someone's arrest has nothing to do with his/her being guilty of an alleged crime or not, but it is just a process done by police to help with investigation of a crime. To investigate a crime, police may arrest an accused and then ask for judicial custody for few days or weeks so they can investigate the alleged crime by talking to victims/witnesses without any possible interference from accused or removal of evidence, and so on.

But in the minds of Indian public, arrest means guilt. Hence it is common to see vociferous protests and demand by public for police to arrest the criminals immediately when a crime which shocks people's conscience comes to light. A few years back, there was a [sexual assault on a 6 year old girl in a school in Bangalore](#), which resulted in widespread protests, and most probably due to pressure to arrest on police, someone who had not committed the crime got arrested:

It is said that the furore over the incident and growing pressure on the police made them to arrest Mustafa, though there was no clinching evidence against him. "Besides the porn videos in his laptops, there were no circumstantial evidence against Mustafa. Owing to pressure, the police could have arrested Mustafa with whatever little suspicion they had," a senior police officer said.

Some people may argue that a few wrong arrests is not so bad and it's like collateral damage of preventing crime, but I disagree because every wrongful arrest wastes police's effort and time, and the real criminals are getting away and making good their escape or erasing evidences while police is spending time and effort on arresting innocent people. There is no valid reason or justification to say that making quick or more or random arrests will in any way help with investigation or reduction of crime. If the real criminals don't get arrested, it can in fact embolden them further knowing that police will always go after innocent people just to satisfy public opinion, and they can relax and feel confident in that knowledge.

In most of these cases, public outrage may subside after a few days, and police being aware of that will try to satisfy public opinion to take the heat off. Putting pressure on police to arrest someone either from politicians or directly from public will only lead to shoddy investigation and wrongful arrests. That is also a **violation of fundamental right of wrongfully arrested people to life and liberty** under the constitution.

Also, public is not aware that an accused who gets arrested **may get out of jail within few days or weeks after getting bail**. Somehow the perception is that the accused stays in jail while the criminal trial goes on for next few years. Nothing is further from the truth. As per law, bail is a right of accused (in theory at least if not in practice always but this is a whole topic by itself) and most accused who have some money to spare on a decent advocate can get bail

within few weeks at maximum and be out of jail while the trial is on. For example, in the same case of rape of child discussed above, [the arrested school chairman got bail on the same day of arrest](#):

Rustum Kerawalla was produced in front of second additional sessions court, Bangalore Rural, and was released on bail, on the condition that he should present himself in Varthur police station once in two days, and should not try to tamper any evidence.

He has been booked under section 23 of Juvenile Justice Act for cruelty to the child, section 21 of the Prevention Of Children from Sexual Offences act (POCSO) act for not reporting rape to police, and section 201 of IPC for destroying evidence.

So if people want that justice is done to victims and crime be deterred, asking for quick arrest is not a solution at all. Arrest is not a means of punishment or pronouncement of guilt but to remove hindrances for investigation of crime. Proper investigation, quick charge-sheeting, good prosecution, faster trials are necessary to get conviction after trial, and that's where the focus of public should shift.

### **Misuse of power of arrest by police**

Since (corrupt among) police know and understand that common man is highly worried about arrest, in any kind of false cases under IPC 498A (cruelty to wife), IPC 354 (molestation), IPC 376 (rape) , SC/ST Atrocities Act, police uses the FIR as an excuse to arrest accused people without notice and any investigation. The standard excuse which used to be given by police was that the alleged crime is cognizable (not needing warrant for arrest) and so they have power to arrest the accused immediately. Thankfully, the Supreme Court finally gave a judgment in July 2014 where they made it [stringent upon both police and magistrate to properly record reasons](#) for arrest/non-arrest due to which fear of arrest has come down a lot. In FIRs filed under IPC 498A, [for](#)

[about every 25 people arrested, only 1 is eventually convicted](#), and it needs to be seen how efficient the police and judicial system is if the law is being used only to put fear in minds of innocent people instead of potential criminals!

The main point is that public needs to get over its fascination as well as fear of arrest — fascination that arrest can deter criminals, and fear that arrest means guilty and rotting in jail for years.

### ***Bribe police to get justice!***

One of my other grouses is against this commonly seen behaviour among well meaning, highly educated, (self-proclaimed) law abiding citizens to give bribes to police and IO (Investigation Officer) to further investigation, do proper investigation, and so on.

#### **Why bribing police does not work if you have filed criminal case**

If you have filed criminal case and bribe the IO to do faster or proper investigation, then the IO will have legitimate doubts that even though he is personally obliged to return the favour to you having accepted a bribe, he will think that your bribe must mean your case is weak and it is filed not with intention to get justice but as a means of vendetta or browbeating the OP (Opposite Party) into submission. An IO cannot create evidence of crime out of thin air (though not impossible) to favour you just because you have given a bribe. I have heard from someone who gave 10,000 bribe to IO so that the IO will at least listen to them!

#### **Why bribing police does not work if you are accused of a crime**

Again, an IO is supposed to do his duty of investigating a crime, so while many IO may not feel the necessity to refuse bribes from bribe givers, it does not

mean that he can steer an investigation in your favour or do an impartial investigation. If an IO is supposed to do impartial investigation only for those who pay bribes, then all poor people will be rotting in jails because they could not afford to bribe the IO.

Further, by doing wrong investigation an IO can expose himself to risk of departmental enquiry or action at a later date, for which reason mere acceptance of bribe doesn't mean that IO will do something in an accused's favour. At most, the IO may give a smile instead of frown when you show up, or share some police gyan with you to make you feel less worried about the accusations.

Since giving bribe to a public servant is a crime, and it can be rightly be called as interference with process of law, anyone who believes he/she is falsely accused of a crime and gives bribe to IO, is actually subverting justice and giving disincentives to police people for doing job in impartial manner. It will only create laziness and unprofessional behaviour. Most likely, the net result of promoting a bribe culture is that officials get motivated to do the usual work only after taking bribe, and sit on it otherwise or delay it. But it cannot get one justice in false case because a crime (of bribe giving) can only be used to hide a crime, not get justice for a false case.

Also, the assumption that by giving bribe the false case can be suppressed is not true. What may happen is that an FIR has not been registered and some corrupt police person is faking to take some action on a complaint by false case filer. By giving bribe, the complaint is suppressed before the FIR stage itself, and it is not that a FIR itself somehow resulted into a B report charge-sheet - which means clean chit and no criminal court trial because IO found no evidence of alleged crime. All the reported news about someone paying bribe

to suppress a false case of alleged molestation or rape etc is most likely the case that it was a setup and drama done by accuser in connivance with corrupt police people. Once an FIR is registered, I doubt one can get it disappeared by paying bribe. Police will usually file charge-sheet and one has to undergo trial.

### **The case of removal of names of falsely accused**

One person who was member (but was removed later) of our Facebook group for men facing false cases, was overjoyed and proudly proclaiming that names of few accused was removed because he had paid bribe to IO! My guess is that the IO removed name of some of accused not because of the bribe, but because there was no case against them and he merely did his job which he should have done even if he was not paid a bribe. But human nature is to search for cause and effect in events, and no one wants to admit that his money has gone waste which will make him look like a fool, and probably that's the reason people think that something good must have happened because they have paid a bribe.

### **The case of 1.5 lakh to IO**

On the other hand, one person was despondent that he has paid 1.5 lakh to IO but it did not get him any benefit! Another person has paid 50,000 to IO but has nothing much to show for it. All these just tend to prove my thesis that bribing police or IO can never get one any 'benefits' or justice, it's just a zombie like behaviour and bribing culture that has been embedded into psyche of fearful middle class Indians right from childhood.

### ***What animal is Contract Law?***

Another pattern I have noticed based on [people's questions on my consumer court related articles](#) is that people have very little knowledge of contract law.

### **Fix my mobile**

A very common issue I have seen goes like this. Someone buys a mobile from a retailer, and if after few days he/she finds a problem in the phone, he/she wants the retailer to get it fixed or replace with a brand new phone! But the retailer dilly-dallies or takes the phone and keeps it without doing anything, or asks the person to contact company's service centre. Our complainant believes that the retailer is bound to either replace the phone or give a refund. Is that the right assumption?

I got so tired of these *fix-my-mobile* complaints that I was forced to put a disclaimer that I will henceforth ignore all emails except on medical related issues, and everyone else has to post a public comment only if they need any guidance on how to proceed with consumer issues. By having to post a publicly visible comment, non-serious people and those who want to take undue advantage of laws automatically get discouraged because unlike private email, their public comment can be seen by anyone who visits the web page. They probably know their complaint has little merit and so will not want to write about it and make it visible to whole world.

### **Unrealistic expectations**

I have had a few people who reported problems in their car, and somehow the description of issues did not seem very clear or honest to me as to who exactly was to be blamed; but these complainants wanted their car to be replaced with a brand new one by the manufacturer! I can imagine a mobile being replaced by a brand one new in case of certain defects, but I can't understand how eligible is the demand to replace a whole car rather than fix the specific problem in it whatever it might be.

### **I told them to disconnect, but am still getting the bills**

Another common problem I hear is that someone has asked the telecom or

broadband service provider to disconnect the service, and maybe they got a verbal or even some written acknowledgement, but they are still getting the bills every month. What normally happens is that people take it lightly that since they have given disconnection request, all these bills are just some mistake by the company and nothing to worry about. But the same people get scared and worried when later they get a notice to pay dues by the telecom operator which may run into few thousands easily.

### **Bond with software company**

Another common problem is that after finishing college, someone got job in a software company and they didn't mind signing a contract which had a clause that they have to work for 1 or 2 years else they are liable to pay to company a certain amount which may run into tens of thousands. The usual excuse for such clause is that company has spent expenses on training this person which needs to be recovered if he/she quits before the bond period. The person now wants to quit but is scared of legal repercussions.

Knowing basics of Contract law is very important, so I will cover them in a later chapter.

### ***I want to teach them a lesson***

Many people who come to my [consumer related articles](#) submit their comment and state their desire that they want to teach a lesson to the whichever company has been troubling them in their consumer related issue.

Having dealt with men's rights related issues, I commonly hear a similar statement that people want to teach a lesson to the other side for filing false cases on them.

Firstly, the main goal of law and justice is not to teach a lesson to your OP (Opposite Party). Under civil law: business, property, contracts related disputes can be resolved, and criminal law is there to punish, and deter criminals. In consumer courts, one can get relief and maybe also penalty for harassment caused by unscrupulous behaviour or breach of terms by a company. But I sincerely doubt in any court judgment will the words “teach a lesson” be used against a party even though that party has lost the case or is being criminally punished.

The other major problem I have with *teach-a-lesson* approach is that most of people who talk about teaching a lesson to OP don't really have the intention to do the work involved in going to court, and subsequently necessary patience to go through the trial. It's just a **emotional expression** they use hoping to impress someone else and thinking that that someone else will jump to their cause and take it upon his own shoulders to see to it that they get justice. As per law, **only the affected person can file a complaint** and at best anyone else can give some legal or moral support from the background. Someone else cannot file a complaint on your behalf and get justice delivered at home. I am ignoring the cases where a representative or Power of Attorney holder may represent one in a legal suit because they will be exceptions.

If one wants to get justice through courts, one has to follow a **very methodical process in an unemotional way** of preparing a petition/complaint etc, collecting and preserving evidences, filing petition/complaint through advocate, and then going through other parts of trial like submitting evidence, doing cross examination, and so on where the job of advocate comes into picture. This process is explained in more detail for various types of cases later.

While emotions may help one to get charged up to do something for the injustice one is facing, it won't be enough to sustain oneself through the long and grinding process (except probably in consumer courts) of justice in Indian courts.

***Please help me!***

One more basic problem I have found especially for consumer related complaints is that people put their issue on various internet sites, which are not even government sites, and hope that someone else can take up their complaint and fix their issue. They put words like “please help me” or something to that effect to indicate that they need help in solving the problem. Sometimes one may get lucky in the sense that many companies also watch these internet sites just in case someone's online complaint affects their reputation, and they take up the complaint and resolve the issue. But this is not the same as filing a complaint in a court. If one gets a solution through putting an issue on random websites, it's great luck but I doubt any company will take up a serious issue with **monetary value of few thousands** or more and fix it. Most of these resolved issues are to do with some billing issue, telecom connection related, overcharging etc, and so on which the company may decide to resolve without the person having approached consumer court.

One basic point in law is that if you are the affected party, then only you can file a complaint to court, **no one else** can do it on your behalf. Only in case of crimes, a non-victim can report it to police.

So while reporting a matter on online sites may get some attention if one is lucky, for serious cases one should attempt to do it via courts. Also, if one tries

to give wrong or exaggerated information about OP online, it could become a case of defamation and legally they could file a defamation case. Most of the defamation cases don't stand in court ultimately, but I doubt anyone would like to go through that process as an accused. So one should be careful to submit only truthful facts about OP on internet and social media, which one is confident to be able to defend should the need arise.

### *Can I file consumer complaint online?*

These days many things are possible to do online without moving out of home — buying on private e-commerce sites, doing airline ticket booking, as well as government operated things like IRCTC for online railway ticket booking. Sometimes, people tweet (on Twitter) a complaint to a minister and the complaint gets resolved after that.

However, when it comes to accessing courts, as of now it is not possible to file a complaint online, whether complaint to consumer forum or petition in civil court. I did a quick check and it seems in [UK it is possible to initiate claim for money](#) (from OP) online including paying court fee, and in fact the court fee is smaller if claim is made online. So logically I don't see much hindrance why the same can't be done in India for small claims of dues, or for consumer forum complaints for smaller sums in dispute.

There are many websites which seem like they are governmental because they have in their domain name words like consumer, complaint, court etc, and many of them attract good traffic also, however they are **privately operated websites** and are not owned by Indian government or judiciary. If you post details of your complaint there, it is purely by luck if the OP sees that complaint and resolves the issue. For filing complaint to consumer forum, I will provide basic

steps later in the book.

## Ch. 3 Basic principles of law and justice

### *Basic principles*

There are some principles of justice, law, and legal principles of which one needs to be aware of. These are very important to know since many doubts and questions people have about law and legal processes can be understood if one tries to see if the issue at hand is in line with the the basic principles or contradicts them.

#### **Constitutional and Fundamental Rights of citizens**

There are few basic rights every citizen needs to be aware of. **Right to equality before law** means that each person will be treated equally in front of law, irrespective of gender, social status, religion, community, caste etc; and that would mean that if you file a case against or face a top politician or government bureaucrat as OP in court, then they should not get any special treatment because of their authority or status.

**Right to life and liberty** means that no one can be deprived of their life, and freedom to do as they please as long as they do not break any law.

#### **Principles of Natural Justice**

There are some basic principles of justice which have evolved over time and are known as **principles of natural justice**. I will not go into [history or philosophy](#) behind it and one can see Wikipedia and other sources on Internet

for that purpose. These principles are grounded in reason and common sense. The principle of natural justice encompasses following two rules:

- 1. Rule against bias:** No one should be made a judge in his own cause. Basically it means whoever is the judge has to be impartial and neutral to both the parties, or otherwise the judge has to recuse from the case. This is the reason that if one of the parties is a relative of the judge or the judge has some direct or indirect financial interest in outcome of the case, then that judge cannot (or at least should not) be a judge in that case.
- 2. Rule of fair hearing:** Hear the other party, or the rule that no one should be punished unheard. It is the principle that no person should be judged without a fair hearing in which each party is given the opportunity to respond to the evidence against them.

### **Rule of Law**

Rule of law implies that every citizen is subject to the law, including law makers themselves. All persons, institutions and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated. So rule of law stands in contrast to an autocracy, dictatorship, or oligarchy where the rulers are held above the law. In minds of many people the powerful people like MPs, ministers, political leaders are to be treated special but actually as per rule of law they are to be treated same as everyone else. It's only because of a *mai-baap* mindset and fear of authority that it seems like that powerful people are above the law.

### **Separation of powers**

In the Indian state, there are three different branches of state with independent powers and responsibility: Legislative, Executive, Judiciary. Legislative

branch refers to parliament and state assemblies who are authorised to create new laws and amend existing laws, Executive is charged with enforcing of laws and administration, and Judiciary has the role of adjudicating on both private civil disputes as well as trying accused for crimes. Police will be a part of Executive branch.

From now, we will refer to above as **basic principles** of law.

### *Applying basic principles*

Let's see some common scenarios where we can apply the **basic principles**:

#### **Can police beat you up or call to police station?**

Recently I was asked to answer some questions on Quora where people had the doubt whether police can beat someone for crossing the road, traffic violation etc, or can police call someone to police station for arguing with them. Many Indians harbour the ideas that since the job of police is to maintain law and order, it must be fine for police to do things like verbally or even physically abusing people, if it can be justified in some way for benefit of enforcing law and order.

As per law police cannot beat up anyone even if that person has been 'seen to' commit a murder. The reason for this is that what may seem like murder to one may be justified by the accused as acting in self-defence. If police becomes aware of a crime, they can register an FIR, do investigation, submit a charge-sheet to criminal court, and after that it is the job of court to conduct trial and either acquit or convict the accused. Police has no authority by law to beat up anyone to extract confession of crime (which is invalid anyway in court) or to get information about who committed a crime.

Police is not part of Judiciary but of Executive so they have **no authority to act as a judge** and pronounce anyone as innocent or guilty. Since they can't act as a judge, they can't dole out any punishment either. In fact, as per Indian law except for death penalty in rare cases of heinous crimes like murder or repeated conviction for rape, no one can be sentenced to be punished by physical beating etc. Convicted criminals have to go through jail sentence, or pay fine, or both.

Similarly, to call someone to police station without any good reason like for investigation of a crime, would interfere with that person's fundamental right to life and liberty. There is no limit to abuse of powers if people start believing that police can pick you up from the street and take to police station just because they have some suspicion or you happened to argue with them. Whether it is about arresting someone or to call someone for investigation as witness to a crime, there are written procedures under Code of Criminal Procedure (CrPC) which the police is bound to follow. So one should stop having fear of police, and insist on seeing a written authorised document like warrant, notice to appear etc as it may be if they are called to come to police station. The document should have clear mention of purpose of calling the person, as well as the section(s) of criminal law under which the person is being called upon. It takes then a quick Google search on those sections to find out then what is the situation one is getting into.

### **How much time will my consumer case take in court?**

This entirely depends on the complexity of the issue, but even for a simple, open and shut case things cannot happen instantly in courts. Referring to basic principles, both parties need to be given a fair amount of time to prepare and appear in court at next hearing. The reason for that is that the opposite party

needs to be sent the notice from court along with copy of complaint, and they are given 30 days to appear in court. Similarly, for other stages of case like evidence, arguments etc, both parties will be given sufficient time to prepare the case before the next hearing date is scheduled. So one has to have patience to wait for 4-6 months at a minimum for final decision even in a simple case in consumer court.

The reason court cases take so long in India have multiple and complex issues, and many experts are grappling with that for the last few decades. But the reason for that is not because of the mandatory minimum times prescribed for various steps in the procedural laws. I will discuss my own experience and some of those issues in more detail later.

## **Ch. 4 Basics of how courts work**

### *Sequence of a typical court case*

Following are the basic common steps in all trials in courts. To make it easy to understand and see the commonalities, the steps have been combined for criminal as well as civil trials. In later chapters, specific details are given on how trial is conducted in each type of court.

1. Complaint (criminal) is filed as FIR to police, or Plaint(civil court)/Petition (family court)/complaint (consumer) is filed directly in court. For non-criminal cases, a court fee is payable.
2. For criminal case, police investigates and submits charge sheet to court.
3. Summons/notice is sent to OP.
4. OP appears in court along with lawyer. The process of appointing an advocate is called as signing a vakalatnama which is described in a later chapter in detail.
5. Written statement, or commonly called objections is filed by OP (not in criminal trial).
6. Framing of issues (civil), or framing of charges (criminal) is done.
7. Trial – Evidence by witnesses(assuming you) is given to court and copy to OP, and then your cross-examination is done by OP lawyer.
8. Evidence is given to court by OP, then their cross-examination is done by your lawyer.
9. Arguments by your and then by OP lawyer.

10. Order/Judgment by judge.

11. Appeal/Revision etc in same or higher court if any party challenges the order

In case you are not the filer of complaint or petition but the OP, then above steps can be understood if you **reverse the parties in above steps** assuming other party is the witness and you are the OP.

In later chapters, we will go over specific details of how different courts work.

### *Common points for all courts*

People who go to court whether as accused, complainant, or defendant are curious and sometimes apprehensive about how they have to be prepared, and what should they say while in court.

The most important thing is that courts have a very unemotional environment (except for family courts and matrimonial cases in other courts probably), and there is usually very little chance of one being able to express one's full story or emotions. Most of the time, you will only be a witness to the court's proceedings and anything you want to tell the court will be said by your lawyer. It is also possible to appear party-in-person which means that you are your own lawyer, but that is usually a rare thing since most common people may not know enough about law and legal procedures even if they may like the idea of going party-in-person.

The businesses of courts is conducted in a particular order. Following is a common description which fits with what I have seen in all courts including criminal, civil, family, and consumer courts. There may be some differences in

process mentioned below depending on type of court, e.g. regarding presence of party, an accused may need to be present unless exempted. In other cases, presence of petitioner (who files petition for some civil relief) or complainant is not necessary on every hearing, and the advocate can take care of the court's business usually.

**Calling hour:** The first hour or hour and a half in all courts (which starts at 11 am mostly) is the calling hour when the cause list (list of cases) is called one by one. The cause list is displayed on a notice board outside the court hall. Since computerisation of many court processes has been ongoing for last many years, the cause lists are sometimes available online too. However, for lower courts it may not be available online for every court. During calling hour, you or at least your lawyer or both have to be present when your case is called. Each case may take anywhere from 10 seconds (if parties or lawyers not present) to a couple of minutes or more if there is some issue to be discussed about the case. After each case file is called, the judge will either give the next date of hearing (announced by bench clerk) or the matter will be passed over for later hearing on the same day, which may happen anywhere from 1.5 hour later to afternoon session, depending on caseload on that day and how many cases are there before yours.

**Do you get to place your story in front of judge?**

Someone raised this question that he has heard that judge doesn't even look at the person and he/she asks two questions and gives next hearing date. This was asked in context of matrimonial cases in family court or in DV (domestic violence) case. But this is a common doubt in minds of most people whether it's about family court or consumer court. If the question is regarding whether the judge will listen to your story for few minutes, or empathize with your

story, or ask your story whenever you appear in court, the answer has to be categorical no.

Broadly during the calling hour, how it works is that the bench clerk will call the case number in open court one by one, your case is called by number and mostly names of parties is also mentioned, judge gets the case file from bench clerk, he/she looks at case file, then checks if advocate of either party has a submission or statement to make to court, makes a noting to that effect on file, and either the matter is passed over or next hearing date is given.

**There is no Mann ki Baat session for litigants:** People who have no experience of courts are usually emotional and go with high hopes that they will be able to share their “Mann ki Baat” in front of judge, explain that the whole case is false if they are accused, or talk about the evil wrong-doings of OP and how hard they have suffered if they are complainant; but the courts work strictly as per the procedure and steps given earlier. So one gets a chance to give their story during the initial stage of complaint or petition, and later during evidence stage they give the evidence supporting their story and claim to court. All this is done by submitting written documents signed by parties.

Most of the statements you need to make will be in writing, and that includes evidence on oath.

## **Ch. 5 How Criminal courts work**

### ***How criminal trials are set in motion***

#### **If you have filed a FIR/criminal complaint**

There is a well defined procedure and process for everything right from filing a complaint in police station, to investigation by police, and then the trial in court after the charge-sheet has been submitted by police to court. In some cases, police may find after investigation that no crime has been committed, and then they will file a so called *B-report* which means no offence committed by alleged accused and court will not initiate any trial. Else police will submit a charge-sheet to court after which you have to appear as witness and

#### **If you are accused of a crime**

Being accused in criminal court is considered shameful and humiliating by most Indians, except probably the politicians and leaders, for whom it is almost a badge of honour, and probably a claim to having arrived on the political scene. What kind of political leader can anyone be in India if he is so weak that no one has bothered to file a criminal case against him! When a politician has many criminal cases filed against him, he can proudly proclaim that these cases are filed by his political opponents who want to stop him from doing all the good work he has been doing for his constituents! His voters and supporters will be elated that there is someone who is not fearful (hint, hint) of facing criminal cases and will continue to work for them in face of such threats.

However police may find that a crime has been committed, or as is often seen in cases especially in alleged crimes against women, police may go by the version of complainant without bothering to give due weightage to evidence which contradicts the complainant's version, and submit a charge-sheet which is basically nothing more than statements of complainant(s) and their witnesses. In that case, your only recourse remains to defend against the prosecution's case in criminal court.

### ***Procedure and steps in criminal trial***

Following are the basic steps in a criminal trial. For sake of simplicity, the more unusual steps like accusing filing application for discharge under CrPC 239 are not mentioned below.

1. Complainant files FIR in police station with allegations of crime.
2. Accused may apply for anticipatory bail before or after FIR. Or if accused is sent to judicial custody in jail, he/she can apply for regular bail through advocate. Sometimes in heinous crimes like rape, accused may be in jail for many months altogether.
3. Police does investigation, calls upon witnesses to alleged crime, and files a charge sheet based on their statements to court. Maximum time of filing charge sheet is 90 days, but in practice it is sometimes seen that it is not filed even after 2 years of filing of FIR.
4. After charge sheet is filed accused appears before judge for hear before charge and framing of charges. Mostly, the accused will plead not guilty to the alleged offence(s).
5. The trial commences. Witness(es) have to give their evidence in court.

Public Prosecutor (PP) or Assistant Public Prosecutor (APP) conducts the prosecution.

6. Defence lawyer conducts cross-examination of prosecution witnesses. Cross-examination is a process where advocate asks questions on witness' evidence and tries to bring out any inconsistencies, contradictions, outright lies, or raises doubts about credibility of witness' testimony.
7. Defence lawyer conducts cross-examination of Investigation Officer (IO) who was the main police officer responsible for doing investigation and filing charge sheet.
8. Accused gives statement to court in his/her defence.
9. Prosecutor cross-examines the accused.
10. Prosecutor gives arguments why accused should be pronounced guilty.
11. Defence lawyer gives arguments why accused is not guilty of alleged crime and should be acquitted.
12. Judge gives order/judgment of acquittal or conviction of accused. If conviction happens, judge may pronounce sentence at a later date.

### ***Practical points about criminal courts and trial***

#### **Accused normally has to be present**

Accused has to be present in all hearings, except for genuine reasons he/she can ask for exemption from appearance on certain hearing dates. If accused is not present without such exemption, a NBW (Non-bailable warrant) is usually issued by magistrate against him/her which authorizes the police to grab the accused and produce him/her before magistrate.

#### **Accused is permitted (and wanted by advocates) to stay silent**

A general principle of law is that accused can't be forced to say something or

anything which can help to convict the accused. If one has seen even a few Hollywood movies which have cops in the storyline, then one may remember an often said dialogue: “*You have the right to remain silent...*”. The police in US is duty-bound to say this to every accused person upon arrest. There is a major difference between US and Indian law that in US a confession of crime made to police is admissible as evidence in court. So (most?) advocates also suggest that accused should keep silent and not admit to his/her guilt, and let prosecution worry about proving the guilt of accused by producing giving credible evidence in front of court.

It is for this reason that narco-analysis, polygraph (also called Lie-detector) and brain mapping tests etc are deemed to be unconstitutional as they violate Article 20(3) of the Indian Constitution. Article 20(3) is given below:

***No person accused of any offence shall be compelled to be a witness against himself***

An accused can be subjected to narco-analysis and polygraph tests only after taking permission from court, and even then they cannot be used as evidence, but only as an aid to investigation. One can read the book (available in [Hindi](#) and [English](#) both) by Avirook Sen about murder of Aarushi-Hemraj where it is very clear that narco-analysis reports on accused as well as suspects were not used as evidence. But investigation authorities had used them to gather more clues about who might have committed the murders. The book gives a detailed account of criminal investigation, how investigation of crime can become hugely biased, and last but not the least it raises doubts on whether the judge who convicted Talwar couple was not biased himself!

## **Ch. 6 Contract Law**

### ***Why Contract Law is important?***

My experience especially from advising on consumer complaints is that Indians in general have very little or no understanding of how day to day dealings and affairs are governed by contract law. That leads to much emotional expression and frustration in dealing with problems from companies, but people are unable to use the right tool at the right time or spend too much time and energy in calling up customer care numbers without getting much results.

I have found Contract law to be the most interesting among various kinds of laws and statutes, and I have used its basic knowledge to resolve disputes at very initial stage, and have also gone to consumer court twice and won. I find Contract law to be interesting because based on a few basic principles, situations and deals can be analysed to make an objective assessment of which party has the claim in its favour.

People may be only vaguely aware that they enter into contracts whenever they do anything of the following:

1. Buy a SIM card from telecom operator. The fine print of service agreement defines the contractual terms.
2. Install a software program on your computer. The license or terms shown at time of install gives the term of agreement or license on your

- rights how to use that software.
3. Buy a mobile.
  4. Take any kind of insurance policy — Be it life insurance, health (or hospitalisation more precisely) insurance policy, motor vehicle insurance, fire insurance, and so on.
  5. Invest or do SIP (Systematic Investment Plan) in a mutual fund. The mutual fund makes certain promises about investment objectives, investment vehicles, and so on, which they are legally bound to keep to all subscribers. Read [this article](#) for more details.
  6. Book a railway or airline ticket. The allowed luggage limits during travel, cancellation/refund policies etc are all part of the contract.

Most of the time, one may need to go to civil court to enforce conditions of a contract. For consumers, there is preferable alternative to approach consumer court instead, which is covered in a later chapter. But since contract law is applicable to all civil disputes, we will cover it in some detail in this chapter.

### ***Basics of Contract Law***

I will try to provide basics of contract law along with examples, so that one can grasp the practical aspects of it without worrying about legal jargon. Later we will analyse some practical real-world problems mentioned in earlier chapter using these principles.

## **Basic requirements for a valid contract**

### **1. Agreement**

One party must offer to enter into an agreement, and the other party must accept the terms of the offer. And there must be a clear offer and a clear agreement

between the parties involved. Vague contracts cannot be enforced in court.

Examples:

1. *Super-Fantastic-Company* offers an offer of employment to *Hard-Working-Employee*, and upon acceptance a contract of employment is in place, which gives details of job, salary, perks, termination, breach of contract etc. There may be a separate agreement about confidentiality called Non-disclosure agreement (NDA). Signing of offer letter by employee makes the contract operational. Right now we avoid complication of whether accepting offer letter makes it a contract because sometimes an offer is withdrawn before the joining date of employee, but definitely in all cases an employment contract is in place once the employee has joined on the job.
2. You download the latest buzzing new social media app called *SocialBuzz* on smartphone, and after install when you open it, before you can use it, it shows you a set of terms and an “I Agree” button to click on, and upon clicking that button you have accepted the terms of usage including your rights as user, your responsibilities, privacy policy, and so on. Showing the terms of agreement on mobile screen was the Offer and your clicking on “I Agree” button is the acceptance of offer, which makes the contract operational from that time onwards.
3. Someone offers to pay anywhere from Rs 5-10,000 per week if you work for them a few hours per week. This cannot make a valid contract since it is vague as to how many hours per week you have to work. Even the consideration of 5-10,000 per week is vague and it is not clear how exactly will the amount be decided. At this stage, it can best be said to be a negotiation or discussion stage, and it needs to be fleshed out into a valid contract with clearly defined consideration and number of hours of

work.

The Indian Contracts Act, 1872 itself contains some examples of how uncertainty as to terms of contract can render it void.

### **29. Agreements void for uncertainty**

Agreements, the meaning of which is not certain, or capable of being made certain, are void.

#### *Illustrations*

(a) A agrees to sell B "a hundred tons of oil". There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

(b) A agrees to sell B 100 tons of oil of a specified description, known as an article of commerce. There is no uncertainty there not make the agreement void.

(c) A who is a dealer in coconut-oil only, agrees to sell to B "100 tons of oil". The nature of A's trade affords an indication of the meaning of the words, and A has entered into contract for the sale of one hundred tons of coconut-oil.

(d) A agrees to sell to B "all the grain in my granary at Ramnagar". There is no uncertainty here make the agreement void.

(e) A agrees to sell to B "1000 maunds of rice at a price to be fixed by C". As the price capable of being made certain, there is no uncertainty here to make the agreement void.

(f) A agrees to sell to B "my white horse for rupees five hundred or rupees one thousand". There is nothing to show which of the two prices was to be given. The agreement is void.

## **2. Consideration**

Something of value received or promised, to convince a party to agree to the deal. Consideration may take the form of pecuniary exchanges, delivery of goods, promises to follow a particular course of action or guarantees to avoid

certain actions.

Examples:

1. In case of previously mentioned employment contract of our *Hard-Working-Employee*, the salary mentioned in the contract is the consideration. In case someone agrees to work for free for another (say due to friendship), it cannot be deemed to be a contract because there is no consideration involved from your friend to you in return for the work that you will do. To keep it simple for day to day practical things, we avoid few cases where a gift agreement can be made between near relatives where no consideration is given for the gift, which is probably why it's called a gift.
2. In case of *SocialBuzz* app on smartphone, there is no monetary promise made by anyone but the services that the app provides to you are the consideration in return for the consideration that your usage of the service adds value to other users of the app. The company hopes to make money from showing advertisements to users (advertisers pay to company), and your and your friends' usage of the app provides them with that business model.

### **3. Contractual Capacity/ competent parties**

Parties to a contract must have the legal capacity to enter into contracts. For this reason, minors, people with mental impairments and those under the influence of mind-altering substances cannot legally enter into contracts.

### **4. Legality**

The contract's purpose must be to accomplish some goal that is legal and not against public policy.

For this reason, a contract between two smuggler buddies to smuggle gold or drugs across the border won't be considered as a valid contract and they cannot enforce it in any court, since the object of the contract is the illegal purpose of smuggling.

## **5. Genuine Consent**

A contract attained by coercion, misrepresentation and undue influence is illegal and cannot be enforced

## **6. Form**

The agreement must be in whatever form (e.g., written, under seal, etc.) the law requires.

In practice, in my understanding as told by a lawyer an agreement even if written on plain paper or company letterhead instead of stamp paper, can be converted to a enforceable contract by paying the stamp duty/fine at the time of initiating court trial. But of course it would be better to create contracts on stamp paper for important things like sale of property, rental agreement etc. In general I have observed that employment contracts are given on company letterhead rather than on stamp paper.

The best way to avoid any surprises later in contracts is to not blindly go by marketing and presentation of any offer, but one can skip the glossy brochure and go directly to the fine print of contract.

## **Other important principles**

**Action of parties:** A very important principle of contract law is that a contract can be deemed to be in place based on action or conduct of the parties. Also, many a time, an original contract may get modified due to actions of parties afterwards to which both parties have agreed. In those cases, one cannot escape by going back selectively to originally agreed terms if one is not happy with the changed terms.

### *Analysis of common problems using Contract law*

Now we will analyse the common issues discussed in previous chapter using contract law.

#### **Problem: Fix my mobile**

A very common issue I have seen goes like this. Someone buys a mobile from a retailer, and if after few days he/she finds a problem in the phone, he/she wants the retailer to get it fixed or replace with a brand new phone! But the retailer dilly-dallies or takes the phone and keeps it without doing anything, or asks the person to contact company's service centre. Our complainant believes that the retailer is bound to either replace the phone or give a refund. Is that the right assumption?

**Analysis:** I think the problem can sometimes arise that in desire to make a sale a retailer may make some vague promise that buyer can bring the product back in case of any problems and they will help out. But in reality, in case of mobiles and smartphones, the liability to fix or replace the mobile is not with the retailer but with the manufacturer of mobile. There is a difference between buying readymade shirt from a shop vs buying a mobile phone vs buying a brand new car. While most retailers will gladly allow for exchange of a shirt due to bad fit or such issues, no car dealer will welcome you with open arms if

you arrive next day to return the car and get a new one because of some defect found with the car. The case of a purchased mobile or smartphone is more like a car purchase than a shirt purchase. No retailer can analyse what might be wrong inside a mobile or a car, so they will not take that liability upon themselves and ask you to approach the manufacturer's service centre instead. And in fact if one cares to read the documents which came with mobile, or with the car, nowhere will it mention anything about liability of retailer or dealer to help with defects or problems in the product. But it is very common to find mention of exchange policy on back of receipts given by garments retailers. One just needs to read the bills and documents carefully.

**Problem: Unrealistic expectations**

I have had a few people who reported problems in their car, and somehow the description of issues did not seem very clear or honest to me as to who exactly was to be blamed; but these complainants wanted their car to be replaced with a brand new one by the manufacturer! I can imagine a mobile being replaced by a brand one new in case of certain defects, but I can't understand how eligible is the demand to replace a whole car rather than fix the specific problem in it whatever it might be.

**Analysis:** Again, by now we can understand that a car purchase is governed by terms of manufacturer's warranty which is a contract really, and any defects in the car can be fixed under terms of warranty. The warranty terms of a car will never say that they will replace a whole car (it's possible, but it will be an engineering failure of highest order to make a whole car as defective!) in case a defect is found. But if one faces persistent problems in car which don't go away even after repeated repairs, then one can approach consumer court to get relief by way of compensation for the bad repairs/bad servicing etc. In extreme

cases, one may demand replacement of the car itself but somehow I am not convinced that such a real life case has occurred.

**Problem: I told them to disconnect, but am still getting the bills**

Another common problem I hear is that someone has asked the telecom or broadband service provider to disconnect the service, and maybe they got a verbal or even some written acknowledgement, but they are still getting the bills every month. What normally happens is that people take it lightly that since they have given disconnection request, all these bills are just some mistake by the company and nothing to worry about. But the same people get scared and worried when later they get a notice to pay dues by the telecom operator which may run into few thousands easily.

**Analysis:** Here, the problem is more about procedure and getting a firm acknowledgement of termination of agreement. I guess most of these problems result when a customer calls up customer service and places a request to terminate the service over the phone, and upon hearing that the connection will be terminated, customer tends to think it is done; and he/she won't be liable for any service charges from now on.

The problem is that customer has not got any written or electronically written proof of the disconnection request. If one has a screenshot of webpage which acknowledges termination request (I doubt telecom operators will make it that easy), or an email which acknowledges the same, one is legally on safe grounds. From that point onward, even if one is sent further bills they can easily be contested with billing or customer service department. It's possible to complain to TRAI and failing that to consumer forum itself.

Also, most of the companies know that people don't have time to follow up and spend hours with customer service, so disconnection of service is one thing they may make as a 'policy' quite difficult, hoping that for 1 out of 100 customers who is savvy about legal rights, there are 80 others who will tend to let things slide or even get under pressure once they see mounting bills every month, or even a legal notice to pay the dues.

One doctor from Bangalore has complained that a high court lawyer from Delhi called him up and asked to pay pending bill of Rs 1,800 else he will be getting notice from court or something to that effect. Nothing was actually due from him towards the company, but out of fear he paid up the amount and then tried to find how he can recover it. Now try to imagine a Delhi lawyer calling up a Bangalore subscriber for an unpaid bill! How likely is that the Bangalore lawyers are not available to do the honourable job of threatening a telecom subscriber, that Delhi lawyers are pressed into service! Basically, people get under pressure due to lack of legal knowledge, and fear that they will be made to run around in courts, and end up agreeing to pay what was not even due.

The right course of action is always to have a written proof of termination of service, and after that one should have the thick-skin and courage to hit back with threat of consumer case or legal action in case anyone calls to threaten about unpaid dues. Most of these pending-bill-bullies don't have courage to stand up to legally savvy customers, and they will immediately leave you and try to find an easier prey.

### **Problem: Bond with software company**

Another common problem is that after finishing college, someone got job in a software company and they didn't mind signing a contract which had a clause

that they have to work for 1 or 2 years else they are liable to pay to company a certain amount which may run into tens of thousands. The usual excuse for such clause is that company has spent expenses on training this person which needs to be recovered if he/she quits before the bond period. The person now wants to quit but is scared of legal repercussions.

**Analysis:** As per Indian Contracts Act, 1872

#### 27. Agreement in restraint of trade, void

Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

Exception 1 : Saving of agreement not to carry on business of which goodwill is sold-One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business therein, provided that such limits appear to the court reasonable, regard being had to the nature of the business.

A bond requirement on an employee can be argued to be a restraint on his/her right to practise a profession. The most important thing with these 'bond'ed labour contracts is to see if the company is spending some huge amount or giving some specialised training to the employee. If it is routine training and the employee is working for the company while getting trained, then it may be reasonably argued that the company is paying **salary of a trainee and getting work output of a trainee**, so there is no special consideration being given or expenses that the company is spending on the employee. If company was training employees but at the same time paying salary commensurate with what they pay to expert engineers, then it may constitute an act of generosity and company may demand something in return, but businesses cannot survive for too long if they are overly generous, so this is a remote possibility.

If we try to analyse this situation from another angle, why would an employee leave for another company after training period before the bond period is over? Leaving apart any personal issues, mostly it will be that the employee is worth more on the job market than what the company is paying him. So effectively what the company achieves by creating a bond clause is that it gets people on the cheap as trainees, who do now know what their skills may be worth after training, and the company then forces them to work at a lower salary than what would be due to them if a bond clause was not there and they were free to leave. If this is not restraint of trade or profession, I don't know what else is!

Most of these bond requirements to work with company would not be enforceable in court of law, but due to fear factor, lack of knowledge of court processes, and long running duration of court cases, people don't take companies to court.

### ***Interesting points in Indian Contracts Act***

Many points in law are not very different from what one thinks of as common sense behaviour, but sometimes we find law has defined things in statute what one normally may not expect to be there. For example, following are some interesting sections from Indian Contract Act, 1872.

#### **Marriage can't be restrained**

##### **26. Agreement in restraint of marriage, void**

Every agreement in restraint of the marriage of any person, other than a minor, is void.

So in some of old(er) Hindi movies, the offer made by rich businessman to the poor hero to stop dreaming about marrying his daughter and giving him 2 lakh rupees in return, is a void contract! If our hero knew about the law, he could

accept the 2 lakh rupees and still marry his daughter without breaking contract law. Of course, the father-in-law's goons may then decide to break his legs, but that's the script of another movie, probably!

**Be careful about assuming something to be a free lunch!**

**70. Obligation of person enjoying benefit of non-gratuitous act**

Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such another person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

*Illustrations*

(a) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

(b) A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously.

## **Ch. 7 How Civil courts work**

### ***Steps in a typical civil court case***

If one has understood one's contracts well, has faced breach of contract terms, has the evidences to support one's claim, then one can go ahead and file a civil suit. One has to be patient, since the trial may go on for years. For example, my civil suit for recovery of dues was filed in 2006 and is close to finishing stages, but I have thought that thought every year for the last few years that it is close to finishing stages. The redeeming point is that I had to go to court only 5-6 times during the court case, so to that extent the advice of lawyers that "*you don't have to come everytime*" has turned out to be exactly true in my civil court case.

Following are the basic steps in all civil court trials.

1. Plaintiff is filed in civil court along with required court fee.
2. Notice is sent to defendant/OP.
3. OP appears in court along with lawyer. The process of appointing an advocate is called as signing a vakalatnama which is described in a later chapter in detail.
4. Written statement, or commonly called objections is filed by OP.
5. Judge looks at the plaintiff and defendant's submissions, and finds out the points of contention. This is called Framing of issues. Further court trial will be to decide the truth or falsity of these framed issues.

6. Trial – Evidence by witnesses(assuming you) is given to court and copy to OP, and then your cross-examination is done by OP lawyer.
7. Evidence is given to court by OP, then their cross-examination is done by your lawyer.
8. Arguments by your and then by OP lawyer.
9. Order/Judgment by judge.
10. Appeal/Revision etc in same or higher court if any party challenges the order

In case you are not the filer of plaint but the defendant/OP, then above steps can be understood if you **reverse the parties in above steps** assuming other party is the witness and you are the defendant/OP.

## **Ch. 8 How Family courts work**

### ***Steps in a typical family court case***

The family courts follow Code of Civil Procedure(CPC) just like civil courts. However, there is one difference in that the family court judge can modify or create own procedures to suit the situation or the case. Ordinarily, one would think that this would give the family court judges flexibility to conduct trials in a fast manner, however I have not seen an iota of evidence of the same, and one should not expect much difference in speed of disposal than a civil court.

Following are the basic steps in all family court trials, which are quite similar to civil court cases.

1. Petition is filed in family court along with required court fee.
2. Notice is sent to respondent/OP.
3. OP appears in court along with lawyer. The process of appointing an advocate is called as signing a vakalatnama which is described in a later chapter in detail.
4. Written statement, or commonly called objections is filed by OP.
5. Judge looks at the petitioner's and respondent's submissions, and finds out the points of contention. This is called Framing of issues. Further court trial will be to decide the truth or falsity of these framed issues.
6. Trial – Evidence by witnesses(assuming you) is given to court and copy to OP, and then your cross-examination is done by OP lawyer.
7. Evidence is given to court by OP, then their cross-examination is done by

- your lawyer.
8. Arguments by your and then by OP lawyer.
  9. Order/Judgment by judge.
  10. Appeal/Revision etc in same or higher court if any party challenges the order. Appeal from family court order lies directly in high court of the state.

In case you are not the filer of plaint but the petitioner/OP, then above steps can be understood if you **reverse the parties in above steps** assuming other party is the witness and you are the respondent/OP.

### *Practical insights from family courts*

I am taking below news story as a backdrop to share my own insights and what I have learnt from others too about how family courts work.

<http://timesofindia.indiatimes.com/india/Be-creative-end-alimony-delays-Madras-high-court/articleshow/39971242.cms>

Passing orders on a petition filed by Anita, who said her husband Mahaveer Sancheti had defaulted on payment of monthly alimony of 10,000 since 2011, Justice S Vimala said in an order on Tuesday that courts should not do three things while handling such cases. One: They could not remain a mute spectators, merely recording the fact that maintenance amount had not been given. Two: They could not ask the wife to file a new execution petition, as it would give the husband some more opportunity to drag proceedings. Three: They should not grant innumerable adjournments, so that the wife is unable to realise the maintenance amount.

**Insight 1:** Family courts in India are places where judges will take **several years to pass even an interim order, then maybe another year or two might**

**lapse before that order is actually executed.** Many orders of child ‘visitation’ to fathers are routinely flouted, and the judges say “*what can I do*” if approached by a father, instead of going by the letter and spirit of Family Courts Act which was to try to reconcile the warring spouses. So for all practical purposes, family courts are mute spectators, and thanks to Madras high court for pointing it out. Even in this case, the interim maintenance order has not been executed for more than 3 years, but hold on, family court would be having all the reasons to wash of it’s own hands. Don’t shoot me now, I am only the messenger!

**Insight 2:** Courts will allow liberally for pleadings/memos/new applications to be filed when older ones remain pending, and of course while the main petition (divorce/RCR etc) also remain pending. The whole idea is to let everything pile up in list of pending main petitions and interim applications on top of those main petition. Let the couple who are parties to the **case tire out themselves running around the courts for several years**, and eventually one of both of them will get the sense that the only way out of family courts is to agree on a mutual consent divorce.

**Insight 3:** Family courts carry on admirably the tradition of all courts in India (barring perhaps consumer courts), to give adjournments on every excuse possible, and sometimes I have seen that the judge wants to adjourn on the excuse of sending the case to Lok Adalath when none of the parties want that to happen anyway! From the same news story:

Pointing out that notices served to the husband had been returned with a note, 'addressee not present', Justice Vimala said it was clear that the intention was to delay the proceedings endlessly. She then directed the family court concerned

to dispose of the petition relating to non-payment of alimony within a week, and pass final orders on the main matrimonial case itself thereafter.

**Secret:** Family courts usually get into serious disposal mode only after the case is 5 years old, presumably because the high courts monitor number of pending old cases, and 5 years seems to be that line when judges start showing discomfort when an old case is called up. So the simple thing for high courts would be to reduce that 5 year threshold to 2 years and see how quickly the family courts might just spruce up their act!

### *Secrets of legal system from an advocate*

Following are secrets shared by “*white fang*” about what his advocate told him about how the legal system works in India. These insights are in context of matrimonial cases but many points may be valid for overall legal system too. The language has been changed a bit to correct for spellings etc but not too much beyond that.

1. You are your own boss and should be. When fighting a case, don't rely on the advocates. We make mistakes, some willingly, some unwillingly, some just for the sheer short term greed of money making, and leaving parties in lurch. Be in a position that even if there is no advocate you should be able to drive the case on your own steam.

2. You see your wife's petition. The way it's drafted? It's a sheer copy paste. Even some sections are wrong. And edited to just change names. And worst, it still got admitted. Know why? Because maximum advocates and maximum judges simply do not know, nor they even bother to read about law. They pass an exam and sit on our heads and the common people who have no clue but

approach them for justice.

3. Advocates themselves are guilty of misusing maximum provisions of law. Whereas in first place their work is to advise parties to follow law. You see the cases running here in this court complex. Maximum have just no merits. And were escalated and show no signs of abating.

4. There is no clause in law which says wives stand to get a share in property. Or any massive lump-sum. Its just because people want to settle their cases "faster" that they agree to pay and then it's taken as a standard procedure by others in herd.

5. Using delay tactics can be dangerous and can backfire. But people use it, when on back foot. To buy more time.

6. Some advocates actually encourage a prospective party to go for a crime. Like say, you want to murder, go ahead I will get you out on bail. Party blinded by emotions or greed and vengeance actually go and does it. After 7-8 months or a year he gets a bail. But then there is no sign of the advocate who goaded him. He's got his share.

7. No case is strong or weak on paper. It's a fear psychosis that's built by advocates on a fragile mind. Proverbially they "Stoke" the fire. Only to leave parties in lurch.

8. Look at yourself and guys like you. I can bet you know the law better than 90 percent of the advocates in this court.

9. He cited a few case studies, where knowingly that there's just no case, advocates went on dragging it, both for years, like in Nandita and Om Puri case, which is going since last 20 years. Both counsels kept assuring the court, and both kept on milking money.

10. Says you have to look both sides very evenly. We see many cases where guys families are actual wife beaters and dowry torturers. And it's done in a very phase wise manner. 1st year the cash is taken, 2nd onwards some pretext streedhan, 3rd year with kid, get some more money from her parents, 4th some more, if not then the taunts and torture continues. 5th, the cases come, when the woman is left to despair.

11. Now consider the other side, there are these greedy women families. Girl has an affair or a different lifestyle before marriage, which the parents don't approve but can't do anything. Then at a marriageable age, get her married to a "traditional" family, knowing very well it would be difficult. Or otherwise into a pretty open liberal generous family. Then phase wise try to alienate the guy from his family, get the power of finances and control. And if there's any kid, the "bakra" is ripe to be cut. If he doesn't yield, then threat blackmail cases and fat alimony demand follows. By the time the guy realises, he's already in deep shit.

12. The steam of 498A is gone long time back. It's just that most guys don't know it. If there is any immediate danger, it's when an actual incident or cause of action arises. If the cases are filed months later, there's no value. And always ask for a speedy trial instead of quash or discharge.

13. Don't get married in special marriage act. Like you did. In SMA there is

no clause for husband claiming maintenance from wife as its there in HMA 24. In SMA there is a clause for permanent alimony to the wife. So girls families very shrewdly get SMA, knowing all these.

14. Child custody cases can get messy and courts are extremely lenient to women, despite prima facie knowing the cause. But judges have a target. Let's say out of 20 matrimonial cases, they would rule 15 in girls' favour, 2 in guys', and leave 3 open ended and ask parties to "settle". Imagine a judge telling that when he's not supposed to do that. He would do that anyways citing some obscure clause in constitution and play mediator.

15. Judges work on targets in their 2-3 year postings. That is finish up these cases, and keep some open. And just observe.

16. There are some 80-90 different section and segments in law. Most advocates don't know much except 7-8. It's a herd mentality. Criminal cases mean fast money, civil cases are steady income and a percentage at settlement time.

17. Asked the oft repeated question of RCR and why do you advocates insist on "I want to bring back my 498A wife". Don't you think it's an open invitation for disaster, and what if she does cases again. He said that's what we suggest to reduce maintenance, that you say you want her, she will refuse, and we will use it as "wife staying away without just and reasonable reason". I asked well that's what she says, that she's driven out, and we say she's left home on own will. Isn't it a chicken and egg story? And how does it reduce maintenance, she comes stays for 2 months and then files cases again.

18. Says in open court bullshit as much as you can, unless pursis filed no one except you and opposite party remembers what was said. Not the lawyers, not the judge.

19. The idea is to convince the judge, no one else matters. The bench clerk is your best friend in court. Do remember to treat him to chai paani at times. Don't bother bribing anyone, not the police at all. They are bloodhounds, once you bribe them, they will remember the scent and chase you.

20. Said, look sometimes you have got to hit below the belt too. Not for revenge or vengeance, but just to get your point across. Screaming innocent innocent wont help, when they are levelling all kind of accusations. Once you resort to a bit of tit for tat, then opposition feels the heat. So allegations should not only be denied but be accompanied by counter allegations too. Just to take sting out of their attack.

### ***Know more from books***

Family court disputes are very personal, and unlike for property matters or civil court lawyers, advocates can't be found based on reference. If someone had to go through a separation/divorce and got good services from a lawyer, he/she is not going to advertise about it to others since it's a very personal matter. Further, telling others about divorce as an option in their life has huge moral and social issues. If society wants to promote healthy marriages, then promoting divorce can't be done at the same time.

Due to my work in men's rights and issues of misuse/abuse of women protection laws against men, I happen to have developed a good understanding of how to tackle such false cases. And so I happen to be author of two books,

written from idea to help men facing false matrimony related cases, which one can refer to to know more about how to handle cases in family courts. *Note: Cases under DV Act don't run in family courts, but arise from the same issues related to matrimony.*

### [Guide for men on divorce, cruelty, desertion, annulment](#)

Above book is written from perspective of informing Indian men about cruelty, desertion, adultery, mental disorder, and false allegations as a ground for divorce, and annulment of marriage. It covers more than 70 judgments on above topics.

### [How to Fight and Reduce Maintenance under CrPC 125 and DV Act](#)

Above book is written from perspective of informing Indian men on how best to handle maintenance cases filed by wife, and how to deny or reduce the maintenance amount. The audience is especially men facing or likely to face multiple cases foisted by wife including IPC 498A, 406, 506, 34, 323 and others. Also, it will be useful for men who have filed RCR/divorce or wife has filed same on them, and now she has filed a maintenance claim under HMA 24. Handling maintenance cases of wife is a universal feature of all above scenarios, but unfortunately it is somewhat ignored in the initial stages by men with the result of getting burdened by high maintenance, and still having to fight cases for many years in court.

The author also does paid private consultation and can be reached via [Man to Man Solutions](#).

**What about women?**

I also have been approached by a few women asking about advice on how to tackle a bad or tricky situation in marriage. Somehow this idea has been spread in society that laws favour women(not true entirely because everything needs evidence in court) and there are no consequences if a woman uses laws as a weapon.

It is a misconception which benefits only the false DV and divorce industry. Even if there may be no major negative consequences, most women who file cases will never see the promised fat alimony and riches which may be true for a few or for Bollywood celebrities cases. One should use **law for protection** and many women who use it as a weapon, many a time get deserted by own lawyers later. By that time, the option of saving the marriage is also practically dead, so there remains no further choice but to drag oneself through the court trials till the end, to see what one can get. A rather sad comedown from the promise of quick riches and independent life!

## Ch. 9 How Consumer courts work

### *Simpler alternatives before approaching consumer courts*

Earlier on my website, I had [suggested people to try opening complaint on National Consumer Helpline](#) and similar sites run by government. However, I have realised now that these sites are more about providing a gentle introduction to process of filing consumer complaints, and people may not be able to get resolution through them. So in this book I am not recommending about them but instead giving recommendations on authorities which have some jurisdiction over various industries/sectors. In past, I have been able to get results from complaint to banking ombudsman, and also from IRDA.

**Banking related complaints.** Though I haven't received lot of such complaints yet, the banking ombudsman is an authority to approach for bank and credit card issues. I successfully got reversed late charges by Standard Chartered bank which were not late according to me since I used to pay around same time every month, but just before renewal of card (another standard trick) they had levied the late charges. The procedure to make complaint with them is that first you need to file complaint with the concerned bank, and on unsatisfactory reply you can go ahead and complaint to banking ombudsman. As of this date, they seem to have an online form for submission. I believe I had used it earlier to send an email complaint along with scan of the letters but don't remember exactly whether I had send a hard copy also by speed post. Someone can confirm if the below website for online lodging of complaint

works for them (it gives security exception so you have to make whitelist/exception for this URL in browser):

<https://secweb.rbi.org.in/BO/precompltindex.htm>

**Insurance related complaints.** Have received 1 query related to insurance. You can try complaining to company first, then [IRDA \(Insurance Regulatory and Development Authority\)](#), and then consumer court if all else fails. For IRDA, many years back I had filed a complaint via speed post but not sure if they have an online form too.

**Mobile/Broadband/Telecom related complaints.** [TRAI \(Telecom regulatory authority of India\)](#): For complaints more related to policy like about terms of service, service etc of all telecom and DTH issues, you can approach TRAI. I had approached them many years back about an issue with Tata sky alerts shown on TV, and they did follow up with Tata sky who replied to me on that issue. But in general, I don't have much hope with them given they allowed mobile operators to run spam SMS and telemarketing operations through their networks for many years without imposing meaningful penalties to stop those spam SMS and phone calls.

### ***Steps in a typical consumer court case***

In case previous steps did not work for you or were not applicable, then the time has come to prepare for consumer forum complaint.

Consumer courts follow a simple process, wherein some of the names seem similar to those used in civil cases but the process seems fairly non-threatening. It is quite common for many people to appear party-in-person in consumer courts and in fact for both my cases I had represented myself party-in-person

without any lawyer.

## Contents of Complaint

Procedures for filing complaints and seeking redressal are simple. A Complaint should contain the following information:

- The name, description and address of the complainant.
- The name, description and address of the opposite party or parties, as the case may be as far as they can be ascertained.
- The facts relating to complaint and when and where it arose.
- Documents, if any, in support of the allegations contained in the complaint.
- The relief which the complainant is seeking. The complaint should be signed by the complainant or his authorized agent. The Complaint is to be filed within two years from the date on which the cause of action has arisen.

*A sample template for consumer forum complaint is given later, based on what I had used in my own case.*

Following are the basic steps one can expect in consumer courts. For full details refer to my articles on how to file consumer court complaint in [Bangalore](#) and [Delhi](#). They can be modified similarly for other cities/districts too.

1. Filing of complaint to district forum administrative office. Call them to find first hearing date.
2. Appear in court on that date and explain within few sentences the problem you are facing.
3. Court will likely accept your complaint. If so a notice is sent to OP.

Expect next hearing date to be 30 days away.

4. OP appears in court. If they offer to do out of court settlement, then try to negotiate towards a mutually accepted settlement. If the negotiation fails, then you can continue to get redressal through court itself.
5. Court will ask you to submit affidavit. This will constitute your final evidence with all documents, if not already submitted with complaint.
6. The OP may also submit their evidence.
7. Judge will set a date for arguments.
8. Based on evidence submitted by both parties and arguments, the court will decide on whether to give relief to you and then how much relief.

Based on my own experience and from listening to others who have filed complaints, consumer courts do not follow the detailed procedure like in other courts regarding detailed cross-examination and so on, and maybe that's why they tend to wrap up cases quickly.

### *Sample of consumer court complaint*

Following is a sample format for filing a consumer forum complaint in Bangalore. You can modify it to suit any other city's district consumer forum too. You can also download it from here: [Consumer forum/court template for Bangalore](#)

**BEFORE THE COURT OF THE HON'BLE COMMISSIONER,  
CONSUMER FORUM, BANGALORE URBAN DISTRICT AT  
BANGALORE**

COMPLAINT NO. \_\_\_\_\_/2013

BETWEEN:

Sri PUT NAME HERE,  
S/o PUT FATHER'S NAME HERE  
Aged about XX years  
R/at PUT ADDRESS HERE

Mobile: ...Complainant

And

GIVE FULL ADDRESS of OP  
E.g. Flipkart's Bangalore address below  
Flipkart Internet Private Limited,  
Ozone Manay Tech Park,  
#56/18 & 55/09, 7th Floor,  
Garvebhavipalya, Hosur Road,  
Bangalore – 560068,  
Karnataka, India.

Phone: 1800 420 1111 or (080) 49400000  
...Opposite Party

## MEMORANDUM OF COMPLAINT UNDER SECTION 12 OF THE CONSUMER PROTECTION ACT:

The complaint submits as follows:

1. The address of the complainant for the purpose of summons, notices etc from this Hon'ble forum is as stated above.
2. The address of the opposite party for the similar purpose is as shown above in the cause title above.
3. The complainant is the resident of the above said address and the complainant had purchased the Bluetooth headset model Swiss Voice HF23 from Flipkart.com for ... NOW GIVE THE DETAILED CHRONOLOGICAL POINTS ABOUT YOUR COMPLAINT along with **date of purchase, service etc as much as possible.**
4. Append any supporting documents like **copies of receipt/invoice, warranty cards, any other relevant documents as annexures at the end of the complaint.** Refer to each individual document as **Annexure A, Annexure B** within your complaint. E.g. See an example point below:
5. The complainant subsequently filed a replacement request for the said product at flipkart.com as per their 30 day replacement guarantee on **DD MM2012, within the 30 days time limit.** The screenshot of the 30 day replacement guarantee at the time is enclosed as **Annexure B.**
6. After having given all the points, at the end of the complaint copy and paste the points given below **AND DON'T FORGET TO MODIFY THEM TO SUIT YOUR OWN CASE.**

...  
...  
...

1. The complaint further submits that the opposite party has declined to respond both to online

request for replacement made by complainant and subsequent to online complaint made at CORE too. The complainant is stuck with a non-working product and unable to buy an alternative product either till this complaint is resolved. This amounts to defect in product and deficiency of service under the consumer protection act. The relevant provision Sections 2(f) and 2(g) under the consumer protection act 1986 are noted as follows:

*(f) "defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods;*

*(g) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;*

1. The complainant further submits that he has not preferred any complaint for the same cause of action before any forum/court or any other authority for the relief.

1. The complainant further submits that he may be permitted to produce the additional documents and to urge additional grounds during the course of the above proceedings.

Wherefore, the complainant above named most respectfully prays that this Hon'ble Forum may be pleased to:-

**RELIEF SOUGHT:**

1. Direct the opposite party to pay a sum of **Rs XXXX** to the complainant for defect of product and deficiency of service, for the harassment and wasted time, and not being able to buy and use any alternative product either.
2. Direct the opposite party to pay interest at the rate of 9-5% per annum from the date of closure till date of realization on Rs XXXX.
3. Direct the opposite party to pay the cost of the proceedings and
4. Grant such other reliefs as this Hon'ble forum deems fit to grant/award in the circumstances of the case, in the interest of justice and equity.

Complainant

**VERIFICATION**

I, PUT NAME HERE, the complainant above named do hereby verify and declare that what is stated above are true and correct to the best of my knowledge, belief and information.

Bangalore Complainant

Date:

### *Success stories*

Apart from my own two cases, I am aware of two more situations where people got the relief they had probably not hoped for.

1. One person whose Samsung LED TV broke down was successful in filing complaint in Delhi and able to recover Rs 25,000 from almost a dead TV which was in fact out of warranty. I had suggested the complainant to fight on the ground that although the TV was out of warranty, it was lack of product quality and service that it could not be repaired at reasonable cost after charging customers a huge amount of money on Samsung brand name. It was reasonable to expect that a highly expensive LED TV should last for 5-6 years at least rather than breaking down within less than 3 years with no hope of repair.
2. One woman was able to get replacement for wrongly prescribed cosmetics worth Rs 11,000 by merely threatening about filing consumer complaint against the vendor.

Apart from above, many people have filed complaints to consumer courts and they have not faced much by way of problems. If one has patience to go through the process for 5-6 months, one can get good results in most consumer cases. In my own case, I found the most cumbersome part to be the commute through traffic to the consumer court. Apart from that, the time spent at the court was never more than 45 minutes or so.

## Ch. 10 Evidence and Story

### *Importance of evidence*

In court trials, only evidences whether documentary or statements by witnesses are what matter for the final decision, assuming of course that one is making lawyer do the work of cross-examination, filing documents etc at right times. The biggest problem with people is that they don't have a very vague idea of what is evidence, don't know what is good versus not-so-good or even bad evidence, and moreover due to **over-emotional (lack of) thinking, are unable to apply themselves properly to collect and submit evidence to court at right time. Not managing lawyer and leaving things to lawyer** assuming he/she's the expert are the other major problem. Without good evidence, lawyer becomes more like a glorified clerk whose job becomes only to submit petitions and statements, and do routine cross-examination which is unable to destroy the OP's case convincingly.

### *Types of evidences*

Now what is evidence and what is not? Mere statements and allegations are not evidences. E.g. your statement in consumer complaint that you car is having manufacturing defects is part of the story of the complaint submitted to consumer court. Evidences will be service/repair documents which show the nature of defects being reported in the car with regular frequency. The more of such service sheets are there, the stronger your case becomes that there is lack

of quality in product and it's more than a random affair. In case one has lost some of the documents, then one can mention about them but the case will become somewhat weaker then.

**Physical contract documents, letters** etc are evidence.

**Videos, photographs, emails, screen-shots of webpages, SMS, WhatsApp** messages etc can all be uses as evidence. These are electronic evidences and are admissible in court. Sometimes things like WhatsApp messages may give problems since people may have a screenshot only by then and the original message has been deleted. Care should be taken to preserve original messages or backup in a way that they can be restored to look like originals at a later date.

**Photocopies of documents** are not acceptable as evidence under the Indian Evidence Act. But they can still be used in cross-examination of OP and based on the situation can elicit useful points in one's favour. So one need not lose heart if one doesn't have original documents for everything. Here I must add that I have not seen the strictness regarding evidence in consumer court, since I had submitted only photocopies along with complaint, and they were not called into question. Had the OP challenged them, I would have produced the originals, but the situation never came to that.

**Audio recordings** are admissible as evidence. If the opponent lawyer objects, they can go for voice sample and authentication, but by itself audio recording can't be dismissed away. This is another myth being spread by lawyers that audio recording won't work in court. Maybe the problem is laziness, lack of application, or lack of prior experience in having submitted audio recording as

evidence to court.

Relying on **people** as witnesses who saw what actually happened, is fine in theory. But in courts, documentary evidences stand the best chance, simply because given the long duration of trials, there is no guarantee your witness may not have moved to another place, or will be as keen to give evidence 2 years from now as he/she may be right now. So it would be better to have documentary evidences as much as possible.

### *Write the story*

Each complaint or petition to a court is basically a kind of chronological story of facts and events, where you state what happened when, where, by whom, to whom, and how it affected your rights in a negative way. If something did not affect you in a negative way, then it should be there in a submission to court only if it fits in within the overall story and ties the events together.

As you write the events, link up the events to the evidence exhibits which will be part of your complaint or your evidence affidavit at a later time. For example, to file complaint about a non-working mobile, you need to write that you had purchased the mobile on so and so date from so and so retailer, and a copy of receipt is attached with the complaint. The copy of receipt is the evidence your story is referring to, because it proves that the mobile was purchased by you, it was sold by the mentioned retailer, it mentions cost (which helps to get appropriate monetary relief), and most importantly the date of purchase, which tells that the mobile was under warranty at the time of complaint.

Once you have written down all the events of your story, you can format it into

a petition or complaint as the need may be. That part of work can be done by your lawyer too, but getting the facts is most important which is why I recommend doing the core writing part yourselves, and leaving the rest of legal drafting in hands of lawyer.

## **Ch. 11 How to hire and manage a lawyer**

### ***How to hire a lawyer***

The best way to hire a lawyer is to do the following:

1. If you are a greenhorn in legal matters, then first read the above chapters of the book if you have not already done so. The reason for saying that is that if you are not aware of what kind of complaint can be made to consumer court vs civil court vs FIR to police, what hope can be there in finding a good lawyer to represent the case. Legal profession deals with many branches of law, and a lawyer who spends most of time in criminal or civil cases may not have the inclination to handle consumer court cases. In family courts, I have seen that there are lawyers who exclusively work in family courts. That shows that many lawyers have tried to specialise or narrow their focus to few areas of law, and it can be an advantage sometimes to have a lawyer who may not be a generalist but can handle your case because of his own experience in that area.

2. Prepare a one page and certainly not more than one and half page of summary of your issue/complaint/problem. You can also prepare a more detailed complaint, e.g., similar to one I have given in the chapter on consumer courts. The advantage of one page summary is that sometimes it helps to focus on most important issues and putting them on paper is one way of doing it.

3. Get contacts of lawyer in your area, or closer to the court where the case may

get filed. You can even try to find a lawyer close to your work if you think you can meet lawyer on the way back from work sometimes. Having a lawyer who is far away from both your residence or work will tend to increase your commute time needed to meet him/her, so you should be aware of that. The reason I am mentioning this is that most lawyers in India tend to be very face to face oriented, and they tend to work on things only when the client is available in front of them! Not for them heavy use of email with clients or fancy collaboration software.

4. Meet 4-5 lawyers and show them the one page summary and discuss with them how the problem can be handled. You can offer to pay for consultation or sometimes lawyers may not charge anything for a basic consultation, either. If you have basic knowledge of law by now, you should be able to weed out those who are suggesting some fancy solutions, or some solution of the *teach-them-a-lesson* variety. Avoid all those who talk condescendingly, are not too keen on answering your questions, or explaining how the next steps are to be taken and what to expect in court. The best experience is when an advocate tells you something which you had missed or gives an insight about law or your case which shows his/her competence and also interest. Apart from competence, you have to judge interest in having you as client as well as professionalism of advocate. The most basic things you need to check is understanding of the case, interest in handling it, ability to explain things articulately and logically, and integrity. The part about assessing integrity will be most likely based on your intuition or gut feel.

5. Once you get confidence with a lawyer, discuss about the next steps and fees for each stage. The best approach is to negotiate on some fees based on complexity and milestones of the case. Giving a large lump-sum advance or

full fees for the case upfront to advocate is a huge no-no, and I continue to wonder why some people fall for that. People in other professions do not ask for large amounts in advance, and I don't see any reason that an advocate's profession is any special or risky that they deserve this.

### **Should you hire a young lawyer or an old, experienced one?**

My guess is that unless you are facing a huge liability in civil case, or you are accused in a false crime, the enthusiasm and interest of lawyer can easily make up for lack of experience. Even experienced lawyers won't be available for every hearing, since they have to handle multiple cases spread across various courts, so what may happen is that after initial filing of complaint or petition, the senior lawyer will be less and less available, and his juniors will take over. They might be taking more adjournments while you want the case to run faster without adjournments due to non-availability of lawyer. I may also be biased in the sense that in my own cases I have prepared most of the documents, and I rely on lawyer for the cross-examination and submission work. After having had experience of courts over many years, I have realised that apart from cross-examination, most of the other important work is done not inside the court hall but in front of a computer, where you prepare your petitions, applications, affidavits etc. This work can be done by the litigant himself, and having a senior lawyer for everything may be an overkill.

### **Setting fees**

Advocates' fees varies from city to city. In a relatively high-income city like Bangalore where people have more income but less time, legal fees will be more than say in Nagpur.

One Bangalore person informed me that his lawyer was charging Rs 1,000 per

hearing in DV case. He also said that his lawyer knew about his relatively high income. It might be a good idea not to disclose one's income or economic status unless necessary.

Another person recently said that his lawyer told him that he expects to get Rs 3-4,000 per hearing. This person has relatively simpler family court case. I find that is way too expensive for any kind of family court case for a middle class person to pay.

I mention the above cases only to suggest what not to fall into. Here are my thoughts on the issue of fees:

1. The best point about legal fees was something I read in Advocates Act. It said that a lawyer is supposed to charge a fees which is commensurate with his experience level in his practice, and other lawyers at same standing. If you read the Advocates Act and bar council rules etc, it would seem that practice of law is a highly noble, and selfless profession the aim of which is service to clients, and not expect rewards, and definitely not act in a greedy manner.
2. In general, I think that paying anything more than Rs 5-10,000 at a stretch to a lawyer should probably only be done AFTER one has some confidence in that lawyer having engaged him for a while. The confidence can be both ways too. I know of cases where lawyer took some money initially and didn't take anything until the cases were closed, at which time the full settlement was done.
3. The fees should be based on progress of case from one stage to another, for example from written statement to evidence, from evidence to cross-exam and so on. That will remove the problem of paying fees per hearing if the hearing is simply resulting in adjournment for no fault of yours. If

you have more than one case with same lawyer, then the fees will increase. If 2 cases are running together in the same court, then the fees may increase but not necessarily be double since both cases get heard on same dates.

4. For consumer court cases which can wrap up within 6-9 months, I feel a fees of Rs 5-10,000 depending on asked for monetary relief is sufficient. One may not get very senior lawyers to represent in that case, but I believe many consumer court cases are also relatively straightforward, and the process of consumer court trials is also relatively simpler.

### *Vakalatnama*

To hire a lawyer it is required for the client to sign a vakalatnama which authorises his/her advocate to plead and argue his case on his/her behalf. While the vakalatnama seems to give lot of powers to the advocate, my belief is that the vakalatnama cannot absolve lawyer from his professional responsibilities. There are bar council rules and Advocates Act which prescribe standards and norms all advocates have to abide by, and for failing to do so even their license to practise can be revoked by bar council. A sample vakalatnama is given below:

IN THE COURT OF

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Suit /Appeal No./CWP \_\_\_\_\_

JURISDICTION

of 2016

In re:

\_\_\_\_\_ Plaintiff  
/Appellants/

Petitioner/ Complainant

V E R S U S

\_\_\_\_\_ Defendant/Respo  
ndent/

Accused

KNOW ALL to whom these present shall come that I/We

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ the above named \_\_\_\_\_ do hereby  
appoint

(herein after called the advocate/s) to be my/our Advocate in the above noted  
case

authorized him :-

To act, appear and plead in the above-noted case in this Court or in any  
other

Court in which the same may be tried or heard and also in the appellate Court

including High Court subject to payment of fees separately for each Court by me/ us.

To sign, file verify and present pleadings, appeals cross objections or petitions for execution review, revision, withdrawal, compromise or other petitions or affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case in all its stages.

To file and take back documents to admit and/or deny the documents of opposite party.

To withdraw or compromise the said case or submit to arbitration any differences or disputes that may arise touching or in any manner relating to the said case.

To take execution proceedings.

The deposit, draw and receive money, cheques, cash and grant receipts thereof and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.

To appoint and instruct any other Legal Practitioner, authorizing him to exercise the power and authority hereby conferred upon the Advocate whenever he may think it to do so and to sign the Power of Attorney on our behalf.

And I/We the undersigned do hereby agree to ratify and confirm all acts done by the Advocate or his substitute in the matter as my/our own acts, as if done by me/us to all intents and purposes.

And I/We undertake that I / we or my /our duly authorized agent would appear in the Court on all hearings and will inform the Advocates for appearance when the case is called.

And I /we undersigned do hereby agree not to hold the advocate or his substitute responsible for the result of the said case. The adjournment costs whenever ordered by the Court shall be of the Advocate which he shall receive and retain himself.

And I /we the undersigned do hereby agree that in the event of the whole or

part of the fee agreed by me/us to be paid to the Advocate remaining unpaid he shall be entitled to withdraw from the prosecution of the said case until the same is paid up. The fee settled is only for the above case and above Court. I/We hereby agree that once the fee is paid. I /we will not be entitled for the refund of the same in any case whatsoever. If the case lasts for more than three years, the advocate shall be entitled for additional fee equivalent to half of the agreed fee for every addition three years or part thereof.

IN WITNESS WHEREOF I/We do hereunto set my /our hand to these presents the contents of which have been understood by me/us on this

\_\_\_\_\_  
day of \_\_\_\_\_ 2016.

Accepted subject to the terms of fees.

Advocate

Client

Client

### ***Setting realistic expectations***

Many people have unrealistic expectations from lawyers.

**Lawyer can speed up my case.** It is not possible. There are other cases filed before yours in court, and so courts will get to dispose them in that order. The only way to speed up disposal is to improve efficiency of the whole judicial system.

**Thinking of lawyer as a solution provider:** If one is not clear about what one wants from lawyer, then there is good chance especially if one's legal knowledge is limited to get on the wrong track and get lost in the legal jungle. It is best to think of advocate as a legal representative or partner who represents your interest in court. If you want to evict someone who has occupied your property, then ask lawyer on how to evict and stop at that. If he has experience in that area he will suggest how to go about it. There is no need to think of lawyer as a life counsellor or a godfather who can take away the pain, because they are not!

### ***How to manage lawyer***

If one has done all of the previous ground work in writing the story, collecting evidences, meeting few lawyers and selecting one who matches the mentioned criteria of competence, interest, and professionalism, then managing a lawyer will not be that difficult. It's the boring homework that once having been done, sets the foundation for smooth sailing later.

## **Communication and managing things**

It's best to have a defined trail of communication with advocate. Most advocates in India are most comfortable with face to face communication, followed by phone call. Most are not too keen on replying to emails or SMS, but that doesn't mean that you shouldn't use them to send your documents, instructions, or your requests. It leaves a good trail which can be useful to prove later if you supplied the information and instructions at appropriate times, but still the advocate didn't take action on them.

The backup mechanism I use is that if my advocate doesn't pick up the phone, I assume he is busy rather than in any conspiracy theory, and send him an SMS about whatever matter I wanted to convey. Sending SMS also keeps a documentary trail in the phone, and one can use SMS backup software to keep the whole history of SMS safe for later use if required. Sending SMS also relieves me of my responsibility in conveying the information to him at the appropriate time.

A few days before next hearing, call the advocate if necessary and discuss. For routine hearings, it may not even be necessary if it is understood that both of you will be present there.

## **Best practices of engaging with lawyer**

It is best to draft your own petitions, complaints etc, your own objections, your own Interim Applications (IAs). All of these can be done by advocate and in fact most laymen hire lawyers to do mainly these things, since they think of petitions and applications to be of special nature needing professional expertise. It is simply not so. Barring the legal header and footer/signature, the matter of any petition or application is basically statements of facts as you know them, followed by your prayer to court asking for specific reliefs. I have done it in all

my cases and in consumer court cases too, with good results. Also, any advocate never knows the facts and evidences as well as you know them yourselves, so you will be at advantage if you write them yourselves, and use lawyer's help to review and polish them if required.

I always prepare my own drafts and expect lawyer only to correct/review and take a print and submit in court. Sending the drafts by email is quite productive so one doesn't have to travel to advocate's office just for that purpose. For that reason, I think it's better not to engage with a lawyer who doesn't use email much. I know of one person who engaged with an advocate who still used to make him run around with him in the court complex trying to find a typist to type the petition, and such things. In today's age, almost everyone can afford a computer, and if they haven't yet learnt how to use it, then probably you can find some other lawyer who can even if he/she is younger. The productivity gain of using computer to draft petition/IA, email to lawyer for review etc are just too high to ignore. So there is no need to settle for old fashioned way of doing things.

You can meet the lawyer at office before important events like submitting an application in court, discussing evidence, how to cross-exam OP, and such things.

While in court during cross-exam, you can stand next to advocate with a list of written points to remind him to ask OP, in case he forgets.

## **Ch. 12 Regulation and upholding high standards among advocates**

### ***Bar councils fail to uphold standards***

#### **Violent/unbecoming/unlawful behaviour by advocates not punished**

It is commonly seen that Indian advocates in all states and cities indulge from time to time in **collective disruption, strike, violence** be it in cities of Bangalore, Ghaziabad, Meerut or Chennai. Usually every 3-6 months or so there is one such news. Just a quick Google search returned sample of news items below all of them being from last few years:

<http://www.thehindu.com/todays-paper/lawyers-police-fight-pitched-battles-in-madras-high-court/article358826.ece>

<http://www.ndtv.com/article/cities/bangalore-lawyers-attack-reporters-with-stones-iron-chairs-181830>

<http://www.rediff.com/news/2009/mar/06lawyers-provoked-madras-hc-violence-sc-committee.htm>

<http://www.ndtv.com/article/cities/violence-mars-lawyers-agitation-in-meerut-414614>

<http://www.newstrackindia.com/newsdetails/2014/04/17/233-Ghaziabad-lawyers-agitation-turns-violent-.html>

At the same time, citizens are supposed to uphold judiciary (and lawyers) in high esteem because some manuals and codes have been written giving

sermons on duties of advocates, expected ethics, high standards of behaviour and what not.

Apart from above, there has been recent news of disruption and violence by some advocates in Chennai.

<http://www.thehindu.com/news/national/supreme-court-frowns-at-violence-by-lawyers-in-madras-hc/article7673680.ece>

**Law applies to all except advocates!:** The public is made to believe that they should not take law into their own hands. But it seems, a totally different standard is used when it's lawyers who have any grouse or grievance. Not only they take law into their hands and indulge in group violence, there is hardly any news ever that such advocates have received any kind of punishment or debarring from legal practice for even a small period of time.

It is a matter of grave concern that advocates themselves act in ways which shows that they do not have much confidence in legal and judicial processes. When that is the case, it's a matter of huge hypocrisy to tell common citizens that they should abide by the law. Indeed, the impression one gets is that if one knows the law well, one can indulge in violent and unlawful behaviour, and no one can touch them!

### **Bar councils fail to enforce violation of standards by advocates**

As pointed out by Supreme Court in Mahipal Singh Rana v. State of U.P judgment, the SC has observed that both bar council of UP and bar council of India failed to take any action against the said advocate. Excerpt below:

We may now come to the direction to be issued to the Bar Council of Uttar Pradesh or to the Bar Council of India. In the present case, inspite of direction of the High Court as long back as more than ten years, no action is shown to

have been taken by the Bar Council. Notice was issued by this Court to the Bar Council of India on 27th January, 2006 and after all the facts having been brought to the notice of the Bar Council of India, the said Bar Council has also failed to take any action. In view of such failure of the statutory obligation of the Bar Council of the State of Uttar Pradesh as well as the Bar Council of India, this Court has to exercise appellate jurisdiction under the Advocates Act in view of proved misconduct calling for disciplinary action

Read more at: <http://www.livelaw.in/urgent-need-review-regulatory-mechanism-legal-profession-sc/>

While I do not have a specific suggestion on how this can be fixed, it seems regulation of advocates by bar councils is almost not working, so there needs to be **overhaul of Advocates Act so that public can have some faith restored that bar councils or a new regulatory body can do the job of punishing violations of standards of conduct by advocates.**

### *Create awareness in public about duties of advocates to clients*

#### **Common public unaware of standards of conduct, and duties of advocate towards client**

The Advocates Act, 1961 defines the process and rules by which Bar council of India and State level bar councils can be constituted, and how they can frame their rules to regulate and give licenses to advocates to practise, and to inform about and enforce standards of professional conduct. But these kind of details about existence of Advocates Act and how bar councils make rules to govern advocates are almost not known to public. Common public is almost unaware of how and where to complain if they have any problem of unprofessional conduct by their advocate. A few suggestions can be made:

#### **Suggestion 1: Give copy of bar council rules about duty of advocate towards client**

A copy of state bar council rules which govern professional duties of advocates towards client to be **given to client by advocate when a vakalatnama is signed**. It should list all duties of advocate towards client. At the beginning of any case whether civil or criminal, the judge should ask the litigants(s) to make sure that they have received that copy and only then the case should proceed. This is a simple and practical suggestion which is not difficult or costly to implement.

**Suggestion 2 (alternative to 1 above): Amend Advocates Act to include rules on duty of advocate towards client**

An alternative suggestion is that to simplify the understanding for common public about what duties advocate has towards clients, the most important **rules of professional conduct towards clients can be made part of the Advocates Act** itself, rather than leaving it to the bar councils to define it as part of bar council rules. This makes lot of sense since the rules of professional conduct and duty towards clients are things which cannot change from state to state, so there is no great hindrance why they cannot be made part of the Advocates Act itself.

**Suggestion 3: The Advocates Act needs to be amended to make it simpler to punish violations of law by advocates.**

If the legal profession needs to keep its image of upholder of justice, then violation of laws by advocates should not be tolerated, because that gives the clear message to public that you can indulge in violence and break laws if you know more about law than others. Also, the failure of bar councils to act against erring advocates gives the message that the **bar councils are acting in ways to protect advocates who are members of the club**, than protecting and enforcing standards of membership of the club.

#### **Suggestion 4: Need simple and effective mechanism of complaint and grievance redressal of clients against advocates**

Following are commonly seen unprofessional behaviour of advocates towards clients:

1. Taking advantage of client who has approached advocate through a known reference who is a relative, friend, common acquaintance, common neighbour; and **taking advance fees** ranging in tens of thousands in promise of doing some work; but then keeping quiet or **not doing any or little work for the client**. The client who has approached the advocate through a common acquaintance loses both money as well as trust in legal process at the very first step itself.
2. **Not appearing in the court on hearing date**. Also, not caring to inform client about it either.
3. Having **client pay the cost to court** for non-appearance of advocate or delays due to advocate. Many a time the advocates do not appear on the hearing date, and the court imposes a cost on the litigant whose advocate has failed to appear. This is a cruel joke on litigants that they end up paying cost which should have been paid by advocate instead. Again, the lack of awareness of rules of duty towards clients by advocates, combined with the fact that bar councils seem to protect their own; means that there is almost nil chance any client will complain about advocate to bar council or try to recover the paid cost from advocate's fees.
4. Taking **large amount of advance fees from client** which may be justifiably earned only over several years of legal representation. Many clients tend to plan for expenses in advance, and they think that by giving advance fees, they don't have to plan for further legal expense for next 2

years or so at least. But they are in for a rude shock when the advocate later starts acting unprofessionally as mentioned in other points. Even if the client is able to change the advocate, he/she stands to lose that advance fees given since most clients don't have requisite knowledge of law and rules to complain against an advocate. That combined with the fact that bar councils have failed to take action in many instances against erring advocates, makes the situation grim for litigants and common public.

5. A common complaint heard from litigants is that their advocate has started 'collaborating' with the opposite party. This is a very commonly heard complaint in public, yet there is hardly any actual complaints being filed for this kind of behaviour, most probably because the litigants don't have any hard evidence to prove it, and also because they lack knowledge of law to collect such evidence and then further complain to bar council. It would be unwise to dismiss such opinions of general public as imaginative thinking, since it strikes at the roots of confidence public should normally have in judicial processes and legal professionals.
6. Misusing *provision of consent of fellow advocate* to appear for client. Bar council rules say that a new advocate should take consent from previous advocate of the client. While this is meant as consent between advocates, in practise this has become source of major harassment and grief for litigants who want to change their advocate, but are made to run around by existing advocate who makes it seem that the client needs a no objection certificate (NOC) from advocate to appoint a new advocate. Nothing can be more damning than this fact that a paying client is made to beg for NOC from his/her own advocate, when the normal process in other professions is that client is free to choose and change his professional without any kind of objection or hindrance from existing

professional. Advocates Act should be amended to **remove need of any consent from one advocate to another**. Most advocates charge fees in advance from clients, so it is clients who need to be protected rather than advocates.

A simpler mechanism needs to be put in place preferably in Advocates Act itself which defines the duties of advocates towards clients and acceptable conduct, and how clients/litigants can file complaints to a regulatory body to get their matter resolved. Whether bar council itself can be that regulatory body or a **new ombudsman kind of body** needs to be defined can be discussed further.

#### **Suggestion 5: Need to remove consent to change advocates**

Bar council of India defines this rule:

<http://www.barcouncilofindia.org/about/professional-standards/rules-on-professional-standards/>

#### **5. Consent of fellow advocate to appear**

An advocate should not appear in any matter where another advocate has filed a vakalat or memo for the same party. However, the advocate can take the consent of the other advocate for appearing.

In case, an advocate is not able to present the consent of the advocate who has filed the matter for the same party, then he should apply to the court for appearance. He shall in such application mention the reason as to why he could not obtain such consent. He shall appear only after obtaining the permission of the Court.

Elaborating further, the need to have consent to change advocates should be removed for following reasons:

1. The said rule was made by bar council ostensibly to protect advocates

from one another, rather than clients and public. A fundamental question needs to be asked: when it's advocates who take fees from clients/litigants are supposed to provide professional service in return, **why should the clients/litigants have to face any hurdle in changing the advocate** if they are unable to get the required service or professional behaviour? There are no such rules in other professions like doctors and Chartered Accountants, which also have regulatory bodies with licensing and disciplinary mechanism.

2. This rule is more in nature of union regulation. It serves to regulate the pool of advocates, but goes against interest of litigants and ultimately against delivery of justice.
3. Further, if the justification of this rule is that it will discourage unhealthy competition among advocates to grab clients, that reasoning doesn't stand detailed scrutiny. Every individual, including advocates, have right to practise their trade /profession; and this kind of rule flies in the face of that since **it prevents a lawyer from giving service to litigant who is stuck with a bad or non-performing existing advocate**. It tends to encourage behaviour by advocates where they can focus more on grabbing a client initially, and then slack off, rather than providing professional service over the course of full trial etc.
4. By removing this rule, **those advocates who work in a professional manner while giving conscientious and good service to litigants, will get rewarded over the long term**. As of now, it is the other way round that those advocates who are smarter in 'bagging' the clients initially will have a more flourishing practice.

## *Conclusion*

I hope to have given a good overview of basic principles and processes of law, basic knowledge on how to understand contracts, and how to hire and manage a lawyer for your court cases. The idea is to raise awareness and knowledge in public so that there is a greater demand for professionalism from advocates, and a demand of higher standards from judiciary both in terms of quality as well as better infrastructure and delivery of justice.

I hope to release updates of the book regularly and cover many more points based on people's queries and doubts about law and legal processes. You can send your suggestions and feedback about the book to me at [vivek@deveshwar.in](mailto:vivek@deveshwar.in).

### ***Other books by author***

#### [Guide for men on divorce, cruelty, desertion, annulment](#)

Above book is written from perspective of informing Indian men about cruelty, desertion, adultery, mental disorder, and false allegations as a ground for divorce, and annulment of marriage. It covers more than 70 judgments on above topics.

#### [How to Fight and Reduce Maintenance under CrPC 125 and DV Act](#)

Above book is written from perspective of informing Indian men on how best to handle maintenance cases filed by wife, and how to deny or reduce the maintenance amount. The audience is especially men facing or likely to face multiple cases foisted by wife including IPC 498A, 406, 506, 34, 323 and others. Also, it will be useful for men who have filed RCR/divorce or wife has filed same on them, and now she has filed a maintenance claim under HMA 24. Handling maintenance cases of wife is a universal feature of all above scenarios, but unfortunately it is somewhat ignored in the initial stages by men with the result of getting burdened by high maintenance, and still having to fight cases for many years in court.

The author also provides paid private consultation for men facing matrimonial/legal issues and can be reached via [Man to Man Solutions](#).