

# Is your lawyer cheating you?

To avoid being taken for a ride by your advocate, make sure you know your rights and acquire some legal information before hiring one.

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In 2006, Delhi-based DK Gandhi engaged a lawyer to represent him in a case. The matter was resolved in the very first hearing and the settlement money paid to the lawyer. However, the advocate refused to hand over the sum to Gandhi till he paid him an additional ₹5,000, over and above the fee he had already received. Gandhi dragged the lawyer to the Delhi State Consumer Disputes Redressal Commission. Though the commission ruled that advocates did not come under the ambit of the Consumer Protection Act (CPA), the verdict was reversed by the National Consumer Disputes Redressal Commission (NCDRC) while hearing an appeal filed by Gandhi. Today, the matter is in the Supreme Court, which has issued a stay in favour of Gandhi as an interim measure. The final hearing has not taken place. "I am waiting for my money. All I want is my pending dues, with a penalty slapped on the lawyer," says the 64-year-old.

Gandhi is not alone. A lawyer may take you for a ride or create hurdles by not filing your case on time or refusing to hand over your documents once the case is closed. As most people lack awareness about legal procedures and provisions, it is easy for lawyers to mislead them. Here's how being vigilant can save you money and trouble.

## Know your case

Do your homework before you hire a lawyer. While it's impossible to know all the laws pertaining to the case, you should try to read up a few cases on the Internet to know where you stand. If your case is too weak, it will be advisable to opt for an out-of-court settlement. "However, a lawyer may advise you wrongly just to make more bucks. If you have background knowledge about your own case, you can get a better deal for yourself," says Ghazala Khatri, associate director, legal services, Warmond Trustees & Executors. You could make a note of the case names and ask your lawyer about them. This will convey to him that he is dealing with someone who has legal knowledge, and may also bring to light cases that he may have overlooked. You can also ask him to explain the specific sections under which he is filing the case. For civil cases, you will need to consider the Limitation Act, 1963, which lays down the period within which a civil case is required to be filed, otherwise the court will not entertain your case. You can look up this information on the Internet or ask your lawyer to show you the section that is relevant to your case.

In 2011, the NCDRC held that an advocate cannot be held liable for delay in filing a case unless mala fide intent has been proved. So, it is your responsibility to ask the lawyer to file it within a reasonable time. "Though one cannot precisely define 'reasonable' time, a lawyer can be held liable if he does not file a case for several months. In such a situation, he must refund the

entire fee he has received in advance from the client," says Khatri.

Not appearing before the court on a given date of hearing is also a malpractice on the part of the lawyer. He can withdraw from a case only after he has given sufficient notice to the client. "However, instead of appearing himself, he can send his junior to argue the case though he must ensure that it does not compromise the interest of the client," says Aakanksha Joshi, senior associate with law firm, Economic Laws Practice. Apart from this, your lawyer must treat your case confidentially and not divulge it to a third party.

## Fee payment

For all legal matters, a two-pronged payment system is in place: lawyer's fee and court fee. While the lawyer is allowed to set his own fee, he has to follow a code of conduct. For instance, once you have given the entire fee, it would be unethical for him to ask for more. You can ask the advocate to issue a receipt stating that you have paid the entire fee. Also, he must return all your documents once the case is closed. It has been held in *RD Saxena vs Balwant Prasad Sharma* case in 2000, that refusal to return the files of a client amounts to misconduct under Section 35 of the Advocates Act, 1961.

Regarding the court fee, it is usually paid by the lawyer on your behalf and you have to reimburse him. You can verify the fee by checking the *challan* (receipt). Currently, payment of court fee can be made on the portals of the Supreme Court ([sc-e-filing.nic.in](http://sc-e-filing.nic.in)) and the high courts of Bombay ([https://gras.mahakosh.gov.in/echallan/](http://gras.mahakosh.gov.in/echallan/)) and Delhi ([shcilestamp.com/estamp](http://shcilestamp.com/estamp), [CFS\\_home.html](http://CFS_home.html)).

## Redress your grievance

In case of misconduct by a lawyer, you can approach the disciplinary committee of the State Bar Council or the Bar Council of India. You can refer to Section 35 of the Advocates Act, which lists malpractices. However, there is ambiguity on whether you can approach a consumer court as is evident in the case of Gandhi. The NCDRC has stated that a lawyer cannot be held responsible for the outcome of the case, but if there is a deficiency in his services, the



## 10 QUESTIONS YOU SHOULD ASK

- 1 Under which provisions of the law does my case fall?
- 2 Can you list out relevant laws that can strengthen my case?
- 3 What are the possible outcomes of my case?
- 4 What are the alternatives to resolving the issue?
- 5 Will you attend the hearings personally or will you send a junior colleague to do so?
- 6 How will you communicate the developments of the case to me?
- 7 Can you outline the basic procedures involved in my case?
- 8 How long is it likely to take for the case to be resolved?
- 9 Can you provide a break-up of your fee for taking up my case?
- 10 If complications arise in the case, will you charge a higher fee than the one already fixed?

client can proceed against the lawyer under the CPA since lawyers charge a fee for the services they render. "I was not sure if a body that represents lawyers (Bar Council) would support me, so I approached the consumer courts," says Gandhi.

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## DK GANDHI, Delhi



**The case:** In 2006, Gandhi received some money that he won in a case, but his lawyer refused to hand it over till he was given ₹5,000 despite having received his fee.

“Why should I pay extra to get the money due to me? This is unethical on the part of the lawyer and I want him to be penalised.”

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