

Praise for the Book

‘Dr Abhishek Manu Singhvi is a lawyer with the Teflon touch. This book is for both non-lawyers and lawmen. The diversity of causes that he has represented through the journey of these cases makes compulsive reading. These cases represent milestones in the legal history of our country. A must-read.’ **Kapil Sibal, member of Parliament and former Additional Solicitor General of India**

‘The idea behind this book – of enlightening the lay reader about the vital role of the Supreme Court in almost every aspect of our contemporary life – is laudable. These diverse cases – argued by one of our foremost legal practitioners – are described in a simple and lucid style, encapsulating stories very well told.’ **Soli Sorabjee, former Attorney General for India**

‘The diversity of the legal themes covered in this legal journey for the non-lawyer is truly impressive and enlightening. Controversial contemporary social themes like Jallikattu and Sabarimala compete with imparted corporate issues like the Mistry–Tata dispute. The book also traverses hardcore constitutional adjudication having a heavy political flavour (e.g., Uttarakhand and Karnataka). Written by an eminent jurist and a third-term member of Parliament, this is a must-read for the expert, connoisseur and dilettante alike.’ **K. Parasaran, former Attorney General for India**

‘For many years now “Manu” Singhvi has been at the top of the profession of practising advocates, constantly arguing cases of someone or the other in India’s highest court. In an account of

eight such cases, he gives us what he has himself described as a “view from the trenches”: well worth reading, not only because of a first-hand account of the foot soldier engaged in the conflict, but also because each of the eight pieces has been composed in elegant prose.’ **Fali S. Nariman, former president, Bar Association of India**

From the Trenches



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Abhishek Singhvi

with
Satyajit Sarna

 juggernaut

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*To my mother
for her love and discipline
and
to my wife
for being an inseparable part of my life*



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Introduction

You are holding in your hand a collection of stories from my life as a counsel. Since 1981, I have argued for litigants in every kind of case – civil, criminal, commercial, constitutional, from the Supreme Court all the way down. I have argued before small tribunals in far-off corners of the country and I have argued in international arbitrations. I have won and I have lost. But above all I have learnt – and I am still learning. The law is a tough teacher.

Over these forty years, I have had the good fortune to have been involved in some of India's biggest legal battles. Not all of them lend themselves to a popular audience, but there are some that do catch the eye of the public. This is a selection of a few of those cases that might be interesting to the reader. Any such selection

is necessarily short and arbitrary, for reasons of space, content and variety.

You may have read in the newspapers about cases I was involved in like Sabarimala, Jallikattu, or the fight between the Tata Group and Cyrus Mistry. Some of them you may not have heard of, but they laid down protections you benefit from, as, for example, freedom from custodial violence or expanded boundaries for freedom of speech.

Others are battles of public law, where the rights of a person or group of people are pitted against the government or the law. For example, do you as a private citizen have the right to fly the flag above your home? I have not in this book focused on too many commercial battles because while they are technically very interesting, they do not personally affect as many people.

Before we go any further, it may serve us well to discuss a few fundamental concepts here:

1. **The Constitution of India:** Our Constitution is the fundamental framework of rules that governs our entire political, civic and legal order as a nation. It lays down the basic principles for the functioning of the executive, the legislature and the judiciary. It lays down that India is a democracy, and how that democracy is to function,

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with Houses of Parliament and elections. It lays down a structure which is federal in nature, that is, where there is a Central government and state governments, each of which can carry out different areas of governance. It states what our basic freedoms are and how they can be protected. Where a law or a governmental action falls afoul of the Constitution, that law or action is illegitimate and a court is to strike it down. Therefore, the Constitution functions as the supreme law of our country. But it is wrong to look at the Constitution as unchangeable, or cast in stone. Judicial interpretations, coupled with the changing mores of society, attach new and ever-changing meanings and facets to the principles in different articles. This is why we call it a living document.

2. **Writ petition:** A writ petition is an action by which a person seeks relief from the courts against actions of a government or a public authority. Under the Constitution, writ petitions can be filed in High Courts and in the Supreme Court. They are a kind of remedy originating in medieval times where the essential fairness of an authority's actions could be challenged before a judicial authority. The person who files a writ petition is a petitioner and the authorities who have to

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answer the case are called respondents. The cause title of a writ petition is usually a person versus a government or authority, for example, *Ram Kumar v. Union of India*, or *Ram Kumar v. State of Maharashtra*, or *Ram Kumar v. Municipal Corporation of Delhi*. (The Union of India is the official name of the Central government.) When the Court decides a matter in a writ, and determines whether the action of an authority was valid or not, it is said to have exercised the power of 'judicial review'.

3. **Public interest litigations** or PILs as they are often called are a kind of writ petition where the petitioner is not seeking relief just for himself or herself, but also for other persons or the public in general. PILs can be entertained by the High Courts and the Supreme Court. They are often criticized as being a vehicle for 'judicial overreach' – where the judiciary steps beyond its traditional function of deciding law, to creating and enforcing new law.

Judges are supposed to declare and apply the law that the people make through their legislators. In practice, judges often find themselves in a position to *make* the law; there is a very fine line between interpretation and creation. Sometimes, they are called upon to make decisions which are unpopular, and then

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we see some difficulties in implementing unpopular judicial decisions.

4. **The hierarchy of courts:** At the very top is the Supreme Court, or Apex Court, which hears mostly appeals and writ petitions. Below that, each state (or sometimes a few states together) has a High court. The High Courts and the Supreme court are courts of record. They have wide powers, and can hear writ petitions. Their judgements bind the courts subordinate to them, and they can punish for contempt of courts. The cases before them should generally involve questions of law, such as whether Section 377 of the Indian Penal Code violates the Constitution or whether commercial speech is protected as free speech. Below the High Court level are the trial courts, which are further subdivided by seniority and by kind of court. Civil and criminal cases in our country by and large start in the trial courts. Trial courts take evidence, hear witnesses and determine questions of fact. For example, does Mr Ram Kumar own the house at 123 Main Street, or did Mr Ram Kumar kill Mr Shyam Kumar on the night of the First of November 2019? In practice, most cases involve a mixture of facts and of law.
5. **Tribunals:** Some bodies of law are specialized and require different sets of procedure. Therefore, the law has

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created separate tribunals for those kinds of cases. For environmental cases, one must go to the National Green Tribunal. For consumer cases, one goes to the Consumer Dispute Redressal Fora. The National Company Law Tribunal hear cases of corporate insolvency and shareholder disputes. Similarly, administrative law, labour laws, etc., also have specialized tribunals. From the tribunals one may appeal to the High Court or the Supreme Court as the case may be.

6. **Precedent:** The common law follows a principle called *stare decisis*, which is more commonly known as precedent – that where a position in the law has been decided earlier, unless there is good reason to differ, that position should be followed. The identical-looking books you see in floor-to-ceiling shelves in a lawyer’s office, with years written on their spines, are reporters, which contain these precedents. With every year and every new case, new fact situations come up, and laws are applied to those situations by the court – from that comes case law. Very little of the law is explained by the sections you see in the acts; for example, Section 420 of the Indian Penal Code which says that cheating is a crime is under a hundred words long. The systematic exploration of how that section is applied, who

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is guilty and who is not – what is or is not cheating – is laid down in the case law.

7. **Separation of powers:** Modern democracies such as ours have checks and balances built into them. One such is the separation of powers. We have three broad branches of government – the legislative, the executive and the judicial. The legislative branch consists of Parliament and state Legislative Assemblies. They are elected by the people and their primary power is to make law. The executive is the acting part of the government, which enforces the law and acts within the bounds of the law. The judicial branch is the part of the government which determines how the law is to be applied, and can judicially review the actions of the executive. This system of having three parts of government is designed to prevent the concentration of power in the hands of any one person or branch.
8. **Barristers, solicitors and briefings:** In England, there are two classes of lawyers: barristers and solicitors. Barristers argue cases in court, and solicitors prepare the papers and interact with the client. The solicitor briefs, or ‘instructs’ the barrister, and the barrister presents the case to the court, or conducts examination. In India, we follow this division more as a custom than as a rule, and lawyers are

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free to draft, file and argue their own cases. However, there is a class of distinguished advocates whom the High Courts or the Supreme Court designates as senior advocates. Senior advocates are expected to have a wide breadth of expertise. They have usually practised law for at least twenty years before they are designated.

Hopefully these explanations will help you make sense of the chapters that follow, each of which is about a case or a pair of connected cases.

Anyone who wants to read these cases can search for them and find them easily. The judgements of our higher Courts are public documents and are intended to be read by anyone interested. But the judgements are the views of the judges, and are a top-down account of the battles before them. They are also usually dry accounts of facts and endless extracts of case law, and make for dull reading for the layperson.

The chapters that follow tell the stories of these cases from the perspective of a lawyer who argued them. This is what I was thinking, what I feared might happen, where I was taken aback, and how it felt. This is the view from the trenches.

I hope you enjoy it.