

2. Privileged Communications – Polity

The Supreme Court reaffirmed the vital role of advocates in a constitutional democracy, ruling that lawyers cannot be compelled to disclose client communications unless the legal advice is used to commit or conceal a crime

Background of the Case

The Supreme Court took up suo motu proceedings after an unusual incident in Ahmedabad, where a police officer issued a notice under Section 179 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. The notice summoned a defence counsel and demanded disclosure of case-related communications connected to the lawyer's client. The Court intervened to examine whether the police could compel such disclosures and whether this violated constitutional protections and evidentiary privileges.

Understanding Privileged Communications

Meaning – Privileged communications are confidential exchanges within relationships that the law recognises as inherently protected to preserve trust and fairness. These include –

1. Advocate–client communication.
2. Spousal communication.
3. Official communications where confidentiality serves public or national interest.

Purpose – To ensure that individuals can seek legal or personal advice freely without fear that the information will be exposed in legal proceedings. To safeguard fair trial rights, privacy, and the integrity of justice processes.

Privileged Communications under the Bharatiya Sakshya Adhiniyam (BSA), 2023

1. Section 128 – Spousal Privilege – Protects marital communications, ensuring that –

1. Communications made during marriage remain confidential.
2. This protection continues even after divorce.

Exceptions – Cases involving crimes committed between spouses. Litigation between spouses, where disclosure becomes relevant.

2. Section 129 – Official Communications – Bars disclosure of unpublished official records except with the department's prior permission.

Purpose – To protect public interest, sensitive information, and national security concerns. Ensures bureaucratic confidentiality and safeguards classified records.

3. Section 132 – Advocate–Client Privilege – Prohibits advocates from revealing – Professional communications received from the client.

Advice provided, documents prepared, and any information obtained during professional engagement.

Exceptions – Communications made in furtherance of an illegal purpose. Facts observed indicating a crime or fraud after the commencement of the engagement. Cases where the client expressly consents to disclosure.

Sections 133–134 – Support these protections by detailing limitations on compelling witnesses and protecting sources for journalists (as understood broadly within evidentiary privilege frameworks).

Latest Supreme Court Observations

1. Compelling Lawyers to Disclose Client Communications is Unconstitutional – The Court held that forcing lawyers to reveal client details—except under specific Section 132 exceptions—violates – Right to fair trial (Article 21). Right against self-incrimination (Article 20(3)).

Lawyer–client privilege is now constitutionalised, meaning – It protects the citizen, not the advocate. It forms part of the due process guarantee under Article 21.

2. Legal Professional Privilege is Essential for Fair Defence – The Court emphasised that – Defence counsel cannot be co-opted into the prosecution machinery. Lawyers are "constitutional actors" whose independence preserves adversarial justice. Compelling a lawyer to testify against their client creates a conflict of interest and violates – Equality before law (Article 14). Personal liberty (Article 21).

3. Section 179 BNSS Cannot Override Privilege – The police cannot use Section 179—which empowers seeking information—to bypass evidentiary privileges under the BSA. Investigative powers are subject to constitutional limitations. The Court called this a case of "investigative overreach".

Doctrinal Significance of the Ruling

1. Strengthens Fair Trial Jurisprudence – Reinforces earlier landmark judgments –

M.H. Hoskot v. State of Maharashtra (1978) – Right to legal aid is essential for fair trial.

Hussainara Khatoon (1979) – Speedy trial and access to legal counsel form part of Article 21.

The present judgment expands this jurisprudence by explicitly linking privilege with – Effective legal representation. Due process protections.

2. Restores Institutional Balance – Prevents the police from – Encroaching upon advocate autonomy. Undermining the adversarial structure of criminal trials.

Reaffirms that – Advocacy is not just a profession but an integral constitutional role. Lawyer–client confidentiality is a structural safeguard for democracy.

3. Shields Citizens from Coercive Investigations – The decision ensures – Citizens can consult lawyers without fear of police scrutiny. Investigations remain accountable, lawful, and proportionate. Reinforces that privileges are not obstacles to justice but safeguards against abuse of state power.

Overall Importance of the Verdict

Reasserts that effective legal assistance is a constitutional right under Articles 21 and 22(1).

Ensures that police investigative powers cannot trespass into protected lawyer–client communications.

Elevates professional privilege from a statutory rule to a fundamental constitutional guarantee.

Reinforces the integrity of criminal justice, protecting citizens' rights and maintaining the independence of the legal profession.

Source – <https://www.thehindu.com/news/national/can-lawyers-break-client-confidentiality-explained/article70272629.ece/amp/>

