

6. Lawyer – Client Privilege – Polity

Probe agencies cannot force lawyers to reveal client info – Supreme Court judgement. The Supreme Court ruled that investigating agencies cannot compel lawyers to reveal confidential client communications, as this violates the client's right against self-incrimination (Article 20(3)) and the lawyer's professional rights. This privilege, protected under Section 132 of the Bharatiya Sakshya Adhiniyam (BSA), 2023, can only be bypassed under strict, high-level exceptions, such as when the communication is in furtherance of an illegal act.

Supreme Court Upholds Sacrosanct Nature of Lawyer-Client Privilege

The Supreme Court of India has delivered a landmark judgment holding that investigating agencies are barred from summoning lawyers or compelling them to disclose confidential professional communications made by their clients.

Key Observations by the Court

The Court's ruling was based on a detailed examination of constitutional rights, legal ethics, and the foundational principles of the justice system.

1. Violation of Constitutional Rights (Article 20(3))

Core Infringement – The Court held that forcing lawyers to disclose communications received from their clients directly infringes upon the client's fundamental right against self-incrimination, which is guaranteed under Article 20(3) of the Constitution.

Lawyer as Alter-Ego – The lawyer is seen as the client's representative. Compelling the advocate to provide evidence against their client is, in effect, compelling the client to be a witness against themselves.

"Outrageous" and "Unconstitutional" – The bench described any act of compelling an advocate to prejudice their own client, without the client's knowledge or consent, as "outrageous" and fundamentally "Unconstitutional."

2. Duty of Investigators

Independent Evidence – The Court reiterated that it is the primary and sole responsibility of the investigating agency to gather independent evidence of culpability.

Lawyers Are Not Tools – Lawyers cannot be treated as a substitute for investigation or as an easy source of information. The investigative process must rely on its own merits, not on breaching legal privilege.

3. Professional Privilege and Trust

Foundation of the Relationship – The advocate-client relationship is fundamentally built on trust and confidence.

Statutory Protection – This relationship is legally protected under Section 132 of the Bharatiya Sakshya Adhiniyam (BSA), 2023.

Integrity of the Justice System – The Court observed that breaching this confidentiality—the cornerstone of legal ethics—undermines the integrity of the entire justice system.

4. Advocates' Fundamental Rights (Articles 19 & 21)

Article 19(1)(g) – The ability of advocates to represent their clients "without fear" is an essential part of their right to practice their profession, guaranteed under Article 19(1)(g). Constant fear of being summoned by investigators would create a chilling effect on this right.

Article 21 – This right is also linked to the right to life and dignity (Article 21), as it allows lawyers to perform their professional duties with integrity and without undue interference.

5. Comparative Insight

Warning Against Totalitarianism – The Court cited an American ruling, which itself referenced Shakespeare, to warn that undermining the role and independence of lawyers is a dangerous precedent. It was noted that such actions are often "a step towards a totalitarian form of government," as the erosion of legal privilege is a hallmark of an authoritarian state.

Lawyer-Client Privilege under the Bharatiya Sakshya Adhiniyam (BSA), 2023

The judgment heavily relies on the statutory protections codified in the new evidence act.

Legal Basis – The privilege is formally established under Section 132 of the BSA, 2023.

Predecessor Law – This new section replaces the long-standing Section 126 of the Indian Evidence Act, 1872, carrying forward the same principles.

Core Principle – The law protects all confidential communications that pass between a legal adviser and their client.

Scope of Protection

Prohibition on Disclosure – An advocate is legally bound not to disclose any communication made by a client, or any advice given to the client, during the course of professional engagement.

Enduring Privilege – This protection is permanent and continues even after the professional engagement has ended.

All Forms Covered – The privilege extends to all forms of communication – oral, written, and electronic.

Exemption from Testifying – Lawyers are exempted from testifying about such confidential communications before any authority or court, unless the privilege is waived.

Exceptions to the Privilege

The Court emphasized that this privilege is not absolute. Disclosure is permitted (and in some cases, required) under three specific circumstances –

1. **Client Consent** – The client explicitly consents to the disclosure of the communication.
2. **Illegal Purpose** – The communication was made in furtherance of an illegal act (e.g., a client seeking advice on how to commit a crime).
3. **Crime or Fraud Observation** – The lawyer, during the course of the engagement, observes that a crime or fraud is being committed (e.g., discovering the client is actively forging documents during a consultation).

Supreme Court's Ruling and Specific Directions

To operationalize this, the Court laid down a clear procedural framework.

Balancing Act – The Court stressed that while the privilege under Section 132 must be respected, it cannot be used as an absolute shield to hide criminality.

No "Fishing Expeditions" – Lawyers cannot be summoned merely to reveal client information in a "fishing expedition" by investigators.

Justifiable Summons – A summons to a lawyer can only be justified when the agency has evidence to believe one of the statutory exceptions (e.g., advice used to commit or conceal a crime) applies.

Conditions for Issuing Summons (Procedural Safeguards)

Any officer seeking to invoke an exception to privilege must –

1. **Specify Facts** – Clearly state the specific facts that justify invoking the exception.
2. **Obtain Written Approval** – Secure written approval from a superior officer who is not below the rank of Superintendent of Police.

Scope of Privilege

Broad Application – The privilege extends to all types of legal work, including litigation, advisory, and pre-litigation matters.

Exclusion of In-house Counsel – The privilege, as defined for advocates, does not apply to in-house counsel.

Reason – They are considered employees of the company, not independent practising advocates.

Separate Protection – However, their communications are still protected from disclosure, but under Section 134 of the BSA (which covers general confidential communications).

Handling of Documents and Digital Devices

The Court provided strict guidelines for seizures to prevent data of other clients from being compromised.

In Criminal Cases – Any request for the production of documents or digital devices must be directed by the jurisdictional court. The court must first hear and consider any privilege-related objections before ordering the production.

In Civil Cases – Documents must be produced before the court, not directly to the investigators.

Mandatory Safeguards (in all cases) – Both the lawyer and the client must be notified. Crucially, confidential data belonging to other clients on the same device or in the same files must be rigorously safeguarded.

Significance of the Judgment

Reinforcement of Legal Privilege – The judgment fortifies the sacrosanct nature of attorney-client confidentiality, which is central to India's legal ethics and the framework for a fair trial.

Prevents Investigative Overreach – It creates a strong check against investigating agencies misusing their powers to pressure advocates or breach confidentiality as an investigative shortcut.

Protects Institutional Trust – The ruling protects the integrity of the legal practice, affirming that a lawyer's duty of confidentiality is essential for the effective delivery of justice.

Balanced Approach – The Court successfully upheld constitutional rights and preserved procedural safeguards without creating new judicial hurdles that would block legitimate investigations into crimes.

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