

Supreme Court Upholds Attorney-Client Privilege, Bars Summons to Lawyers for Client Advice

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Attorney-Client Privilege Latest News

The Supreme Court stated that summoning lawyers for advising clients violates their rights and undermines the autonomy of the legal profession, which is protected by statutory provisions.

Background of the Case

- The Supreme Court made its remarks while hearing a case involving a Gujarat-based lawyer summoned by police for helping his client secure bail in a loan dispute.
- The observation followed the Supreme Court Bar Association's criticism of the Enforcement Directorate's summons to senior advocates Arvind Datar and Pratap Venugopal.
- They were called in connection with an Employee Stock Option Plans (ESOPs) probe involving Care Health Insurance and former Religare Enterprises chairperson Rashmi Saluja.

Privileges Associated with the Attorney-Client Communication

The Bharatiya Sakshya Adhiniyam, 2023 (replacing the Indian Evidence Act, 1872), grants privileged status to communications between lawyers and their clients, protecting them from third-party disclosure.

Conditions for Disclosure

- Section 132 of the BSA prohibits advocates from disclosing client communication, even post-employment, except when:
 - The client consents,
 - The communication involves illegal activity,
 - The lawyer observes criminal conduct during employment.

Exemption from Testifying

Lawyers are exempt from testifying or disclosing client communications in any form—oral, written, or electronic.

Exclusive Protection for Legal Professionals

This privilege is exclusive to legal professionals; other experts like chartered accountants, company secretaries, and cost accountants do not enjoy such protection.

Judicial Stand on Summoning Lawyers

Indian courts have consistently held that police or prosecution agencies cannot summon lawyers merely for advising their clients.

A.V. Pavithran v. CBI (2024) - Bombay High Court Ruling

- The Bombay High Court quashed a CBI summons to Advocate Pavithran, asserting that legal advice is privileged under Section 126 of the Indian Evidence Act (now Section 132 of the BSA).
- The court reiterated the principle: “once privileged, always privileged.”

Praram Infra v. State of M.P. (2025) - Madhya Pradesh High Court Decision

- The Madhya Pradesh High Court also quashed summons issued to Advocate Rahul Maheshwari, emphasizing that an advocate who is neither an accused nor a witness should not be summoned.
- The court again cited the protection under Section 126 of the Evidence Act.

The Significance of Attorney-Client Privilege for Legal Sanctity

- Attorney-client privilege, as upheld by Section 132 of the BSA, 2023 and reinforced by the Advocates Act, 1961, is central to maintaining the integrity of the legal profession and the rule of law.
- This privilege ensures lawyers can provide impartial and fearless advice without fear of coercion or reprisal.

- Summoning legal professionals without any evidence of wrongdoing not only violates this protection but threatens the institutional balance between the Bar, Bench, and Executive.
- Such actions create a chilling effect—discouraging legal advocacy, fostering self-censorship, and undermining public interest litigation and constitutional advocacy.

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