

EXPERTS CORNER

Summoning Advocates: Supreme Court Fortifies Advocate-Client Privilege



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Home › Experts Corner › **Summoning Advocates: Supreme Court Fortifies Advocate-Client Privilege**

Summoning Advocates: Supreme Court Fortifies Advocate-Client Privilege

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Introduction

In a landmark decision, the Supreme Court of India in *Summoning Advocates who give legal opinion or represent parties during investigation of cases and related issues, In re*¹ clarified the limits of investigative authority vis-à-vis the statutory and constitutional protection of advocate-client privilege. The Supreme Court held that an advocate cannot be summoned merely because they have advised or represented a client, unless one of the specific statutory exceptions under Section 132, Sakshya Adhiniyam, 2023 (BSA) is clearly established. The judgment harmonises the investigative powers under the Nagarik Suraksha Sanhita, 2023 (BNSS) with the independence of the legal profession, recognising that confidentiality between lawyer and client is integral to the administration of justice.

The Supreme Court grounded advocate-client privilege within Articles 19(1) (g), 21 and 22(1) of the Constitution and confirmed that professional communications between an advocate and a client are part of the constitutional right to counsel and fair process. This ruling is significant for

the autonomy of the Bar and the procedural limits of State investigation.

Background

The controversy arose from a reference made by the Supreme Court of India in a special leave petition titled *Ashwinkumar Govindbhai Prajapati v. State of Gujarat*² filed against a notice issued to the petitioner, an advocate by profession, under Section 179 BNSS.

The notice related to a first information report (FIR) that was lodged at the Odhav Police Station, Ahmedabad, Gujarat, under Sections 296(b) and 351(3), Bharatiya Nyaya Sanhita, 2023 (BNS), and Sections 40, 42(a), 42(d) and 42(e), Gujarat Money-Lenders Act, 2011 as well as under Sections 3(2)(v) and (2)(va), Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

The accused in the FIR, upon arrest, was represented by the petitioner in a petition for regular bail before the Sessions Judge at Ahmedabad, which was allowed. Subsequently, the investigating officer, i.e., the Assistant Commissioner of Police, summoned the petitioner under Section 179 BNSS by way of the Notice dated 24-3-2025.

The notice required the petitioner to appear within three days of receipt for enabling the police to understand the true facts and circumstances of the matter. The petitioner first challenged the notice before the Gujarat High Court. The High Court rejected the petition, opining that the petitioner did not respond to the notice and was non-cooperative. The High Court concluded that there was no violation of fundamental rights, as the notice was served to the petitioner under Section 179 BNSS only in the capacity of a witness.

When the case ultimately reached the Supreme Court in the special leave petition, the Bench identified two important questions that arose in the matter:

- (i) Whether advocate(s) can be called or questioned by the police, or any other investigating agency, simply because they have represented or advised a party?
- (ii) If the investigating agency suspects that the advocate's role has exceeded professional limits, should the advocate be summoned directly, or should there be checks and balances through judicial

oversight?

The referral order emphasised that the above issues must be addressed thoroughly, since any unwarranted interference with an advocate's ability to perform their professional duty fearlessly impinges on the very administration of justice.

The matter garnered significant interest, and several advocates and Bar Associations (together, "the Bar") filed intervention applications to oppose the notice, viewing it as an unjust attempt to interfere with the fundamental rights of advocates under Articles 19(1)(g) and 21 of the Constitution of India.

The case in favour of advocates

The Bar's arguments before the Supreme Court relied on a broad and emphatic interpretation of Section 132 BSA, which protects professional communications between an advocate and a client. It was contended that this privilege is both statutory and constitutional and cannot be overridden by investigative notices or summonses demanding disclosure of such communications. The Bar emphasised that, while the privilege is granted in the best interests of the client, it also serves as a protection for lawyers, with the confidentiality obligation being absolute, except for the limited exceptions outlined in the proviso to Section 132 BSA.

The Bar argued that the issuance of the notice amounted to a constitutional encroachment on the independence of advocates who are part of the justice delivery system. To further its case, the Bar relied on the decision of the Supreme Court in *Jacob Mathew v. State of Punjab*³ to argue that professionals such as lawyers and doctors are included in the category of persons professing special skills, and any allegation of misconduct should be examined by a committee of similarly skilled individuals akin to a peer review.

A reference was also made to the decision in *Vishaka v. State of Rajasthan*⁴, to argue that, in the absence of statutory protection, the Supreme Court can exercise its plenary powers under Article 142 of the Constitution to issue guidelines to protect advocates from arbitrary summons.

Finally, it was argued that forcing an advocate to disclose communications exchanged with the client not only goes against Section 132 BSA but also

exposes the advocate to allegations of professional misconduct under the Advocates Act, 1961, and the Bar Council Rules. Essentially, the case presented by the Bar was that the independence of the legal profession and the privilege of communicating with clients are not personal benefits of the profession but are core institutional features essential to the administration of justice.

The case of the State

The State recognised that advocates cannot be summoned as witnesses solely because they represent their clients or appear for a party. However, the State did not see the need for coming up with a fresh set of judicial guidelines, considering that the existing legal provisions under the BSA and the BNSS adequately safeguarded the advocate-client privilege.

The State argued that there was no legislative vacuum that would require Supreme Court's intervention, as done in the case of *Vishaka*⁵ and *D.K. Basu v. State of W.B.*⁶.

At the same time, the State cautioned against absolute claims of immunity. The State submitted that the statutory privileges bestowed upon advocates in terms of Section 132 BSA cannot be claimed by those involved in, concealing, or promoting criminal activities. Sections 175 and 179 BNSS grant investigative powers over cognizable offences, and it was argued that no judicially imposed restrictions could limit these powers.

Analysis of the Supreme Court

The Supreme Court, at the outset, reiterated that an advocate is not an "agent" but a critical figure in the delivery of justice. In this regard, the Supreme Court relied on the decisions in *Bar Council of Maharashtra v. M.V. Dabholkar*⁷ and *State of U.P. v. U.P. State Law Officers Assn.*⁸.

The Supreme Court opined that the duty of confidentiality under Sections 132 to 134 BSA has two main purposes: first, to protect the client's right to full and honest disclosures; and second, to shield the lawyer from pressure to reveal confidential information. This duty continues even after professional relations end.

The Supreme Court examined Section 132 BSA and broke down its three primary components. First, the prohibition on disclosure covers all

communications made in the context of professional services. Second, the privilege can only be waived if the client explicitly consents. Third, disclosure is allowed solely under legal exceptions, such as when communications are made for illegal purposes or if the advocate learns of a crime or fraud after becoming involved.

The Supreme Court then compared the position in Indian law with the principles from other jurisdictions. In this regard, the Supreme Court referred to the decision in *Greenough v Gaskell case*⁹, reaffirming that the privilege is not an indulgence for lawyers, but a structural assurance that justice must operate.

The Supreme Court also referred to *US v. Upjohn & Co.*¹⁰ from the United States, and *Minister of National Revenue v. Duncan Thompson*¹¹ from Canada. These decisions held that the principle of confidentiality, rooted in the advocate-client privilege, is essential for maintaining the trust that underpins the lawyer-client relationship.

The constitutional dimension: Privilege, liberty and representation

The Supreme Court examined the constitutionality of compelling an advocate to disclose client information. It upheld the protection of professional privilege within the broader context of Articles 19(1)(g), 20(3), 21 and 22(1) of the Constitution.

The Supreme Court stated that advocates cannot fully exercise their right to practice law under Article 19(1)(g) of the Constitution if they are subjected to arbitrary coercive actions. Justice is based on the principle that advocates should be able to perform their duties freely, without fear and independently. Subjecting them to unwarranted and baseless inquiries would undermine their independence and hinder effective advocacy.

The Supreme Court established a link between the constitutional right against self-incrimination under Article 20(3) and Section 132 BSA. Although Article 20(3) is aimed at protecting the client, the Supreme Court emphasised that it must be extended to protect communications passed through the advocate. It is unlawful to indirectly compel a person to incriminate themselves by forcing their counsel to disclose confidential instructions or advice.

Moreover, the Supreme Court recognised the right to be represented by an advocate as an integral part of “due process”, as enshrined in Articles 21 and 22(1) of the Constitution. In this regard, reliance was placed on authorities such as *M.H. Hoskot v. State of Maharashtra*¹², *Rakesh v. State of M.P.*¹³ and *Sk. Mukthar v. State of A.P.*¹⁴ to reaffirm that the right to legal representation is a fundamental element of a fair trial.

Additionally, the Supreme Court highlighted that the advocate-client privilege envisaged under Section 132 BSA embodies the principle of equality before the law, as articulated in Article 14 of the Constitution. This ensures even in the most contentious matters, litigants are entitled to honest and fearless legal counsel. Any action by investigative agencies that infringes upon this confidentiality constitutes a violation of fundamental rights and an abuse of authority.

After examining the statutory and constitutional frameworks, the Supreme Court addressed the two moot questions. Firstly, it firmly ruled that investigation officials, prosecutors, or police cannot summon advocates solely because they represent their clients or provide legal advice, as that would violate Section 132 BSA and undermine the advocate’s constitutional duty to deliver justice.

The Supreme Court clarified that summons to a lawyer should only be issued under rare circumstances, specifically when:

- (i) a communication is made with an illegal intent;
- (ii) the advocate witnesses a crime or fraud after engagement; and
- (iii) the client explicitly authorises the disclosure.

In all such cases, the investigating officer must specify in writing the exception invoked and the factual basis for doing so. To ensure procedural discipline, the Supreme Court mandated that any summons to an advocate must be approved beforehand by a superior officer no lower than a Superintendent of Police, with documented reasons for invoking any statutory exception. An unauthorised summons would be unlawful and subject to dismissal. Further, both the advocate and the client can invoke Section 528 BNSS, to challenge such summons judicially.

In addressing the second question, i.e., whether judicial or institutional oversight is adequate, the Supreme Court concluded that existing

mechanisms, including Section 528 BNSS and the High Courts' supervisory jurisdiction, provide sufficient oversight.

Ancillary issues: Documents, digital devices and in-house counsel

In addition to the moot points discussed earlier, the Supreme Court addressed three related issues that could be commonly encountered during investigations: (i) summonses issued for producing documents held by an advocate; (ii) searching or seizing digital devices; and (iii) whether in-house corporate counsel can claim advocate-client privilege.

The Supreme Court distinguished between the disclosure of communications and the production of physical and/or electronic records by an advocate. It clarified that while Section 132 BSA, does not prevent the production of documents. However, advocates cannot be compelled to reveal privileged communications contained within those documents.

Regarding digital devices, the Supreme Court recognised the heightened risk of privacy breaches. Therefore, when an investigating officer calls for the production of a digital device, the Court must handle its inspection. The device should be produced in the presence of the advocate and the client, possibly with a person of the latter's preferred digital expertise. The scope of discovery should be limited to materials relevant to the investigation, and the privacy of unrelated data must be protected.

As regards in-house counsels, the Supreme Court referred to cases in *Rejanish K.V. v. K. Deepa*¹⁵ and *BCI v. A.K. Balaji*¹⁶ and noted that only advocates practising under the Advocates Act, 1961, can claim advocate-client privilege.

In contrast, in-house legal advisors who are full-time employees do not enjoy statutory privilege for their communications with the employer. However, these communications are protected under general confidentiality provisions.

The Supreme Court also referred to the decision of the European Court of Justice in *Akzo Nobel Ltd. v. European Commission*¹⁷, which held that individuals akin to in-house lawyers lack the independence necessary for professional privilege due to their position subordinate to the employer. As a

result, only communications between advocates and clients receive full statutory protection.

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1. [2025 SCC OnLine SC 2320](#).
2. [2025 SCC OnLine SC 1384](#).
3. [\(2005\) 6 SCC 1](#) : 2005 SCC (Cri) 1369.
4. [\(1997\) 6 SCC 241](#) : 1997 SCC (Cri) 932.
5. *Vishaka v. State of Rajasthan*, [\(1997\) 6 SCC 241](#) : 1997 SCC (Cri) 932.
6. [\(1997\) 1 SCC 416](#) : 1997 SCC (Cri) 92.
7. [\(1975\) 2 SCC 702](#).
8. [\(1994\) 2 SCC 204](#) : 1994 SCC (L&S) 650.
9. 39 ER 618 (1833).
10. 600 F 2nd 1223 (6th Cir 1979).
11. 2016 SCC Online Can SC 30 : [2016 SCC 21](#).
12. [\(1978\) 3 SCC 544](#) : 1978 SCC (Cri) 468.
13. [\(2011\) 12 SCC 513](#) : (2012) 1 SCC (Cri) 613.
14. [\(2020\) 19 SCC 178](#) : (2021) 3 SCC (Cri) 795.
15. [2025 SCC OnLine SC 2196](#).
16. [\(2018\) 5 SCC 379](#) : (2018) 2 SCC (Cri) 734 : (2018) 2 SCC (L&S) 35 : (2018) 2 SCC (L&S) 39 : (2018) 3 SCC (Civ) 30.
17. European Court Report 2010 I-08301, Case C-550/07P