

SAFEGUARDING ADVOCATE - CLIENT PRIVILEGE

"The Bar is not a private guild, like that of 'barbers, butchers and candlestick-makers' but, by bold contrast, a public institution committed to public justice and pro bono publico service." - Justice V. R. Krishna Iyer

The Supreme Court's recent judgment in *re: summoning advocates who give legal opinion or represent parties during investigation of cases and related issues* (suo motu writ petition (crl.) no. 2 of 2025), is a significant pronouncement reinforcing the principles of confidentiality of communications between advocates and their clients. The matter arose when an advocate in Gujarat was summoned by the investigating officer under Section 179 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), solely because he had filed a bail application on behalf of an accused person. The summons sought true details of the case from the advocate, directly intruding into the zone of privileged communications protected under Section 132 of the Bharatiya Sakshya Adhiniyam (BSA). The Supreme Court treated the issue as one of broad public importance and addressed the legality and limits of summoning advocates during criminal investigations.

Background

The High Court of Gujarat declined to interfere with the summons issued to the advocate, prompting the Supreme Court to examine two very important questions: (i) when an individual has association with a case only as an advocate advising the party, could the investigating

agency/prosecuting agency/police summon the advocate for questioning, and ii) assuming that the investigating agency/prosecuting agency/police has a case that the role of the individual is not merely that of an advocate but something more, even then should they be directly permitted to summon or should judicial oversight be prescribed for those exceptional criterion of cases?

The matter attracted wide participation from the Bar, with various associations and senior advocates arguing that issuing summons to an advocate is unconscionable and a blatant interference with the right to practice under Article 19(1)(g) of the Constitution. It also violates Article 21 of the Constitution and risks compelling breaches of professional duty.

Centrality of Advocate - Client Privilege

Section 132 of the BSA formed the fulcrum of Supreme Court's reasoning. It prohibits advocates from disclosing communications received from clients in the course of professional engagement, except in strictly limited circumstances, i.e., when the communication is made in furtherance of an illegal purpose, when the advocate observes a crime or fraud committed in the course of the engagement or when the client expressly consents. The Supreme Court reaffirmed that this privilege is client centric and continues even after the engagement ends. Forcing disclosure would not only breach statutory confidentiality but would also expose advocates to charges of



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professional misconduct. It was highlighted that compelling an advocate to reveal privileged communications contradicts the constitutional protection against self-incrimination and undermines the right to effective representation.

The Court's Stance

Answering the first question i.e., when an individual has association with a case only as an advocate advising the party, could the investigating agency/prosecuting agency/police summon the advocate for questioning, the Supreme Court held an unequivocal "No". Investigating agencies cannot summon an advocate solely to ask details about a case in which the advocate is representing a party. Such summons violate Section 132 of the BSA because the information sought is privileged. The summons issued in the present case, seeking factual details of the crime, was itself illegal and a reflection of investigative failure, as it attempted to extract from counsel what the investigator must independently determine. Answering the second question i.e., assuming that the investigating agency/prosecuting agency/police

has a case that the role of the individual is not merely that of an advocate but something more, even then should they be permitted to summon or should judicial oversight be prescribed for those exceptional criterion of cases, it was held that sufficient judicial oversight is prescribed under Section 528 of the BNSS which gives inherent powers to the High Court to secure the ends of justice.

Exceptions and Safeguards

It is only when a situation falls squarely within the statutory exceptions in Section 132 of the BSA may an advocate be summoned and even then it is subject to strict safeguards. The summons must specifically and explicitly state the facts constituting the exception. Further, such summons can only be issued with prior written approval of a superior officer not below the rank of Superintendent of Police (SP). The SP must record satisfaction in writing regarding the applicability of the exception. These conditions are mandatory to prevent casual, coercive or uninformed issuance of summons to advocates.

Need for New Guidelines?

In response to suggestions for creating screening committees or judicial pre clearance mechanisms, it was held that no new guidelines were necessary. There is no legislative vacuum because Section 132 of the BSA already incorporates a complete statutory scheme governing privilege and its exceptions. Additionally, Section 528 of the BNSS provides adequate judicial oversight for any aggrieved advocate who wishes to challenge any illegal summons. Imposing additional procedures

could conflict with the BNSS and impede investigation.

Documents and Digital Devices in Lawyer's Possession

While privileged communications are protected, production of documents is not covered by Section 132 of the BSA. However, such production must be regulated strictly through statutory procedure. In criminal cases, any direction to produce documents must be made under Section 94 of the BNSS and the production must be before the court. The court must then decide objections and admissibility. For digital devices, the advocate must produce them only before the jurisdictional court. On production of the digital device by the advocate before the court, the court shall issue notice to the party with respect to whom the details are sought to be discovered from the digital device and hear the party and the advocate on any objection regarding the production of the digital device, discovery from it and the admissibility of that discovered. If the objections are overruled by the court, then the digital device shall be opened only in the presence of the party and the advocate, who will be enabled due assistance of a person with expertise in digital technology of their choice.

In House Counsel and the Reach of Section 132 BSA

The Supreme Court also considered whether in-house counsel employed by corporate entities are entitled to the same privilege as an advocate. It held that full-time salaried in house counsels do not fall within the definition of an advocate for the purposes of Section 132 of the BSA. Therefore, they cannot claim statutory privilege governing professional

communications. However, they remain protected under Section 134 of the BSA to the extent that the provision covers confidential communications between a party and his/her legal adviser, though such protection does not extend to communications between the employer and the in house employee counsel for the purpose of Section 132 of the BSA.

Findings

Applying the above principles, Supreme Court held that the summons issued to the advocate in the present matter were illegal. The investigating officer had no authority to summon the advocate to obtain true details of the facts of the case. The High Court's refusal to interfere was held to be erroneous and an abdication of its duty under Section 528 of the BNSS, given the clear breach of the statutory privilege.

Conclusion

The judgment pronounced by the Supreme Court stands as a strong reaffirmation of the advocate-client privilege and a decisive barrier against investigative overreach. By holding that advocates cannot be summoned except under clearly defined statutory exceptions and by requiring written senior level approval and explicit reasons, the Supreme Court has ensured that the confidentiality central to legal representation remains protected. The directions on document production and digital devices further safeguard the professional space of advocates while maintaining the integrity of investigations. In dismissing the illegal summons and reinforcing statutory protections, Supreme Court has strengthened both the independence of the Bar and the fairness of the criminal justice system.