Supreme Court Ruling on Summoning Advocates in Investigations – Privilege, Safeguards, and Impact

Background and Legal Context

In late 2025, the Supreme Court of India addressed a troubling trend: investigating agencies (police, CBI, ED, etc.) summoning advocates who **only advised or represented clients** during investigations.

A notable instance arose in Gujarat, where police summoned a lawyer (who had filed a bail application for his client) to "know the true details" of that case. The Gujarat High Court upheld the summons by treating the lawyer as a mere witness, **ignoring advocate-client confidentiality**.

Around the same time, the Enforcement Directorate (ED) sparked outrage by summoning two senior advocates (Arvind Datar and Pratap Venugopal) simply because they were representing clients in a money laundering probe. Bar Associations nationwide condemned this summons as *"perverse" and "intimidating"*, urging the Chief Justice of India to intervene. In response, the ED hastily withdrew the summons and even issued a circular directing that no advocate should be summoned in violation of client-attorney privilege.

Amid this outcry, **Chief Justice B.R. Gavai took suo motu cognizance** of the issue, leading to a reference of critical questions to a larger bench. On October 31, 2025, **a three-judge bench (CJI Gavai, Justices K. Vinod Chandran and N.V. Anjaria)** delivered a landmark judgment. It emphatically held that **advocates cannot be compelled by investigators to disclose case details about their clients**, except under narrowly-defined exceptions. This ruling anchors the longstanding principle of attorney-client privilege in India's modern legal framework and lays down fresh **safeguards** to prevent abuse.

Section 132 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA)

At the heart of the issue is **Section 132 of the BSA, 2023**, the new Indian Evidence Act. Section 132 codifies the **attorney–client privilege**, continuing the protection that was previously in Section 126 of the Indian Evidence Act 1872. In essence, this provision **forbids an advocate from disclosing any**

communication made by a client during the course of professional engagement, unless the client explicitly consents. The section's **proviso carves out only two narrow exceptions** to this privilege:

- **Illegal purpose** – if a communication was made in furtherance of an illegal purpose, it is not protected. (For example, if a client seeks a lawyer's advice to commit fraud or crime, that advice loses privilege.)
- **Crime/fraud after engagement** – if the advocate observes facts that indicate a crime or fraud committed after the start of the engagement, those facts are not privileged. This means privilege cannot shield ongoing or future wrongdoing.

Aside from these exceptions, the statute makes clear that **confidentiality is absolute**. The **Explanation to Section 132** confirms the **duty of nondisclosure continues even after the professional relationship ends**. Moreover, **sub-section (3)** extends the same protection to the advocate's assistants – interpreters, clerks, and others involved in the legal work are equally barred from revealing client communications.

Notably, the new BSA also contains **Section 134**, which addresses communications with "legal advisors." As discussed later, the Court distinguished this from Section 132 – Section 134 offers some confidentiality to legal advisors, but it **does not equate to the full privilege** accorded to communications with an advocate.

The Supreme Court's Judgment and Key Findings

- **On whether investigators can summon advocates:** The Supreme Court answered with a resounding **"No."** It held that a lawyer **cannot be summoned by police or agencies merely for advising or representing a client**. Such professional communications are protected by Section 132 and **cannot be pierced just because investigators want "clarifications" or details about a client's case**. The routine summoning of counsel to extract information was deemed **"completely untenable"** and an affront to the autonomy of the legal profession.

  The Court underscored that the **investigator's powers under the BNSS (new CrPC)** – for example, the power to require someone's attendance (Section 179

BNSS) or demand documents (Section 94 BNSS) – **do not override statutory confidentiality**. In other words, a police officer issuing a summons under BNSS must respect Section 132's mandate **"not [to] expect any disclosure of a privileged communication."** Investigators should use lawful tools to gather evidence (witness testimony, documents, etc.) **without making counsel a source of facts about the client**. If they seek information that falls squarely within attorney-client conversations, **privilege is a lawful shield** that cannot be breached.

- **On creating special oversight for such summons:** The petitioners (including bar associations) had urged the Court to frame additional **guidelines or a review mechanism** before any lawyer could be summoned – akin to requiring judicial or expert committee approval, inspired by precedents like *Vishaka* (guidelines for sexual harassment) and *Jacob Mathew* (steps to sue doctors for negligence). However, the Supreme Court **refused to impose any new pre-approval committees or procedures** for summoning advocates. It noted that this is not a situation of **legal vacuum** or absence of remedies (unlike *Vishaka*), nor a case of special expertise needed (unlike *Jacob Mathew*). Here, clear statutory provisions (BSA Sections 132–134 and BNSS provisions) already occupy the field. Creating a parallel mechanism would risk **derogating from the well-crafted law** and undermining legislative intent. The Court observed that when a summons is wrongly issued (in breach of privilege), the lawyer or client can always invoke **judicial review** to quash it – thus existing legal remedies are adequate.

In summary, the judgment **set aside the exemplar summons** (the Gujarat case notice) as **illegal and against Section 132**. The police had sought "true details" about a case from the advocate – precisely the kind of privileged information the law protects. The Supreme Court pointed out that the summons **failed to demonstrate any fact that brought it under the lawful exceptions** in Section 132's proviso, and there was no indication that higher officials vetted it. Allowing such a notice to stand would have "blatant[ly] breached" the rule of non-disclosure. The Court's ruling is anchored in a fundamental concern: **to preserve effective legal representation and the administration of justice**. If advocates could be routinely compelled to divulge client information, it

would **seriously hamper candid consultation** between clients and lawyers and erode the trust that underpins the justice system.

Court's Reasoning: Upholding Confidentiality and Rights

The bench offered strong observations on **why protecting advocate-client confidentiality is vital**. It highlighted that the legal profession is *"integral to the administration of justice"* and that placing counsel at the "beck and call" of investigative agencies **threatens the profession's independence**. An advocate is not just a witness for hire, but a **trusted fiduciary of the client**, bound by utmost good faith (*uberrima fides*). Clients must feel safe confiding in their lawyers, or else they may **withhold information out of fear that it could be exposed** – ultimately harming their own defense and the court's truth-finding process.

Crucially, the Supreme Court linked this confidentiality to a **constitutional right**. It noted that the advocate-client privilege is **anchored in the client's right against self-incrimination under Article 20 of the Constitution**. In other words, forcing a lawyer to reveal a client's private communications is indirectly compelling the client to incriminate themselves – a practice our Constitution forbids. By rooting privilege in Article 20, the Court elevated the principle from a mere statutory rule to one that has **constitutional significance** for fair trial rights.

The Court was careful to clarify that **attorney-client privilege, while robust, is not absolute**. The **two statutory exceptions** (illegal purpose, and observed crime/fraud) are the safety valves to prevent abuse of the privilege. If a lawyer's services are being used as a cloak for ongoing illegality, the law **will not protect those particular communications**. Outside of those scenarios, however, the *default position* is strict confidentiality.

The judgment stressed that investigators cannot treat every lawyer as a potential informant; they **must respect the "protective umbrella" of privilege shielding advocates**. This approach, the Court observed, ultimately *bolsters* investigations in the long run – since clients who trust that their secrets are safe with lawyers are more likely to fully disclose the truth to their counsel, enabling better legal advice and compliance.

Safeguards and Guidelines Laid Down by the Court

While the Court declined to invent new extralegal procedures, it did **interpret Section 132 and related laws to mandate important safeguards**. These act as guidelines to ensure that any truly necessary summons to an advocate (under an exception) is handled with great caution:

- **High-Level Approval & Reasons:** No investigating officer should issue a summons to a lawyer under the Section 132 exceptions on their own authority. The judgment directs that any such summons **must receive prior approval from a superior police officer of at least the rank of Superintendent of Police (SP)**. The approving officer **must record written reasons** explaining how the case falls within the **proviso to Section 132** (i.e. why the communication in question is believed to further an illegal purpose or involve a post-engagement fraud/crime). These requirements are meant to **deter speculative or routine summons** and create a paper trail that can be reviewed by courts later if needed.

- **No Fishing Expeditions:** Even with senior approval, a summons to an advocate should **never be a blanket inquiry**. The Court made it clear that an officer *"would be cautioned by Section 132 in not expecting any disclosure of a privileged communication"*. Practically, this means any questioning must steer clear of advice or information exchanged in confidence. A lawyer is not to be interrogated on client instructions, strategy, or other privileged details **unless** the very narrow exception applies.

- **Procedure for Documents:** If investigators seek documents or evidence **in a lawyer's possession** (related to a client's case), the **proper channel is via a court**, not a direct police demand. The bench clarified that any summons under BNSS (new CrPC) for document production **should require the lawyer to produce the material before the appropriate court**, not at the police station. The court will then **hear any objections** raised (for example, the client or lawyer can object that the material is privileged under Section 132) and the judge will decide on whether it can be disclosed, and if so, what portions are admissible. The key point: **it is**

a judge, not the police, who decides if a document held by a lawyer can be taken as evidence, thereby interposing judicial scrutiny to protect privileged materials.

- **Handling Digital Devices:** Where the sought evidence is in electronic form (say on a lawyer's laptop or phone), the Supreme Court imposed additional precautions. If a court does order that a lawyer must produce a device, the **lawyer and client have the right to be present when the device is inspected**. In fact, the lawyer/client can bring along a **technical expert of their choice** to assist. The Court *"specifically"* required this because a lawyer's digital device **likely contains other clients' confidential data** beyond the case at hand. Having the lawyer or their IT assistant present helps ensure that only relevant data is accessed, minimizing any accidental exposure of unrelated privileged information. This safeguard recognizes the reality of modern legal practice – e.g., an advocate's phone or laptop may hold emails and files for dozens of clients, so any search must be narrowly supervised.

- **Judicial Review Remains Available:** The Court noted that if despite these safeguards, a lawyer feels a summons is unjustified, they can **approach a High Court under writ jurisdiction** to quash it. High Courts are expected to actively protect against "blatant breach" of the non-disclosure rule by using their inherent powers (analogous to old CrPC Section 482). Going forward, the expectation is that courts will not turn a blind eye if investigators overreach.

Importantly, the Supreme Court's refusal to frame new guidelines was accompanied by a **strong reminder**: The real issue was not a lack of law, but **non-compliance or overreach** by agencies. The bench remarked that the scenario was one of *"absolute overreach in violation of the statutory mandate"* by agencies, whether through *"deliberate design or abject ignorance"*, and that the correction for this lies in courts enforcing the existing law. Thus, the onus is on both investigators to follow the law strictly and on courts to swiftly check any abuse.

Independent Advocates vs. In-House Counsel – Privilege Distinction

A significant aspect of the ruling is the clear **differentiation between advocates in independent practice and in-house legal counsel**. The Supreme Court observed that **in-house counsel (lawyers employed full-time by corporations)**, even if enrolled as advocates, **do not qualify as "practising advocates" under the Advocates Act, 1961**. Therefore, communications between a company's in-house legal team and the company are **not covered by Section 132's advocate-client privilege**.

Section 132 explicitly protects communications with an "advocate," and the Court held that this term means an advocate engaged in professional capacity (independent counsel). By contrast, an employed lawyer's advice to their company is governed by a different provision – **Section 134 of the BSA**, which deals with confidential communications with "legal advisers".

The judgment makes clear that **Section 134's protection is distinct and more limited**. Essentially, an in-house counsel's communications enjoy a degree of confidentiality, but **do not get the robust, near-immunity of Section 132 privilege**. As one commentary put it, the in-house counsel's protection **"arises only under Section 134, which affords limited confidentiality"**, not the full privilege of Section 132.

The **rationale for this distinction**, as gleaned from the judgment, is tied to the notion of independence. Because in-house counsel are salaried employees and part of the client organization, the Court aligned with a view (found in certain jurisdictions like the EU) that they lack the **independent capacity of external advocates** when it comes to privilege. The Court even referenced the European case *Akzo Nobel*, which denies EU privilege to in-house lawyers on the independence rationale. However, this stance has sparked debate – critics note that many common-law countries (US, UK, etc.) **do extend privilege to in-house lawyers** acting in a legal advisory role. They argue that independence is a matter of professional ethics and role, not employment status. Nevertheless, as the law stands after this ruling, **Indian in-house counsel must be aware that their communications with corporate management could be subject to disclosure in investigations**, since they cannot invoke Section 132.

Companies seeking full privilege protection may need to involve outside counsel for the most sensitive legal advice.

(The judgment's acknowledgment of in-house counsel is notable as a first in India's jurisprudence, even if it stops short of granting them equal privilege. It leaves room for future legislative or judicial reevaluation of how to better integrate in-house legal advice into the privilege framework as corporate legal practice evolves.)

Implications of the Ruling

This Supreme Court decision has **far-reaching implications** for various stakeholders:

- **Investigating Agencies:** Agencies like the police, CBI, and ED must **exercise greater restraint** in dealing with attorneys. They **cannot summon an advocate** for interrogation or information **solely because the lawyer represented or advised an accused**. Any attempt to do so will be unlawful unless they have clear evidence fitting the Section 132 exceptions. Even then, **officers must obtain senior approval with recorded reasons**, and be prepared to justify their actions in court.

- **Legal Professionals (Advocates):** The ruling is a major reaffirmation of the **sacrosanct duty of confidentiality** lawyers owe to clients. Advocates can take comfort that, when acting within the law, they cannot be roped into investigations or coerced to spill client secrets. This ensures lawyers remain **fearless and independent in defending clients' rights**. As the Jharkhand High Court observed, a lawyer has *"no personal interest"* in the client's alleged crimes and should not be seen as participating in the offence. If lawyers had to worry about being summoned or implicated for their client's conduct, **"no lawyer would be able to discharge his function without fear."** Now, with the Supreme Court's clear stance, advocates are better protected from harassment. However, lawyers must also be mindful: the privilege is not a shield for wrongdoing. If a lawyer **crosses the line to facilitate illegal acts**, or if they become aware of ongoing fraud, the protection falls away. Ethical

lawyering, thus, remains paramount – the privilege covers **bona fide legal advice, not complicity** in crime.

- **Clients (Accused/Litigants):** For clients, especially those facing criminal charges, the judgment bolsters their **faith in the confidentiality of legal consultations**. They can freely share all relevant facts with their advocate – even sensitive or incriminating details – without the fear that the lawyer could be forced to reveal those discussions to police. This candor is crucial for lawyers to mount an effective defense or provide correct advice. The Bombay High Court, in a case on this issue, famously noted that if communications with legal advisors were not privileged, a person **"would be deterred from fully disclosing their case to obtain proper professional aid"**, impairing justice. The Supreme Court's ruling ensures that *"once privileged, always privileged"* remains the rule – what a client confides to their lawyer stays protected during and even after the engagement. This should encourage clients to be truthful and thorough with their lawyers, which in turn improves the quality of legal representation. It also gives practical effect to the constitutional right against self-incrimination – one can seek legal advice without gifting the prosecution evidence through one's own lawyer.

- **In-House Legal Counsel & Corporates:** A cautionary note arises for in-house counsel and the companies they advise. Since communications with in-house corporate lawyers **do not enjoy Section 132 privilege**, they may be **more vulnerable to investigative scrutiny**. Corporations cannot assume that internal legal memos or emails with their general counsel are immune from seizure. In-house counsel might still invoke **Section 134 (legal advisor confidentiality)**, but the extent of that protection is untested and likely weaker. This could lead companies to involve external law firms sooner for sensitive matters (to ensure full privilege), or at least to handle internal communications with the understanding that they might one day be examined by authorities.

Overall, the Supreme Court's decision **fortifies the attorney-client privilege** in India's investigatory context. It sends a message that **law enforcement must work within the bounds of law and cannot undermine the lawyer's role as**

an officer of the court. By preventing the easy route of summoning lawyers for information, the ruling upholds the integrity of the adversarial system – where the prosecution must build its case without coercing the defense's assistance. At the same time, the clarified exceptions and safeguards ensure that truly nefarious collaborations (a rare scenario) between lawyers and clients in furtherance of crime **can still be addressed**, but only under careful judicial oversight.

Relevant Past Rulings on Privilege and Lawyer's Role

The judgment drew upon, and is consistent with, a line of precedents emphasizing the inviolability of lawyer-client communications. Some notable rulings include:

- **Satyen Bhowmick (1981, Supreme Court)** – The Supreme Court upheld a magistrate's decision not to act against a defense lawyer who **refused to produce his case diary and client instructions** when asked. The Court found no impropriety in the lawyer's refusal to share witness statements he had prepared for cross-examination, reaffirming that materials prepared in the course of defending a client are privileged.

- **Kokkanda B. Poondacha (2011, Supreme Court)** – The apex court underscored that the **relationship between a lawyer and client is founded on trust and confidence**. It held that a lawyer cannot pass on a client's confidential information to anyone else. This decision cemented the principle that **breach of confidentiality by an advocate is unacceptable**, highlighting the fiduciary nature of the legal profession.

- **Nishikant Dubey v. State of Jharkhand (2024, Jharkhand High Court)** – The High Court described the privilege under Evidence Act Section 126 (now BSA Section 132) as a *"protective umbrella"* shielding advocates **from unwanted and unnecessary proceedings**. The court noted that an advocate *"has no personal interest in the matter"* and should not be treated as if they partake in the client's crime. It warned that if lawyers were also targeted for their clients' actions, **it would instill fear and hinder them from discharging their duties without fear**. This

sentiment was echoed and validated by the Supreme Court in the present ruling.

- **A.V. Pavithran v. CBI (2024, Bombay High Court at Goa)** – Faced with a similar situation of a lawyer summoned under old CrPC 160 in a case involving his former client, the High Court quashed the summons. It reasoned that if attorney-client communications weren't privileged, clients would be reluctant to confide, and the **quality of legal aid would suffer**. The court emphasized that Section 126 of the Evidence Act **"not only protects the legal adviser from disclosing communications… when interrogated as a witness"**, but also forbids the lawyer from **voluntarily giving such evidence** without client consent. In a powerful dictum, the HC stated *"once privileged, always privileged"* – even after the lawyer-client relationship ends or the client has died, the confidentiality remains. Crucially, the judgment added that **respecting this privilege *"does not amount to interference with investigations"***, meaning the police must investigate by other means. The Supreme Court's ruling builds directly on this logic, reinforcing that genuine investigations are not hampered by privilege; only investigative overreach is.

- **Lavanya C. v. Vittal Gurudas Pai (2025, Supreme Court)** – Though dealing with a different issue, this decision reiterated the **paramount importance of client consent in a lawyer's actions**. The Supreme Court held that an advocate **cannot give any undertaking on behalf of a client without the client's express authorisation**. If a lawyer acts beyond the client's instructions, it is invalid. This again flows from the principle of lawyers as agents and fiduciaries of their clients, underscoring that **the client's interest and intent are supreme** in the professional relationship.

When does Section134 BSA kick in?

- **Only when a Court is compelling you** (as a witness/party) to reveal **confidential communications** with **your legal adviser**. (A police/ED/CBI officer in a police station isn't "the Court"; S.134 is a

courtroom rule. Summons to lawyers by investigators is governed by S.132.

- The communication must be **confidential** and with **your legal adviser** (not just any professional or friend). "Confidential" is defeated if you shared it widely or discussed it in the presence of non-privileged third parties.
- **Exception:** If **you** voluntarily **offer yourself as a witness**, the judge **may** compel **limited** disclosure—but **only** what's **necessary to explain your own testimony**, "**but no others**."

3) Step-by-step: how S.134 is applied in court

Step 1 — Is the question seeking a *confidential communication* with a *legal adviser*?

If yes, S.134 is triggered. If it's not confidential (e.g., said openly in front of third parties) or not with a legal adviser, S.134 does not apply.

Step 2 — Are you being *compelled by the Court*?

S.134 is about **Court compulsion** during testimony or production before the Court (not an IO's interview). If it's outside court, S.134 doesn't apply; other rules (e.g., S.132 for advocates; court-first production for documents/devices) govern.

Step 3 — Have *you offered yourself as a witness*?

- **If NO:** The Court **cannot compel** you to disclose that confidential lawyer communication.
- **If YES:** The Court **may compel** disclosure **strictly limited** to what is **necessary to explain your evidence**—and **nothing beyond**. The judge should confine compulsion to that slice alone.

Step 4 — Judicial control of scope

Even when the exception applies, the judge curates scope (relevancy/necessity). You/your counsel can object that a question goes beyond what's "necessary to explain" your testimony. The Court then narrows or disallows.

Step 5 — Documents/devices containing such communications

If the other side wants documents/emails or data that contain lawyer communications, the **proper route is via Court**. The judge hears your objections (including S.134/S.132 issues) and decides **what, if anything, must be revealed** (and how narrowly).

4) How S.134 differs from S.132

- **S.132 = client's privilege binding the advocate** (the advocate must not disclose professional communications; narrow exceptions; continues after engagement).
- **S.134 = a witness's shield against Court compulsion** to disclose confidential communications with **his legal adviser**; limited **waiver** if he **testifies** and only **as needed** to explain **his** evidence.

In-house counsel alert: The Supreme Court made it explicit—**in-house counsels are *not* covered by S.132**; and **S.134** protection is **limited** and **doesn't convert** employer↔in-house communications into S.132-type privilege. S.134 protects communications **to the company's legal adviser** (e.g., external counsel), **but not** communications **between the employer and the in-house counsel**.