

Advocacy, Autonomy, and Accountability

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Advocacy, Autonomy, and Accountability: Supreme Court's Clarion Call

Context:

The **Supreme Court of India** recently made significant observations stating that **summoning lawyers solely for advising their clients** violates their **professional rights** and undermines the **independence of the legal profession**.

This issue is crucial for understanding **legal ethics**, **judicial accountability**, and **constitutional safeguards**. It holds relevance for **UPSC General Studies Paper II** (*Polity and Governance*) and **Paper IV** (*Ethics, Integrity, and Aptitude*).

Background of the Case

- The Supreme Court was hearing a case where a **Gujarat-based lawyer** was **summoned by the police** for assisting a client in obtaining **bail** in a **loan dispute**.
 - The observations came after criticism from the **Supreme Court Bar Association (SCBA)** against the **Enforcement Directorate (ED)** for issuing summons to **senior advocates Arvind Datar** and **Pratap Venugopal**.
 - These summons were issued in connection with an **Employee Stock Option Plan (ESOP)** probe involving **Care Health Insurance** and **Rashmi Saluja**, the **former chairperson of Religare Enterprises**.
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Legal Protection for Attorney-Client Communication

The **Bharatiya Sakshya Adhiniyam, 2023**, which replaced the **Indian Evidence Act, 1872**, provides **privileged status** to **communications between advocates and clients**.

- **Section 132** of the **Bharatiya Sakshya Adhiniyam (BSA), 2023** prohibits lawyers from **disclosing any communication** made in the course of professional engagement.
 - This **privilege remains intact** even **after the professional relationship ends**.
 - **Exceptions to disclosure** are permitted only in the following cases:
 - The **client consents** to disclosure.
 - The communication involves **illegal activity**.
 - The lawyer observes **criminal conduct** during employment.
 - Lawyers are **exempt from testifying** or disclosing client communication in any form—**oral, written, or electronic**.
 - This protection is **exclusive to legal professionals**. **Chartered accountants, company secretaries, and cost accountants do not enjoy this privilege**.
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Judicial Precedents Upholding the Privilege

Indian courts have consistently ruled in favour of protecting the **attorney-client privilege** and have opposed arbitrary summons against advocates.

- In **A.V. Pavithran v. CBI (2024)**, the **Bombay High Court** quashed the CBI summons to the advocate and held that legal advice is **privileged under Section 126** of the Indian Evidence Act (**now Section 132 of the BSA**). The court reiterated: **"Once privileged, always privileged."**
 - In **Praram Infra v. State of Madhya Pradesh (2025)**, the **Madhya Pradesh High Court** quashed the summons issued to **Advocate Rahul Maheshwari**, observing that a lawyer who is **neither an accused nor a witness** should **not be summoned**. The court again invoked protections under **Section 126** of the former Evidence Act.
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Importance of Attorney-Client Privilege in a Constitutional Democracy

- **Attorney-client privilege** under **Section 132 of BSA, 2023** and the **Advocates Act, 1961** is essential for the **free and fair functioning of the legal system**.

- It ensures that lawyers can give **independent, fearless, and confidential advice** without the threat of coercion or reprisal.
- It is a **cornerstone of the rule of law**, ensuring the **integrity of the legal profession** and **public trust** in the justice system.
- **Unjustified summoning of lawyers**, without any material evidence, threatens the **institutional balance** between the **Bar**, the **Bench**, and the **Executive**.
- Such actions create a **chilling effect** on legal advocacy, lead to **self-censorship**, and undermine **public interest litigation** and **constitutional justice delivery**.



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