
CLIENT AND ATTORNEY : A TRUSTFUL JOURNEY



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INTRODUCTION:

Since time memorial, man has been a social being and has many relationships and roles to play. Amongst these relationships, some are trusted relationships [1] wherein individuals generally freely communicate themselves to each other for an effective communication. The Indian Evidence Act, 1872 (hereinafter referred to as “Act”) identifies specifically some of these relationships and accords a special status to the communications under these relationships like communications during marriage, communications with respect of the affairs of state, information as to commission of offences (applicable for police, revenue officers etc.) and lastly the professional communications between an attorney and a client.

These communications are understood as privileged communications implying that a law enforcement authority cannot compel any of the parties to disclose the information received by such party subject to certain exceptions contained in the Act.

For example:

- either of the spouses cannot disclose details of their communication to a third party and a Court cannot compel either the husband or wife to testify against each other subject to exceptions contained in section 122 of the Act.
- In case of State privilege, an officer cannot be forced to produce any document relating to official unreleased records of State affairs and if asked by Court to give it as evidence, it may be submitted only with the permission of officer in charge of the department, who may grant or deny such authority as he deems appropriate.
- A, a client, says to B, an attorney — “I have committed forgery and I wish you to defend me.” As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure. This is the Client-Attorney privilege.

This article analyses the legalities of attorney client privileged communications.

WHAT IS CLIENT ATTORNEY PRIVILEGED COMMUNICATION?

It is communication between the attorney and client, which cannot be disclosed to the third party. The basic premise of this privilege is that it not only allows a client to obtain legal advice in confidence, but it also encourages open and honest communication between the client and the attorney.

It is generally known and accepted that one should not lie to a doctor or an attorney, when a person is caught in some kind of situation. This is to ensure that professionals can help one find solution only if they are aware of the complete situation and such disclosure is protected by the law.

WHAT ARE THE PROVISIONS DEALING WITH ATTORNEY-CLIENT PRIVILEGE UNDER THE INDIAN LAWS?

Legal authorities cannot force a person or an organization to reveal the substance of privileged communication. This privilege clearly defined under Section 126 to Section 129 of the Act. Let’s discuss the provisions under different sections of the Evidence Act, 1872[2].



[1] The article reflects the general work of the author on the date of publication and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.

[2] <https://legislative.gov.in/sites/default/files/A1872-01.pdf>



SECTION 126 :

It accords special protection to :

- any communication made to an attorney by the client or anyone on behalf of the client
- the contents or conditions of any document which the attorney becomes acquainted to
- any advice given by the attorney to the client

in the course and for the purpose of employment of the attorney, vakil or pleader. Such protection continues even after the relationship has ceased and the attorney can refuse to disclose the matters stated above to any law enforcing authority

Section 127 :

This section extends the benefit of non disclosure extends to interpreters, clerks, and servants of the attorneys under Section 126.

Section 128 :

This section continues to prohibit attorney from disclosing any data secured under Section 126 unless the client himself questions the attorney for a testimony.

Section 129 :

This section specifically protects a client and permits a client to withhold from the court any private discussion that has occurred between himself and his legal expert consultant unless he gives himself as a witness.

If any person needs to claim the privilege under section 126 of Act, the information which client is sharing with his attorney, should be confidential in nature.

It should be noted that existence of client attorney relationship is very important.

If, there are group of friends who were having a conversation regarding some offence committed by one them, an attorney by accidently is already sitting next to them without either of them having knowledge about it. Here, there no such relationship created between them and the communication is not a privileged communication.

This was also recognized in the Memon Hajee Haroon Mohamed v. Abdul Karim [1878], stating that, if it was determined that there is no privilege to communicate made prior to the formation of a pleader's or client's relationship.

In addition to these sections there are rules of Bar Council of India (“BCI”) that grant such protection to client and ultimately safeguard the client’s interest.

According to Rules 7 and 15 of the BCI Rules on an Advocate's Duty to the Client, the Attorney cannot reveal the client’s and his own communications. An advocate should not abuse or take advantage of the trust that his client has placed in him. [3]

ARE THERE ANY EXCEPTIONS?

Section 126 of the Act also includes certain exceptions-[4]

- Any information exchange made in accordance with the provision of an unlawful Act.
- If there is something noted by an Attorney while on the job that discloses a crime or fraud has been involved ever since start of his or her jobs. For example, A, a client, says to B, an attorney — “I wish to obtain possession of property by the use of a forged deed on which I request you to sue.” This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.
- If the client himself wants to disclose the information to the court or waives off his right to such privilege.

UNDERSTANDING THE PRIVILEGE

Anil Vishnu Aturkar v. Chandrakumar Popatlal Baldota and ors[5]

In this case, the petitioner being a designated senior advocate of the Bombay High Court was summoned by a civil judge, senior division Pune for giving special evidence in a suit. The petitioner had written a letter to his client (Shri Dara Bharucha) in 2004 and was required to produce an office copy of the letter and confirm his signature.

The Petitioner contended that the said letter was a privileged communication under the Act between an attorney and the client and could be produced, only if the client actually consented to the same. The client had passed away and thus his consent could not be obtained.

The Respondents contended that the letter was already produced and the presence of senior advocate was required only to confirm the signature on the letter.

Rejecting this contention, the court held that “even though the communication dated 11th January, 2004 between Petitioner and his client Shri Dara Bharucha, now deceased, is already disclosed to the trial court and also annexed to the petition at Exhibit-B, however, in view of the clear bar in Section 126 of the Evidence Act, and the said communication being privileged, cannot be produced nor admissible in evidence in Special Civil Suit No. 1209 of 2004. Therefore, Petitioner cannot be compelled to attend the trial court for the purposes of confirming the communication dated 11th January, 2004 or for identifying his signatures to the said communication. And in view of the Explanation to Section 126 of the Evidence Act, which explains, that the obligations not to disclose in the said section continue even after the employment of the professional has ceased, the said prohibition would continue even though Shri Dara Bharucha is no more.”

[3] <http://www.barcouncilofindia.org/about/professional-standards/rules-on-professional-standards/>

[4] <https://legislative.gov.in/sites/default/files/A1872-01.pdf>

[5] *In high Court of Bombay Writ Petition No. 3356 of 2015*



In light of this, the contested witness summons from February 16, 2015 was accordingly quashed and set aside.

Amrit Lal v. Harjinder Pal Singla[6]

In this case, there was an allegation of fraud and one of the parties wanted to examine an erstwhile attorney of the other party. The question before the court was to determine existence of a compromise and the presence of petitioner's attorney was required as a witness in to obtain some relevant information in order to dispute any claims of fraud.

The court observed that “It appears from the materials on record that, the examination of petitioner's lawyer as a witness in the present proceeding is meant for eliciting certain essential facts in disproof of allegations of fraud. The essential facts include the answers of the lawyer as to whether the client signed in her presence and she had explained to her the terms and conditions of the agreement before it was signed. The witness, in our opinion,

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The Court agreed that none of this factual data which was sought falls under the category of privileged information or otherwise qualifies for the immunity provided by Section 126. The order was challenged in appeal and the Appellate court allowed the examination while cautioning the learned trial Court to make sure that any information sought from the former attorney does not violate Section 126 at the time of his proposed testimony in order to preserve the interests of his former client.

RECENT DEVELOPMENTS:

The protection accorded to the client attorney communications is in existence since long and forms the very basis of judicial system. Off late, there have been recent developments as the mode of communications amongst the client and attorney are also changing. Since Covid times, meetings and hearings are conducted through video conferencing.

The Bar Council of India has made the decision to ask the Central Government to specify video-conferencing programmes that would guarantee the secrecy of the privileged attorney-client contact. The judgement was decided after taking into account Mr. Akhil Hasija's petition[7] for rules and regulations to preserve the privacy of attorney-client communications conducted via video-conferencing apps.

[6] *In court of Punjab and Haryana CR No. 2057 of 2020*

[7] <https://indiankanoon.org/doc/52278316/>

CONCLUSION :

Most common law countries require information and knowledge to be treated confidentially and kept private in order to protect their client. Information shared between a lawyer and his client is considered confidential, and it may not be used or disclosed outside of the scope of the retained service. It is not about either party's right, but a measure to maintain the proper professional standard.

If such right didn't exist at all, each person would be left to rely only on his or her own legal remedies. A man would not consult any expert without any professional aid,

or he may only choose to tell his lawyer half the truth. Moreover, he/she always thinks how the society will think/look at him, after these facts are known by the society.

The authority granted to professional communication is also in the interest of justice because justice cannot be delivered without the assistance of expert in jurisprudence and Court practise. If there had been no privilege or confidentiality, a man would have been hesitant to contact any professional or seek professional assistance, leaving him helpless and lacking any professional assistance.

or any feedback or response on this article, the author can be reached on sanika.phatak@ynzgroup.co.in and siddhi.mhamunkar@ynzgroup.co.in



Siddhi Mhamunkar

is an associate at YNZ Legal.
By qualification she is Bachelor of commerce and Bachelor of Law from Mumbai University.



Sanika Phatak

is an associate at YNZ Legal.
By qualification she is Master in Corporate Law from Vishwakarma University, Pune and Bachelor of Law from Pune University.