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THE PRIVILEGE OF PROFESSIONAL COMMUNICATIONS UNDER INDIAN EVIDENCE LAW: CONFIDENTIALITY, LEGAL REPRESENTATION AND ACCESS TO JUSTICE

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ABSTRACT

Legal professional privilege is more than a rule excluding evidence: it helps make effective legal advice possible by allowing clients to communicate candidly with advocates without a reasonable fear that those communications will later be used against them. In India, the privilege is principally reflected in sections 132–134 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA), read with professional duties under the Advocates Act, 1961 and the Bar Council of India Rules. This paper examines the statutory structure, the limits of confidentiality, and the relationship between privilege, legal representation and access to justice. It considers the distinction between legal-advice privilege and litigation privilege; the exceptions for communications connected with an illegal purpose and specified later crime or fraud; the treatment of documents held by counsel; and risks associated with compelled disclosure and digital investigations. It draws on Indian judicial decisions and scholarship on Indian litigation privilege, while using selected English, European and technical literature comparatively rather than as binding authority. The paper argues that privilege should be applied as a principled protection for the client, not as a blanket immunity for every item held by a lawyer. Clear protocols for summoning advocates, reasoned judicial scrutiny, secure handling of digital communications and a careful approach to third-party litigation material can protect confidentiality without obstructing legitimate investigations. The central claim is that access to justice requires both the ability to obtain legal advice and a bounded, accountable system for deciding when confidentiality may lawfully yield.

KEYWORDS: Legal professional privilege; professional communications; Bharatiya Sakshya Adhiniyam, 2023; advocate–client confidentiality; access to justice; Advocates Act, 1961; right to legal representation.

1. INTRODUCTION

A person seeking legal advice must be able to explain the facts, including facts that may be embarrassing, damaging or legally complicated. If a client expects that a candid explanation may later be disclosed by the advocate, the client may withhold information or avoid seeking advice altogether. The resulting advice may be incomplete, and the administration of justice may suffer. Legal professional privilege responds to this practical problem by protecting certain communications made for the purpose of professional legal assistance.

In India, the principal evidentiary protection now appears in sections 132–134 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA), which came into force on 1 July 2024.¹ Section 132 regulates what an advocate may disclose; section 133 addresses when a party’s participation in proceedings does not amount to waiver; and section 134 protects confidential communications between a person and a legal adviser from compelled disclosure, subject to its terms. These provisions should be read alongside the Advocates Act, 1961 and the Bar Council of India Rules, which regulate professional conduct.

The subject is variously described as advocate–client confidentiality, professional privilege or legal professional privilege. These expressions overlap, but are not identical in every context. The BSA establishes rules of evidence, while professional-conduct rules govern the advocate’s obligations more broadly. This paper focuses on Indian law and asks how the statutory framework can protect genuine legal consultation while preserving the ability of courts and investigators to obtain non-privileged evidence. It argues that a principled approach must distinguish protected legal communications from pre-existing evidence, communications made to advance an illegal purpose, and facts falling within the statutory crime-or-fraud exception.

¹ Bharatiya Sakshya Adhiniyam, 2023, No. 47 of 2023, §§ 132–134 (India) [hereinafter BSA], <https://www.indiacode.nic.in/handle/123456789/20063?locale=en>; official text at <https://www.indiacode.nic.in/bitstream/123456789/20063/1/a2023-47.pdf>. The Act came into force on 1 July 2024.

A useful analytical distinction is between legal-advice privilege and litigation privilege. Andrews describes legal-advice privilege as protecting lawyer–client communications made to obtain or give legal advice, while litigation privilege may extend, in the relevant English framework, to some communications with third parties made predominantly for litigation.² That distinction is conceptually useful, but it should not be assumed to apply in India without a textual and doctrinal basis. Recent scholarship specifically identifies unresolved questions about the foundations and scope of litigation privilege under Indian evidence law.³

2. RESEARCH QUESTIONS, OBJECTIVES AND METHODOLOGY

The paper addresses four questions:

- (1) What communications and material are protected by sections 132–134 of the BSA?
- (2) How do statutory exceptions and rules concerning waiver limit that protection?
- (3) What do Indian judicial decisions indicate about the relationship between privilege, professional responsibility and access to justice?
- (4) What procedural safeguards could reduce unnecessary disclosure without creating an absolute immunity for lawyers or their files?

The objective is to assess the law as a working system rather than treat confidentiality as an unlimited professional entitlement. The study uses doctrinal legal research, examining statutory provisions, professional rules and reported judicial decisions. It also uses a policy-oriented approach to consider the implications of compelled disclosure for a client’s ability to obtain effective representation. The analysis is principally Indian and draws on selected English, European and technical scholarship only to clarify conceptual distinctions and practical implementation risks; it does not assume that foreign privilege rules are binding in India.

² N.H. Andrews, *Legal Advice Privilege: A Matter of Substance*, 59 Cambridge L.J. 47, 47–50 (2000), <https://doi.org/10.1017/S0008197300370015> (distinguishing legal-advice privilege from litigation privilege in English law; cited for the conceptual distinction only, not as Indian authority).

³ Shaurya Upadhyay, *Through the Looking Glass: Locating Litigation Privilege Under the Indian Evidence Code*, 29 Int’l J. Evidence & Proof 232, 232–48 (2025), <https://doi.org/10.1177/13657127241288867> (on the unresolved foundation and scope of litigation privilege in India).

3. THE STATUTORY FRAMEWORK UNDER THE BHARATIYA SAKSHYA ADHINIYAM, 2023

3.1 SECTION 132: THE ADVOCATE'S OBLIGATION

Section 132(1) provides that an advocate may not, without the client's express consent, disclose communications made by or on behalf of the client in the course and for the purpose of professional service; the contents or condition of documents encountered for that purpose; or advice given to the client.⁴ The provision is directed to the professional relationship and the purpose for which the information was received. The mere fact that information is in a lawyer's possession does not automatically make every item privileged; the connection with professional service and the statutory language remain important.⁵

3.2 THE EXCEPTIONS:

Illegal purpose and later crime or fraud. Section 132 expressly excludes from protection a communication made in furtherance of an illegal purpose and a fact observed by an advocate in the course of professional service showing that a crime or fraud has been committed since the service began.⁶ The second exception is not a general licence to disclose suspicions or every fact adverse to a client. Its wording requires attention to what was observed, when it was observed, and whether it shows a crime or fraud committed after the professional relationship commenced. The statutory illustrations make clear that defending a person who admits a past offence is not, without more, a communication in furtherance of an illegal purpose.⁷ Comparative analysis of the common-law crime/fraud exception explains the policy distinction between candid consultation about legal rights and communications intended to facilitate

⁴ BSA, *supra* note 1, § 132(1).

⁵ See *In re Summoning Advocates Who Give Legal Opinion or Represent Parties During Investigation of Cases and Related Issues*, Suo Motu Writ Pet. (Crl.) No. 2 of 2025 (with W.P. (C) No. 632 of 2025 & SLP (Crl.) No. 9334 of 2025), 2025 INSC 1275 (Sup. Ct. India Oct. 31, 2025) [hereinafter *In re Summoning Advocates*], https://api.sci.gov.in/supremecourt/2025/35619/35619_2025_1_1503_65372_Judgement_31-Oct-2025.pdf, ¶ 67 (direction 2) (documents in the possession of the advocate or the client are not covered by § 132); *id.* ¶¶ 54–58 (discussing production of documents).

⁶ BSA, *supra* note 1, § 132(1) proviso, cls. (a)–(b); see also *In re Summoning Advocates*, *supra* note 5, ¶¶ 33, 40 (identifying consent, furtherance of an illegal purpose, and a fact showing that a crime or fraud has been committed since the commencement of the service as the exceptions).

⁷ BSA, *supra* note 1, § 132(1) illus. (a) (a client's statement that he has committed forgery and wishes to be defended is protected, because the defence of a person known to be guilty is not a criminal purpose).

wrongdoing; in India, however, the statutory wording and illustrations govern the analysis.⁸ Legal representation of an accused person is therefore not equivalent to assisting the commission of an offence.

3.3 DURATION AND PERSONS COVERED

The explanation to section 132 states that the obligation continues after professional service has ceased.⁹ Section 132(3) extends the provision to interpreters and the clerks or employees of advocates.¹⁰ That extension matters in modern practice, where client material may pass through assistants, translators, office staff and digital systems. Confidentiality cannot be effective if it depends only on the advocate personally keeping a communication secret.

3.4 SECTIONS 133 AND 134:

Waiver and the client's protection. Section 133 clarifies that a party does not consent to disclosure under section 132 merely by giving evidence. Where a party or proceeding calls the advocate as a witness, consent is treated as arising only if the advocate is questioned on matters that would otherwise be protected.¹¹ Section 134 separately provides that a person cannot ordinarily be compelled to disclose to a court a confidential communication with a legal adviser. If that person offers himself or herself as a witness, the court may require disclosure of communications necessary to explain the evidence given, but not other communications.¹² Read together, these provisions demonstrate that privilege is not simply a personal shield for counsel; it protects the client's ability to seek and use legal advice.¹³

⁸ A.L.E. Newbold, *The Crime/Fraud Exception to Legal Professional Privilege*, 53 Mod. L. Rev. 472, 472–84 (1990), <https://doi.org/10.1111/j.1468-2230.1990.tb02829.x> (comparative policy reasoning only; the Indian statutory wording and illustrations remain controlling).

⁹ BSA, *supra* note 1, § 132 expl. (providing that the obligation continues after the professional service has ceased).

¹⁰ *Id.* § 132(3).

¹¹ BSA, *supra* note 1, § 133.

¹² *Id.* § 134.

¹³ See *In re Summoning Advocates*, *supra* note 5, ¶¶ 33, 67 (direction 1) (describing § 132 as a privilege conferred on the client, which the advocate may invoke on the client's behalf in the client's absence).

4. PRIVILEGE, CONFIDENTIALITY AND PROFESSIONAL RESPONSIBILITY

The evidentiary rules operate alongside the professional responsibilities imposed on advocates. Section 35 of the Advocates Act, 1961 empowers the relevant State Bar Council disciplinary machinery to address professional or other misconduct.¹⁴ Rule 17 of Part VI, Chapter II of the Bar Council of India Rules states that an advocate must not directly or indirectly breach the obligations imposed by section 126 of the former Indian Evidence Act, 1872.¹⁵ Following the BSA's commencement, this rule should be read carefully alongside the successor provision in section 132 and any applicable updates or interpretations. The professional duty and the evidentiary rule reinforce each other, but perform different functions: one regulates professional conduct; the other governs disclosure and compulsion in evidentiary settings.

In *R.D. Saxena v. Balram Prasad Sharma*, the Supreme Court considered an advocate's refusal to return a client's litigation files because of a fee dispute. The Court held that an advocate has no lien over a client's litigation files for unpaid fees and that withholding them amounted to professional misconduct, although it reduced the sanction to a reprimand because the law on the point had been unsettled. It also emphasised the client's ability to continue litigation through counsel of choice.¹⁶ The case was not primarily a privilege decision, but it is relevant to the broader relationship between professional obligations and access to justice: a lawyer's position must not be used to obstruct the client's legal remedy. Confidentiality should likewise be understood as a protection for the client, rather than a personal entitlement that an advocate can use for unrelated purposes.

In *Gurunanak Provisions Stores v. Dulhonumal Savanmal*, the Gujarat High Court considered the predecessor provisions on professional communications, including the proposition that a privileged communication does not lose its protected character merely because it becomes

¹⁴ Advocates Act, 1961, No. 25 of 1961, § 35 (India), <https://www.indiacode.nic.in/handle/123456789/1362?locale=en>.

¹⁵ Bar Council of India Rules, pt. VI, ch. II, § II, r. 17 (India), <https://www.barcouncilofindia.org/info/rules-on-professional-standards>. The rule is framed by reference to § 126 of the Indian Evidence Act, 1872; the Supreme Court has treated § 132 of the BSA as the corresponding provision. See *In re Summoning Advocates*, *supra* note 5, ¶¶ 2, 18.

¹⁶ *R.D. Saxena v. Balram Prasad Sharma*, (2000) 7 SCC 264, AIR 2000 SC 2912, 2000 INSC 409 (India) (decided Aug. 22, 2000) (holding that an advocate has no lien over a client's litigation files and discussing the client's right to change counsel and continue the litigation), <https://indiankanoon.org/doc/151656/>; official PDF at <https://api.sci.gov.in/jonew/judis/37983.pdf>.

relevant in later proceedings.¹⁷ The decision should be read in the context of its facts and the provisions then in force, but it supports careful treatment of privilege as a legal protection attaching to the communication rather than a personal entitlement belonging to the advocate.

5. JUDICIAL TREATMENT AND THE LIMITS OF PROTECTION

5.1 COMMUNICATIONS ARE NOT THE SAME AS EVERY DOCUMENT IN A LAWYER'S CUSTODY

A recurring difficulty is the difference between a confidential communication and an underlying document or object. In *Chandubhai Jethabhai Desai v. State*, the Gujarat High Court explained that the predecessor section 126 protected communications and advice but did not automatically prevent production of an original document merely because it had come into an advocate's possession from a client.¹⁸ The document's own legal status and whether it contains a protected communication must be assessed. This distinction prevents privilege from becoming a device for concealing pre-existing evidence simply by transferring it to counsel.

5.2 THE PURPOSE OF THE COMMUNICATION MATTERS

The exception for communications made in furtherance of an illegal purpose requires a distinction between advice about past conduct and assistance in carrying out future unlawful conduct. The statutory illustration concerning a client who admits forgery but seeks a defence shows that the advocate may still provide legitimate representation. By contrast, asking an advocate to use a forged deed to obtain property is an example of a communication outside the protection.¹⁹ The boundary is important to the rule of law: privilege should preserve the ability to obtain lawful advice, but it should not be used to facilitate an illegal scheme.

5.3 SUMMONING ADVOCATES AND THE RISK OF INDIRECT DISCLOSURE

¹⁷ *Gurunak Provisions Stores v. Dulhonumal Savanmal*, AIR 1994 Guj. 31, (1993) 2 GLR 1693 (India) (discussing former §§ 126–129 of the Indian Evidence Act, 1872).

¹⁸ *Chandubhai Jethabhai Desai v. State*, AIR 1962 Guj. 290, (1962) 3 Guj. L.R. 833 (India); *see also In re Summoning Advocates*, *supra* note 5, ¶¶ 55–57, 67 (direction 2) (discussing *Chandubhai* and the principle that production of a document is not barred by the advocate–client privilege).

¹⁹ BSA, *supra* note 1, § 132(1) proviso & illus. (a)–(b).

In its decision of 31 October 2025 concerning the summoning of advocates who give legal opinions or represent parties during investigations, the Supreme Court addressed the danger of requiring lawyers to reveal information about their clients or the matters in which they act.²⁰ The Court held that an investigating officer cannot directly summon an advocate appearing for the accused to elicit the details of the case unless the officer relies on one of the exceptions in section 132; the summons must then specify the facts supporting the exception, must carry the recorded approval of an officer not below the rank of Superintendent of Police, and is open to judicial review under section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS).²¹ The decision therefore emphasises the statutory bar on disclosure and the need to distinguish legitimate investigative requirements from attempts to compel an advocate to reveal protected professional communications. It should not, however, be read as placing every document held by an advocate beyond scrutiny. The Court directed that documents in the possession of an advocate or the client are not covered by section 132 and must be produced before the court, which decides any objection; for digital devices, it required notice to the client and protection for the confidentiality of the advocate's other clients.²² The statutory test and exceptions remain controlling.

5.4 LITIGATION PRIVILEGE AND THIRD-PARTY COMMUNICATIONS

The privilege issue becomes more difficult when the communication is not between client and advocate but involves a third party, such as a witness or another person consulted in anticipation of litigation. Upadhyay's analysis of Indian litigation privilege highlights the need to identify the legal source for protecting such communications and cautions against simply importing English rules to fill perceived gaps in the Indian evidence framework.²³ The distinction matters because sections 132–134 of the BSA expressly regulate professional communications and confidential communications with legal advisers; a claim involving third-party material

²⁰ *In re Summoning Advocates*, *supra* note 5, ¶¶ 2–5, 46–48.

²¹ *Id.* ¶¶ 49–50, 67 (directions 1.1–1.3); *see also id.* ¶ 13 (recording as agreed that no advocate may be summoned merely for giving a legal opinion or appearing for a party, though not for participation in a crime beyond professional duty, and that §§ 132–134 are to be applied case by case); *id.* ¶ 68 (cautioning investigating officers against transgressing the § 132 privilege).

²² *Id.* ¶¶ 54–58, 67 (directions 2–3.3).

²³ Upadhyay, *supra* note 3, at 232–48.

requires separate analysis of the applicable Indian law and cannot be resolved solely by labelling it 'litigation privilege.'

The cases collectively support a careful rather than categorical approach. Courts should identify the precise information sought, its origin, the purpose for which it was communicated, and whether a statutory exception applies. Broad demands for an advocate to explain a client's case can chill legitimate representation; equally, a blanket assertion of privilege over all papers in a lawyer's office may obstruct the production of independently discoverable evidence. The legal question is not simply whether the material is physically held by counsel, but whether the law protects the particular communication or information from disclosure.

6. PROFESSIONAL PRIVILEGE AND ACCESS TO JUSTICE

Access to justice is often discussed in terms of court access, legal aid, delay and affordability. Confidentiality is an equally important, though less visible, condition of meaningful access. A client who cannot safely disclose relevant facts may receive advice based on an incomplete account. The resulting consequences can include poor litigation choices, missed opportunities for settlement, inaccurate pleadings or an inability to understand legal risk. Privilege therefore supports the quality of legal representation before a dispute reaches court as well as during proceedings.

The protection is particularly important for people unfamiliar with legal process, accused persons, survivors of abuse, employees facing retaliation, and small organisations that lack in-house legal teams. These groups may be especially reluctant to disclose sensitive information if they believe their lawyer can later be compelled to reveal it without a clear legal basis. Privilege does not guarantee equal access to counsel, and it cannot substitute for legal aid or affordable representation. It does, however, help ensure that the advice obtained is meaningful rather than compromised by fear of disclosure.

At the same time, access to justice includes the public interest in investigating crime, preventing fraud and ensuring that relevant evidence is available to courts. Privilege must therefore remain bounded by statutory exceptions and the distinction between protected

communications and pre-existing material. A workable balance is achieved through scrutiny of the specific demand, not through a presumption that all material involving a lawyer is secret or that confidentiality must yield whenever an investigator asks for information.

Selected comparative scholarship also demonstrates that privilege can operate differently across legal systems and procedural settings. Pantelidis examines the transatlantic divergence over attorney–client privilege, including the treatment of in-house counsel, while Ruster and von Massow analyse privilege claims in European private antitrust litigation, where disclosure of lawyer–client communications may affect the ability to prove competition-law claims.²⁴ These studies are not authorities on the content of Indian law; their relevance is cautionary. They show why privilege rules must be considered in context and why neither confidentiality nor disclosure should be treated as an automatic answer in every type of proceeding. The Indian position on in-house counsel illustrates the point: the Supreme Court has held that in-house counsel who are full-time salaried employees are not advocates entitled to the section 132 privilege, while recognising a more limited protection for them under section 134.²⁵

7. CONTEMPORARY CHALLENGES: DIGITAL PRACTICE AND INSTITUTIONAL SAFEGUARDS

Legal advice is increasingly communicated through email, messaging platforms, cloud documents, video conferences and shared case-management systems. The statutory language of communication and professional service is capable of applying to modern forms of communication, but digital practice creates practical risks: accidental forwarding, access by unauthorised staff, insecure devices, broad electronic searches and disclosure of metadata that reveals who contacted counsel or when. Jiang and co-authors identify the forensic integrity problem posed by digital legal-professional-privilege data and discuss a practical approach to

²⁴ Konstantinos Pantelidis, *The Attorney–Client Privilege in Antitrust: Unravelling the Transatlantic Debate*, 21 J. Competition L. & Econ. 81, 81–119 (2025), <https://doi.org/10.1093/joclec/nhae019> (comparative treatment of attorney–client privilege, including in-house counsel); Andreas Ruster & Sebastian von Massow, *In for a Penny, in for a Pound? Legal Professional Privilege as a Shield Against Disclosure in Private Antitrust Litigation in Europe*, 11 J. Eur. Competition L. & Prac. 22, 22–34 (2020), <https://doi.org/10.1093/jeclap/lpaa004> (European private antitrust litigation).

²⁵ *In re Summoning Advocates*, *supra* note 5, ¶¶ 59–66, 67 (directions 4–4.1) (approving, at ¶¶ 65–66, the reasoning of the Court of Justice of the European Union in *Akzo Nobel* that privilege does not extend to in-house lawyers).

preserving the integrity of such material during digital investigation.²⁶ That technical work does not determine the legal scope of privilege in India, but it strengthens the case for procedures that can isolate potentially privileged data without compromising the integrity of electronic evidence. A privilege claim should be assessed by the substance and purpose of the information rather than the medium through which it was transmitted.

Institutions can reduce avoidable disputes by adopting clear protocols for requests directed at advocates. A request should specify the material sought and explain its relevance; the advocate should have a reasonable opportunity to identify a privilege issue; and a court should decide contested claims through a reasoned, item-specific process. Where appropriate, sealed production, redaction, in-camera review or an independent privilege review can protect confidential portions while allowing non-privileged material to be considered. Such safeguards should be proportionate and should not become a routine source of delay.

Law offices should also maintain practical confidentiality measures: access controls, secure storage, staff training, careful use of external service providers, and documented procedures for responding to subpoenas or investigative requests. Clients should be told that privilege is not absolute and that communications made to advance illegal purposes may fall outside protection. Clear explanations at the outset of representation can help clients make informed decisions without weakening the underlying duty.

8. RECOMMENDATIONS

First, courts and investigative agencies should use a structured test when seeking information from an advocate: identify the exact material; determine whether it was communicated in the course and for the purpose of professional service; distinguish communications from pre-existing documents; and consider whether a statutory exception applies. The test should be applied to the material itself rather than to the professional status of its custodian alone.

²⁶ Zoe L. Jiang et al., *Maintaining Hard Disk Integrity with Digital Legal Professional Privilege (LPP) Data*, 8 IEEE Transactions on Info. Forensics & Sec. 821, 821–28 (2013), <https://doi.org/10.1109/TIFS.2013.2256784> (technical and forensic-integrity issues in digital investigations). For the procedure the Supreme Court has prescribed for digital devices produced by an advocate, see *In re Summoning Advocates*, *supra* note 5, ¶¶ 58, 67 (directions 3–3.3).

Second, any summons or production order directed at an advocate should be reasoned and narrowly framed. Where the request may implicate privilege, the advocate should be permitted to raise the issue without being treated as obstructive merely for doing so. Judicial review should focus on the particular information sought and should avoid unnecessarily exposing the substance of the privileged communication during the process of deciding the claim.²⁷

Third, the Bar Council of India and State Bar Councils should provide accessible guidance explaining the interaction between section 132 of the BSA and the professional-conduct framework, including the treatment of digital records, staff access, client consent and statutory exceptions. Guidance should avoid suggesting that every document supplied to a lawyer is automatically privileged.

Fourth, law offices should adopt written data-handling and disclosure protocols, particularly for electronic material and third-party service providers. Fifth, legal education and public-awareness initiatives should explain both the value and the limits of privilege. These steps would strengthen public confidence while preserving the ability of courts to obtain evidence where the law permits it.

9. CONCLUSION

Professional communications privilege is a practical condition of effective legal representation. Sections 132–134 of the Bharatiya Sakshya Adhiniyam, 2023 protect communications and advice connected with professional legal service, preserve the continuing nature of the obligation, and regulate waiver and compelled disclosure. The protection is deliberately qualified: communications made in furtherance of an illegal purpose and specified facts showing later crime or fraud are excluded, while the status of documents held by counsel requires separate analysis.

Indian decisions reinforce a client-centred understanding of professional duties and warn against using the lawyer–client relationship either to obstruct a client’s access to legal remedies

²⁷ Cf. *In re Summoning Advocates*, *supra* note 5, ¶¶ 46, 50, 67 (directions 1.2–1.3) (requiring a summons issued under an exception to specify the facts relied on, to carry the recorded approval of a senior officer, and to be open to judicial review).

or to create a blanket shield for all material held by counsel. The appropriate approach is neither absolute secrecy nor unrestricted compulsion. It is careful, item-specific application of the statutory language, supported by reasoned orders, sound professional practices and secure handling of digital communications. Confidentiality and accountability are not opposing values when the law is applied with precision. Properly balanced, privilege helps individuals seek candid advice and participate meaningfully in the justice system while preserving lawful investigation and adjudication.

ADDITIONAL REFERENCES AND AUTHORITIES:

LEGISLATION AND PROFESSIONAL RULES

1. Advocates Act, 1961, No. 25 of 1961 (India), <https://www.indiacode.nic.in/handle/123456789/1362?locale=en>.
2. Bar Council of India Rules, pt. VI, ch. II (Standards of Professional Conduct and Etiquette), § II, r. 17 (India), <https://www.barcouncilofindia.org/info/rules-on-professional-standards> (last visited Oct. 19, 2026).
3. Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023 (India).
4. Bharatiya Sakshya Adhiniyam, 2023, No. 47 of 2023 (India), <https://www.indiacode.nic.in/handle/123456789/20063?locale=en> (official text: <https://www.indiacode.nic.in/bitstream/123456789/20063/1/a2023-47.pdf>).
5. Indian Evidence Act, 1872, No. 1 of 1872, §§ 126–129 (India) (repealed with effect from 1 July 2024).

CASES

1. *Chandubhai Jethabhai Desai v. State*, AIR 1962 Guj. 290, (1962) 3 Guj. L.R. 833 (India).
2. *Gurunanak Provisions Stores v. Dulhonumal Savanmal*, AIR 1994 Guj. 31, (1993) 2 GLR 1693 (India).
3. *In re Summoning Advocates Who Give Legal Opinion or Represent Parties During Investigation of Cases and Related Issues*, Suo Motu Writ Pet. (Crl.) No. 2 of 2025, 2025 INSC 1275 (Sup. Ct. India Oct. 31, 2025), https://api.sci.gov.in/supremecourt/2025/35619/35619_2025_1_1503_65372_Judgement_31-Oct-2025.pdf.
4. *R.D. Saxena v. Balram Prasad Sharma*, (2000) 7 SCC 264, AIR 2000 SC 2912, 2000 INSC 409 (India).

SECONDARY LITERATURE

1. N.H. Andrews, *Legal Advice Privilege: A Matter of Substance*, 59 Cambridge L.J. 47 (2000), <https://doi.org/10.1017/S0008197300370015>.
2. Zoe L. Jiang et al., *Maintaining Hard Disk Integrity with Digital Legal Professional Privilege (LPP) Data*, 8 IEEE Transactions on Info. Forensics & Sec. 821 (2013), <https://doi.org/10.1109/TIFS.2013.2256784>.
3. A.L.E. Newbold, *The Crime/Fraud Exception to Legal Professional Privilege*, 53 Mod. L. Rev. 472 (1990), <https://doi.org/10.1111/j.1468-2230.1990.tb02829.x>.
4. Konstantinos Pantelidis, *The Attorney–Client Privilege in Antitrust: Unravelling the Transatlantic Debate*, 21 J. Competition L. & Econ. 81 (2025), <https://doi.org/10.1093/joclec/nhae019>.
5. Andreas Ruster & Sebastian von Massow, *In for a Penny, in for a Pound? Legal Professional Privilege as a Shield Against Disclosure in Private Antitrust Litigation in Europe*, 11 J. Eur. Competition L. & Prac. 22 (2020), <https://doi.org/10.1093/jeclap/lpaa004>.
6. Shaurya Upadhyay, *Through the Looking Glass: Locating Litigation Privilege Under the Indian Evidence Code*, 29 Int'l J. Evidence & Proof 232 (2025), <https://doi.org/10.1177/13657127241288867>.