

AN ANALYSIS ON THE MANDATE OF PROFESSIONAL COMMUNICATION
UNDER THE LAW OF EVIDENCE

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ABSTRACT

Professional Communication is an idea that prevents the disclosure of any communication made by the client to his attorney in the course of or for the purpose of litigation in a dispute. This notion is enshrined in the Sections 126 – 129 of the Indian Evidence Act, 1872 and provides special protection to the confidential communication between the lawyer and the client from any admissibility in the court of law.

The fiduciary nature relationship between the lawyer and the client prevents the lawyer from passing off any confidential information shared with him/her for the purpose of litigation.¹It relies on the idea that promoting clients to disclose the facts unambiguously to their lawyers would empower the latter to defend the former's case with far greater efficiency, and the benefits of this is exponentially greater than the risks of barring a complete disclosure in the court.²However, the perils of the privilege becoming illegal in itself were well understood and thus were accommodated within the provisos of Sec.126, Indian Evidence Act.³ The privilege is not absolute but is limited by the statute itself.⁴The judiciary further interpreted the law and established certain exceptions that prevented the abuse of the law.

Keywords: *Professional Communication, privilege, Disclosure, attorney, Client.*

¹ Union of India v. Subhash Chandra Aggarwal, IIIAD (Delhi) 2017 439.

² Ross G.Greenberg, Jordan Klingsberg, & Diedre Mulligan, *Attornem-ClientPrivilege*, 30 AM. CRIM. L. REV. 1011 (1993) [hereinafter Greenberg et al.].

³ KC Sonrexa v. State of Uttar Pradesh AIR 1963 |All 33.

⁴JETHMALANI & CHOPRA'S, THE LAW OF EVIDENCE 1999 Vol.2 (1st ed. 2013).

Research Question

While the position of law with regard to the Attorney Client Privilege is well settled, the author would try to identify the situations where the privilege would not apply. The paper would address all the possible exceptions to the privilege in the Indian context and few from the Western law which are not applicable in the Indian legal framework. It would further try to ascertain the position of in-house counsels as legitimate advocates and the application of the privilege over them. It addresses the controversy of privilege not applicable on in-house counsels.

Introduction

Professional Communication is an idea that prevents the disclosure of any communication made by the client to his attorney in the course of or for the purpose of litigation in a dispute. It is the Indian incorporation of the common law principle of Attorney Client Privilege. This notion is enshrined in the Secs 126 – 129 of the Indian Evidence Act, 1872 and provides special protection to the confidential communication between the lawyer and the client from any admissibility in the court of law.

The relationship between the lawyer and the client is predominantly based on trust and confidence. Thus, the fiduciary nature of the relationship between the two prevents the lawyer from passing off any confidential information shared with him/her for the purpose of litigation.⁵The concept is originated on the basis that the administration of justice cannot take place without the aid and assistance of legally skilled professionals and without the assurance of secrecy, no client would dare to reveal the complete facts to the counsel which would in turn hamper the judicial process.⁶It relies on the idea that promoting clients to disclose the facts unambiguously to their lawyers would empower the latter to defend the former's case with far greater efficiency, and the benefits of this is exponentially greater than the risks of barring a complete disclosure in the court.⁷

This principle not only helps the accused get a chance to efficiently defend oneself, but furthers the cause of access to justice by preventing deception of the court. A mandatory disclosure of

⁵ Union of India v. Subhash Chandra Aggarwal, IIIAD (Delhi) 2017 439.

⁶ Greenough v. Gaskell (1833) 1 Myl& K 98, 103. (Per Brougham LC.).

⁷ Ross G.Greenberg, Jordan Klingsberg, & Diedre Mulligan, *Attorney-Client Privilege*, 30 AM. CRIM. L. REV. 1011 (1993) [hereinafter Greenberg et al.].

confidential information would be so flagrantly opposed to the popular conscience that it would result in regular misconceptions with regard to the reality.⁸ Privilege historically evolved into a tangible right of the client with regards to the communication with the counsel. Lord Taylor emphasized on the paramountcy of the principle of confidence even over the dominant public interest using the balancing exercise.⁹ He rationalized his stand by highlighting the perils of a single exception casting a doubt over the sacrosanct notion of 'client's confidence'.¹⁰

While the privilege evolved as an honorary custom in many jurisdictions of law, the informal presence of it would have led to its ultimate demise. Therefore, it became crucial to formalize the rule into a concrete law.¹¹ The Constitution of India grants a fundamental right to the accused to defend one's case with the aid and advise of a professional legal practitioner of one's own choice.¹² The concept of privilege becomes an indomitable attribute of this right, where the obligation of non-disclosure of the communication becomes both moral and legal.¹³ The Bar Council of India Rules further prohibits the impingement of obligations of Sec.126 by enumerating it in the standards of professional conduct and etiquette.¹⁴ Any breach of the imposed duty would result in initiation of disciplinary proceedings against the advocate. And any disclosure of the privileged information by the attorney would stand inadmissible in the court of law.¹⁵

Ingredients

The privilege protects all forms of communication between the legal advisor and the client both oral and documentary, provided that it is made in the professional capacity of the advisor and communicated specifically for the purpose of the litigation.¹⁶ The lawyer is regarded as a special kind of agent, any communication to whom would be considered as a communication

⁸MunchershawBezonji v. New Dhurumsey Spinning and Weaving Company, ILR 4 Bom. 576 ¶ 582.

⁹ R v. Derbyshire Magistrates Court ex parte B 1995 (4).

¹⁰ Law Commission of India, *69th Report of the Fifth Law Commission of India*, available at <http://lawcommissionofindia.nic.in/reports/185threport-partii.pdf>

¹¹SIR WILLIAM HOLDSWORTH, A HISTORY OF ENGLISH LAW Vol. IX

¹²The Code of Criminal Procedure, 1973, sec.303; The Constitution of India, 1950, Art.22(1).

¹³Karamjit Singh v. State of Punjab MANU/PH/2352/2009.

¹⁴Bar Council of India Rules, 2009, Rule 17, Part VI, Ch. II Section II.

¹⁵BakaulaMollah v. DebiruddiMollah (1911-12) 16 CWN (Cal) 742.

¹⁶WOODROFE & AMIR ALI, LAW OF EVIDENCE Vol.4 4960 (20th ed., 2017); Ayesha Bi v. Peer Khan Saheb AIR 1954 Mad 741.

to oneself.¹⁷ Any communication with a law student or a lawyer in a friendly capacity remains outside the confines of the privilege, since the legal advisor was not acting in his professional capacity.¹⁸ Even if information is communicated on a misconception of the intention of the attorney to act¹⁹ or if the attorney refuses to provide his service after a valid retainer, the protection still exists.²⁰

In order to attract protection of the privilege, the information communicated must be strictly confidential in nature and must have been conveyed *sub sigillo confessionis* (i.e. in confidence) to the attorney. Privilege does not protect information deviating from the purpose of employment, and is strictly confined to confidential information relayed by the client for the purpose of and in the course of litigation.²¹ The nature of the information is contextually assessed by the court if disputed. For instance, if an information is passed on in the presence of third parties, the court would ascertain the intention behind the communication by examining the position occupied by the third parties; whether the parties were closely related or shared similar interests.²² The case of *Waugh v. British Railways Board* laid down the 'dominant purpose test' to assess the purpose of the preparation of a document being that for the sole purpose of litigation in order to bestow exclusion from admissibility.²³

Any communication channelled through the clerk, interpreter, stenographer or any servant of the solicitor does not amount to publication and remains within the professional range of the solicitor.²⁴ Sec.127 extends the application of professional communication to the interpreters etc. to prevent any further spillage of information.²⁵

The privilege is not restricted to mere oral communication between the party and the attorney but also extends to the facts observed by the counsel during the course of litigation.²⁶ However,

¹⁷Hormusji Bhabha v. Nana Appa AIR 1934 Bom 299.

¹⁸M MONIR, LAW OF EVIDENCE Vol.2 2186 (17th ed., 2016).

¹⁹ Smith v. Fell (1841) 2 Curtis 667. (cited from WOODROFE & AMIR ALI, LAW OF EVIDENCE Vol.4 4965 (20th ed., 2017))

²⁰Cromack v. Heathcote (1820) 2 Br & B 4. (cited from WOODROFE & AMIR ALI, LAW OF EVIDENCE Vol.4 4965 (20th ed., 2017)).

²¹ Gillard v. bates 1840 6 M&W 547 (cited from M MONIR, LAW OF EVIDENCE Vol.2 2187 (17th ed., 2016)).

²²Bhagwan Choithran v. Deoram AIR 1933 Sind 47.

²³ Waugh v. British Railways Board [1980] AC 521.

²⁴ P.R. Ramakrishnan v. Subbaramma Sastrigal AIR 1988 Ker 18.

²⁵The Indian Evidence Act, 1872, §.127.

²⁶ Hakam v. Emperor AIR 1934 Lah 269. 269 (cited from WOODROFE & AMIR ALI, LAW OF EVIDENCE Vol.4 4970

no privilege would apply to information gathered by the attorney himself using independent sources.²⁷The privilege is only accorded to the client after the creation of an attorney-client relationship.²⁸Once established, the obligation of non-disclosure continues even after the termination of the employment or the death of the client.²⁹It is judicially accepted that even if the client fails to accept the legal advice rendered by the attorney, the attorney cannot be coerced to make a disclosure, since the final decision always rests with the client.³⁰

No privilege is accorded to the information relayed between the client and the attorney in subject matters involving more than a single party such as between partners, shareholders of a company, lesser-lessee, reversioner-tenant, or any number of people contesting a case for a joint benefit.³¹When two parties are joint parties in the same suit, the privilege does not prevent the solicitor from making any disclosure to either of them, even if one of the parties goes bankrupt, the court treats both of them similar and not as a third party.³²Any communication made by the agent of the client to the attorney on his behalf would come within the ambit of the privilege.³³

It is judicially established that the professional privilege belongs to the client and not to the lawyer. Neither the lawyer nor the party can be compelled to reveal any information communicated to the lawyer during the course of litigation provided that the communication does not fall under the exceptions provided in the statute.³⁴

Work Product Doctrine

All forms of private and confidential information communicated between the client and the attorney are shielded from both direct questions and indirect techniques of extraction.³⁵The rule by necessary inference extends to the protection of the documents prepared by the client for

(20th ed., 2017))

²⁷M MONIR, LAW OF EVIDENCE Vol.2 2186 (17th ed., 2016).

²⁸Kalkikumar Pal v. Rajkumar Pal (1931) 58 Cal 1379, Para 5.

²⁹ Moti Bhai v. State AIR 1954 Raj 241.

³⁰ Sunil Kumar v. NC Jain 1986 All WC 191, 195.

³¹WOODROFE& AMIR ALI, LAW OF EVIDENCE Vol.4 4967 (20th ed., 2017).

³² Re Koingberg (a bankrupt) [1989] 3 All ER 906 (QBD). (cited from WOODROFE& AMIR ALI, LAW OF EVIDENCE Vol.4 4963 (20th ed., 2017)).

³³WOODROFE& AMIR ALI, LAW OF EVIDENCE Vol.4 4964 (20th ed., 2017).

³⁴Mohd. Afzal Mir v. Haji Mahda Bhat 1983 SLJ 218 (J&K).

³⁵ Ayesha Bi v. Peer Khan Saheb AIR 1954 Mad 741.

the purpose of either seeking legal assistance or for utilising them in the litigation i.e. in the “anticipation of litigation”.³⁶The Indian law in this regard recognizes the Work-Product Doctrine which protects all tangible and intangible communications made for the purpose of seeking legal advice consultancy, collection of evidence or garnering any information aiding the smooth process of litigation.³⁷ The doctrine essentially protects the thoughts and the original work (interviews, statements, case briefs, notes, convictions, etc.) of the attorney by preventing any disclosure of the same in the court.³⁸It is indispensable for a lawyer to execute his duties in just manner with adequate confidentiality from the opposing counsel and any third parties. This principle mitigates the risk of rampant spread of malpractices and inefficiency in the legal circuit if the opposing counsels are allowed to get a glimpse of the ‘work product of the lawyer’.³⁹ The effect of any deviation from the principle can lead to a complete lack of faith amongst the masses in the cause of justice and the legal system at large.⁴⁰The Work Product Doctrine only secures the communication made in the “anticipation of litigation” and not in the general course of administration of the company.⁴¹

However, the US Supreme Court differentiated work product into ‘ordinary work product’ and ‘opinion work product’ and asserted that the former which is factual information collected by the attorney, can be obtained by the opposing party by exhibiting a “substantial hardship” in terms of an undue financial burden to obtain a certain evidence, while the latter which constitutes of attorney’s own intellectual effort into cracking the case, would be more difficult to ascertain only in the case of an “extraordinary need”.⁴²

Criticism

A number of scholars have raised concerns over the sacrosanctity of the rule of privilege especially in the light of public interest. They believe that the privilege in most cases constitutes as a hindrance for the “truth-seeking function of the judicial process” by unnecessarily

³⁶Larsen & Toubro Ltd. V. Prime Displays (P) Ltd [2003] 114 Comp Cas 141 (Bom).

³⁷ Brian M. Smith, *Be Careful How You Use It or You May Lose It: A Modern Look at Corporate Attorney-Client Privilege and the Ease of Waiver in Various Circuits*, 75 U.Det. Mercy L. Rev. 389 (1998).

³⁸Id.

³⁹ Hickman v. Taylor 329 U.S. 495 (1947)

⁴⁰Id.

⁴¹ In re Grand Jury Proceeding October 12, 1995 78 F.3d 251 (6th Cir. 1996).

⁴²See *supra* note 33.

thwarting the disclosure certain facts that may be relevant for the timely delivery of justice.⁴³ Due to these concerns, sometimes the privilege is construed narrowly by the court. Certain courts in the United States of America acknowledge the existence of the Last Link Exception of the rule.⁴⁴ It is invoked when the only link in the chain of incriminating evidence is the disclosure of the identity of a client.⁴⁵ Such a legal position is heavily criticized since it casts serious a impugnation on the sanctity of the relationship between the lawyer and the client and indirectly thwarts the administration of justice.

Exceptions

The perils of the privilege becoming illegal in itself were well understood and thus were accommodated within the provisos of Sec.126, Indian Evidence Act.⁴⁶ The privilege is not absolute but is limited by the statute itself.⁴⁷ The judiciary further interpreted the law and established certain exceptions that prevented the abuse of the law.

Waiver

The presence of words ‘unless with his client’s express consent’ in Sec.126 indicate that the client has complete authority to waive off the privilege through his express consent. Since, the privilege belongs to the client and not to the lawyer, the client has the authority to allow disclosure through an express or an implicit waiver. The term ‘express consent’ does not necessarily mean a written consent, but is capable of being contextually interpreted.⁴⁸ If the contents of the communication are disclosed in the reply notice or is made public in any other form, it is safely assumed that the client has given consent for the waiver.⁴⁹ In case of a voluntary disclosure of a confidential information to a third party by the client himself, the information is not protected by the privilege under Sec.126.⁵⁰

Illegal Act

⁴³ Greenberg at 1012 (citing United States v. Nixon, 418 U.S. 683, 710 (1974)).

⁴⁴ John R. Przepyszny, *Asserting the Attorney-Client Privilege: Client Identity, Fee Information, Whereabouts, and Documents*, 3 Geo. J. Legal Ethics 113 (1989).

⁴⁵ *In re Grand Jury Proceeding* (Pavlick), 680 F.2d 1026, 1027 (5th Cir. 1982)

⁴⁶ *KC Sonrexa v. State of Uttar Pradesh* AIR 1963 |All 33.

⁴⁷ JETHMALANI & CHOPRA’S, *THE LAW OF EVIDENCE* 1999 Vol.2 (1st ed. 2013).

⁴⁸ *Rev. Fr. Bernad Thattil vs Ramachandran Pillai* 1987 CriLJ 739

⁴⁹ *P. Rajamma y. R. Chintaiyah*, 1973 Cri U 1489

⁵⁰ WOODROPE & AMIR ALI, *LAW OF EVIDENCE* Vol.4 4970 (20th ed., 2017).

It cannot be assumed that the lawyer has a burden of aiding the client to evade the law.⁵¹ Thus, any communication made to the lawyer about the commitment of an illegal act after the beginning of employment is not protected by the privilege.⁵² For instance, after confessing of committing a murder, if the client informs his lawyer of another murder that he has planned to help him win the case, this communication would not be provided with the said protection since this would strictly be in furtherance of an illegal act. The lawyer is duty bound to help his client defend himself within the confines of the law and prevent the commitment of any further illegal acts that the client might undertake during the course of the litigation.⁵³ While S.126 allows confidentiality of incriminating communication between the lawyer and the client, it does not allow the accused to defend his case by committing a fresh violation of the law.⁵⁴ Correspondingly, when a client with the purpose of strengthening his claim instructs his lawyer to commit another illegal act, such instruction is considered being made in furtherance of a crime and its disclosure stands admissible in the court of law.⁵⁵ Essentially, it is all a question of timing as to when a crime is committed; whether a crime is committed before approaching the lawyer or after.⁵⁶ If at any time during the litigation, the counsel discovers that the client committed an illegal act after the commencement of the employment, the counsel can legally disclose the fact.⁵⁷

Lawyer's right to defend himself

The gravity of the conflict of interest increases in a criminal dispute when compared to a civil dispute, therefore, this provides for an exemption from the general law of non-disclosure to allow the lawyer to defend himself in case of a criminal case targeting his competence.⁵⁸ The lawyer is not duty bound to bear the consequences of his client's illegal acts and would not be vicariously made liable for an act executed only on the instruction of the client.⁵⁹ Any attempt to conceal the fact would be construed as advancing the client's cause. Even though the

⁵¹ Russell v. Jackson (1851) 9 Hare 392.

⁵²The Indian Evidence Act, 1872, §.126 Expl.(i).

⁵³See *supra* note 42 ¶ 17.

⁵⁴See *supra* note 42 ¶ 17.

⁵⁵See *supra* note 42 ¶ 17.

⁵⁶See *supra* note 42 ¶ 18.

⁵⁷The Indian Evidence Act, 1872, sec.126 Exp. (ii).

⁵⁸See *supra* note 42 ¶ 11.

⁵⁹See *supra* note 46 ¶ 4971.

privilege belongs to the client, it should not be so narrowly construed so as to jeopardise the interest of the lawyer. Therefore, the lawyer is empowered to disclose the privileged communication in the case of any attack on his competence as a professional. The most common cases of such imputation are the cases of defamation where the lawyer who sent the notice is also charged with defamation along with the client. It is possible that the lawyer misunderstood the instructions and overstepped his duty, nevertheless he cannot be precluded from defending his case on grounds of privilege.⁶⁰

Production of an evidence

Sec 91 of the Code of Criminal Procedure mandates the presentation of any document necessary for the trial or proceeding irrespective of who the possessor is.⁶¹ This provision might prima facie be perceived as a deviation from the general rule of professional communication; however, it does not violate the privilege at all, but simply circumvents around it. Unless the original document in the possession of the attorney consists of any confidential communication between the attorney and the client, it has to be compulsorily submitted to the court as an original piece of evidence without the protection of the privilege.⁶²

Attorney as a witness

Sec.129 of the Indian Evidence Act, 1872 explicitly exempts the lawyer from the privilege in a situation where he offers himself as a witness in the case. Any information sought by the opposing counsel which needs evidence using the privileged information cannot be denied on the grounds of non-disclosure privilege.⁶³ However, if the lawyer is not directly questioned on a particular privileged information, he is under no obligation to reveal it and the privilege is retained.⁶⁴

Right to Information Scrutiny

The Right to Information Act [hereinafter, RTI], 2005 legitimises the fundamental right of right to information by providing a framework for the citizens to extract information withheld by the

⁶⁰See *supra* note 42 ¶ 10.

⁶¹The Code of Criminal Procedure, 1973, §.91.

⁶²Chandubhai v. State AIR 1962 Guj 290.

⁶³ Ayesha Bi v. Peerkhan Sahib AIR 1954 Mad 741.

⁶⁴*Id.*

public authorities.⁶⁵ This has raised multiple concerns regarding the application of attorney client privilege when the client is a public authority. The Central Information Commission held that Sec 8.1(e) of the RTI negates the obligation of privilege that exists between the public authority and the attorney, and allows for a complete disclosure of information provided a larger public interest is proven.⁶⁶ The relationship between the public authority and the attorney cannot be termed as a fiduciary relationship since the relationship is not bound by trust or faith, rather its held together by the statutory compulsion.⁶⁷ Therefore, the larger public interest outweighs protected interest under §.8(2) of the RTI Act.⁶⁸

Privilege with respect to In-House Counsels

The contention of in-house counsel being legitimate advocates has been subject to judicial scrutiny several times. S.2(a) of the Advocates Act defines advocate as any lawyer registered in any roll under the provisions of the act.⁶⁹ S.29 further clarifies the role of an advocate being limited to (i) appearing before a court, (ii) or practicing the profession outside court by way of giving legal advice to clients.⁷⁰ Rule 49, Bar Council of India Rules prohibits an advocate from taking up a full-time salaried job with a corporation, individual, firm or government in order to continue being considered as an advocate.⁷¹ The rule exempts only Law Officers of the Central, State and Statutory Authorities who function as full-time salaried employees and represent the interests of the state in the court of law.⁷² It is in the light of this exemption that the role of salaried lawyers as practicing advocates is contended.⁷³

However, the Supreme Court ruled that the basis of the test should not be whether the lawyer is a fulltime salaried employee or not but whether the role played by him in the corporation is limited to legal affairs or includes other kinds of executive work as well.⁷⁴ The Bombay High Court further clarified the position of law by confirming the extension of privilege to full time

⁶⁵Right to Information Act, 2005.

⁶⁶ Mukesh Agarwal v. Public Information Officer, Reserve bank of India [2012] CIC 11210.

⁶⁷*Id.*

⁶⁸ Alok Srivastava v. CPIO, English and Foreign Language University [2015] CIC 11232.

⁶⁹Advocates Act, 1961§.2(a).

⁷⁰*Id.*

⁷¹Bar Council of India Rules, 2009, Rule 49.

⁷²Bar Council of India Rules, 2009, Rule 49.

⁷³ Sushma Suri v. Government of NCT (1999) 1 SCC 330.

⁷⁴ Satish Kumar Sharma v. Bar Council of Himachal Pradesh, SCC2001 2 365.

salaried in house counsels provided that there is a scrupulous distinction between the legal and the executive work of the employees.⁷⁵The court acknowledged the rampant practice of employing qualified legal advisors to manage the legal affairs of the corporation and effectively expanded the definition of advocate considering that the nature of the work is completely similar to that of a barrister, pleader of an attorney except the negligible appearance in the court.⁷⁶Furthermore, the privilege was provided to all documents framed by the in-house counsels in anticipation of a legal dispute are protected by the privilege.⁷⁷The position of law with respect the attorney client privilege being extended to the in-house counsels in now settled and is in consonance with the western approach of interpretation.

Conclusion

The principle of attorney client privilege derives its power from a single yet the most powerful source of faith and confidence. It is a tiny cog in the large wheel of the whole justice system without which the whole structure would crumble. The principle empowers and endorses people to confide in the judicial system by the way of being candid in their conversation with their attorneys. Advocate literally means someone who represents the other on his behalf. In order to create a fair and accurate representation, it is essential for the client to reveal all the information to the counsel without any reservations. Without the strong assurance of privity between the client and the attorney, no client would find oneself in a favourable position to frankly and freely discuss the facts of his case. The privilege not only prevents a crony lack of information but also creates a relationship free from prejudice for the client to confide in.

However, such an open-ended privilege posed an acute risk of becoming a safety valve for organised crimes. Therefore, it was essential to impose limitations on this absolute privilege and make it work in the favour of an authentic delivery of justice. Certain exceptions from the rule were thus carved out to prevent any further perpetuation of crimes using the very right to protect. The position of law with regard to the privilege is well-settled in both the Indian and the Western context. A plethora of judicial decisions have bolstered the rule enumerated in S.126 into a mammoth concept governing attorney client privilege in India. While the

⁷⁵ Municipal Corporation of Greater Bombay v. Vijay Metal Works, AIR 1982 Bom 6.

⁷⁶*Id.*

⁷⁷See *supra* note 32.

jurisprudence behind the norm is much more advanced in the West, Indian jurisprudence does not lag behind and matches up with the ethos of access to justice.

The attorney client privilege in India would protect from disclosure all confidential communications between the client and an attorney acting in his professional capacity made in the course of or for the purpose of litigation. The rule is formulated purely for the benefit of the client and not the legal adviser, therefore the privilege can only be waived by an express consent of the client. The privilege would be further curtailed if the situation falls under one of the exceptions mentioned in the proviso of S.126 or under those which are judicially invented as and when the need arose. The exceptions to the privilege are carefully crafted to prevent crime and injustice to anyone involved in the process of litigation. There is no rule barring an attorney from disclosing communication of information exhibiting the commitment of a crime after the commencement of the employment. Therefore, any discovery of a crime being committed after such commencement is exempted from the non-disclosure clause.

The privilege is not only granted to individuals against their attorneys but also to corporations against their in-house counsels. It is firmly established that the documentary material prepared by the in-house counsel in anticipation of any litigation would be legitimately protected under the doctrine. For that matter, the in-house counsels are considered as professional legal practitioners and the definition of advocate has been expanded to accommodate the changing roles of the corporate governance, provided that the legal advisor is working in the sole capacity of a legal adviser and not assuming any administrative role.

The attorney client privilege is ideally the backbone of any judicial system. A skilful interpretation of the same is essential to keep the law alive in spirit and at the same time install safeguards to protect the abuse of the doctrine. The Indian legal system judiciously uses the doctrine in the able administration of justice and accurately maintains pace with the changing viewpoints in the international scheme of affairs.