



June 2025

## **Supreme Court grants relief to a lawyer from appearing before the police and places the broader issue before the Chief Justice of India**

On June 25, 2025, a 2 (two) judge bench of the Hon'ble Supreme Court of India ("**Supreme Court**") in the case of *Ashwinkumar Govindbhai Prajapati vs. State of Gujarat and Anr.*<sup>1</sup> took cognizance of the growing trend of summoning of lawyers by police/investigating agencies for seeking privileged client information or legal advice delivered by them in course of their professional duties.

### **Brief facts**

The Directorate of Enforcement ("**ED**") had recently issued summons to senior advocates Arvind Datar and Pratap Venugopal in relation to an opinion provided by them in their professional capacity and in the course of their professional duties. While the summons subsequently came to be withdrawn, a more important question, one of independence of legal professionals, began to gain prominence.

In another matter, on March 24, 2025, a Gujarat-based lawyer ("**Petitioner**") received a notice under section 179 of the Bharatiya Nagarik Suraksha Sanhita ("**BNSS**")<sup>2</sup> from the Ahmedabad Police seeking his appearance in relation to a criminal matter involving his client. The Petitioner did not appear before the police and approached the Hon'ble High Court of Gujarat ("**Gujarat HC**") to challenge the validity of such a notice on the ground that he was only acting in his professional capacity and was not connected to the matter beyond his role as a lawyer. However, his plea was dismissed.<sup>3</sup>

The Gujarat HC held that not only did the police have the power to investigate, but the summons issued to the Petitioner was in the capacity of a witness and hence there was no valid ground to challenge the notice. Consequently, the Petitioner approached the Supreme Court.

### **Issues**

After hearing the submissions advanced by the counsel for the Petitioners, the following questions were raised by the Supreme Court:

1. when an individual has association with a case only as a lawyer advising the party, could the investigating agency/prosecuting agency/police directly summon the lawyer for questioning?

<sup>1</sup> Special Leave to Appeal (Crl.) No. 9334 of 2025

<sup>2</sup> Earlier known as the Code of Criminal Procedure (CrPC), 1973.

<sup>3</sup> R/Special Criminal Application (Quashing) No. 5349 of 2025

2. assuming that the investigating agency/prosecuting agency/police has a case that the role of the individual is not merely as a lawyer but something more, even then should they be directly permitted to summon or should judicial oversight be prescribed for those exceptional criteria of cases?

## Findings of the Supreme Court

The Supreme Court took cognizance of the issue and highlighted the need to address such issues in a comprehensive manner. It was observed that the practice of summoning lawyers severely undermines the autonomy of the legal profession. While acknowledging that the legal profession lies at the heart of administration of justice, the Supreme Court observed that lawyers have certain rights and privileges by virtue of them being legal professionals and in view of the provisions under section 132 of the Bharatiya Sakshya Adhiniyam, 2023<sup>4</sup> ("**BSA**").

Section 132 of the BSA protects privileged communications and ensures that no advocate is made to disclose any confidential information communicated to/from a client in the course and for purposes of his professional duties. The Petitioner's argument that privileged communication between a lawyer and a client cannot be subject of a notice under section 179 of the BNSS was upheld. The Supreme Court further highlighted that issuing such notices severely hinders the administration of justice and comes in the way of lawyers' ability to fearlessly discharge their professional duties.

It was observed that prosecuting/investigating agencies summoning lawyers is completely untenable and accordingly Ahmedabad Police have been restrained from summoning the Petitioner till further orders.

However, owing to the growing prominence of the issue, the Supreme Court decided to place the subject matter before the Hon'ble Chief Justice of India and also issued notices to the Ld. Attorney General of India, Ld. Solicitor General of India, Chairman of the Bar Council of India, President/Executive Committee of the Supreme Court Bar Association, and the President/Executive Committee of the Supreme Court Advocates-on-Record Association seeking their assistance.

## Conclusion

By taking cognizance of this growing trend of summoning lawyers, the Supreme Court has exercised its judicial oversight and has taken a necessary step towards protecting the autonomy of the legal profession. Whilst conducting a free and fair investigation may be the right of any investigating agency, the same cannot be misused to hinder administration of justice, which would potentially render Section 132 of the BSA *otiose*.

Protecting privileged communication encourages lawyers to freely discharge their professional duties and thus remains a pivotal aspect of any justice delivery system. By involving relevant stakeholders and placing the matter before the Hon'ble Chief Justice of India, it appears that the Supreme Court aims to address the issue holistically while maintaining a balance between the rights of investigating agencies and the independence of the legal profession. A further update on this topic will be provided in due course.

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<sup>4</sup> Earlier known as the Indian Evidence Act, 1872.

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