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LAWYER-CLIENT PRIVILEGE IN INDIA - A CRITICAL ANALYSIS

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ABSTRACT

The relationship between a client and a lawyer is depending on their trust and according to the legal privilege, it gives the client assurance of confidentiality in case of obtaining some legal advice from a lawyer. We can say that the communications have some weaknesses as protection is absent for communication with the third parties, which can be saying that it is a major or big loophole and also certain categories of intellectual property advisors that are not covered. There is a need to develop some rules and regulations regarding this problem or which can cover the loopholes or weakness that is present in the client and lawyer relationship.

INTRODUCTION

The relationship between a client and a lawyer is depending on their trust. A client has to discuss the matter related to his case very frankly otherwise if he hides something and not tell the truth then the lawyer will not able to fight the case with his strong and true arguments. A lawyer needs information from his client correctly for fighting the case effectively and efficiently. Lawyers are very intelligent towards each and every situation therefore they give legal advice to their clients to stop themselves from doing something wrongful activity.

A lawyer always fights cases on behalf of his client or state. It is a duty of a lawyer to fight the case for the rights of his client that is violated by someone by wrongful intention or activity. We can also say that the relation between Client and lawyer is a type of ‘Fiduciary Relationship’. The term Fiduciary Relationship is defined as trust and a high confidence level that have to be present on both of them otherwise if any of one has a lack of trust then it is very hard to fight the case on true legal grounds and arguments.

CHARACTERISTICS OF LEGAL PRIVILEGE:

1. According to the legal privilege, it gives the client assurance of confidentiality in case of getting legal advice from the lawyer.
2. It should encourage full and frank communication between the attorney and his client.

3. The duty is applied even when the client does not retain the service of the lawyer but has consulted him.

PRIVILEGED COMMUNICATION

The term ‘Privileged Communication’ is a type of protection that is granted to a communication between the legal adviser (lawyer) and the client. It is very important for society so that no one can throw his type of legal resources.

The Indian law gives us full detailed rules and regulations regarding communications between the legal advisor (lawyer) and the client i.e. mentioned in the Indian Evidence Act, 1872 under sections 126 to 129 in detail.

THE INDIAN EVIDENCE ACT – 1872

According to section 126 of the Indian Evidence Act state that it will put a limit on attorneys from make known any of the communications which can be exchanged with the clients and the contents which are stating or the conditions of the document in a particular way of the legal advisor (lawyer) in course of and in last the purpose of the more recent client. This section also gives details with certain exceptional grounds on which the privileged shall deny or became void due to some illegal purpose or due to any type of crime or fraud have been committed for the reason that because at the beginning of the attorney's employment on the troubling matter or concerning matter.

CASE:

Memon Hajee Haroon Mohomed v. Abdul Karim, 1878 3 Bom. 91¹

In the case of *Memon Hajee Haroon Mohomed v. Abdul Karim*, it was found that there is no privilege to communicate that are made before the creation of the relationship of a pleader or the client.

According to **section 127** of the Indian Evidence Act 1872, the privilege that is granted by 126 shall be enlarged to the interpreters, clerks or the servants of the lawyers, then the vakils, pleaders, etc. Whatever facts and the circumstances that are communicated by the client to his

¹ Memon Hajee Haroon Mohomed v. Abdul Karim, 1878 3 Bom. 91

lawyer is presumed to be known to his clerk also and also the facts and circumstances that are communicated by the client through the clerk to his lawyer.

According to **section 128** of the Indian Evidence Act 1872, it gives all the details related to other exceptional cases or we can say that it is a type of supplement of section 126 mentioned in the Indian Evidence Act 1872. Under this section, if any of the parties will give evidence to the matter which is covered by a type of secret communication then it shall not amount that the party will give his consent for the action of making it.

According to **section 129** of the Indian Evidence Act 1872, a person shall not bring about any confidential communication which has taken place between him and the legal advisor (lawyer) unless he offers himself as a part of the witness. Therefore, all the three sections such as section 126, 127, and section 128, deals with the type of a situation where legal advisors are prohibited to disclose confidential communications whereas the section 129 of the Indian Evidence Act 1872, imposes the obligations upon the clients and therefore not to disclose any type confidential communication before the court given by his legal adviser.

The weaknesses of the Indian Evidence Act 1872, in dealing with client privilege relationship-

1. According to **section- 126** of the Indian Evidence Act 1872, only the communication between lawyer and client is privileged but the communication that is made between the client and third party or lawyer and third parties are not privileged if the communication is made for getting some legal advice from the lawyer.
2. **Section- 126**, of the Indian Evidence Act 1872, restricts the privilege only for clients but the provisions do not include a patent agent.
3. There are certain categories of intellectual property advisers that are not covered.

The rules that have to be maintained by the advocates are mentioned in chapter-II, Part-VI of the Bar Council of Indian Rules. These rules are also has been placed in section 49(1) (c) under the Advocates Act, 1961.

Satish Kumar Sharma v. The Bar Council of Himachal Pradesh, AIR 2001 SC 509²

² Satish Kumar Sharma v. The Bar Council of Himachal Pradesh, AIR 2001 SC 509

In the case of *Satish Kumar Sharma v. Bar Council of Himachal Pradesh*, the Supreme Court of India held that if a full-time employee is not pleading on the behalf of his employer, or if the terms of employment are such that he does not have to act and plead but shall require to do other kinds of functions, then he will cease to be an advocate.

The following rules have to be maintained by Advocates towards the Court -

1. When an advocate gives a presentation of his client case in the court of law he should act in a very well and dignified manner.
2. An advocate should always respect the court and maintain respect toward the judicial office.
3. An advocate is bound to not communicate with the judge in private with regards to the matter related to his case.
4. An advocate should refuse to act in an illegal manner towards the opposition party because that will cause a breach of duty from his side as a legal practitioner.
5. An advocate should always appear in their proper dress code in the court for fighting the case for his client with the opposition party and this is a type of respect in the eye of law that is created by the judiciary.
6. An advocate may refuse to appear in the court in front of his relations if any member of the bench is related to his father, grandfather, son, grandson, sister, aunt, niece, daughter, mother in law, father in law, Uncle, brother, nephew, daughter in law, sister in law etc.
7. An advocate should not wear his gown in public places without any reason except only the ceremonies or the Bar Council especially may be prescribed.
8. An advocate should not represent the establishment if he is a member of any of the management of the establishment.
9. An advocate shall not appear or plead any matter which can be related to the financial interest.
10. An advocate should not stand as a surety of the client or we can say that an advocate cannot certify the surety of his client in the court of law.

The following rules have to be followed by advocates towards the clients-

1. An advocate is bound to accept the briefs in the courts
2. An advocate shall not withdraw from his service.
3. An advocate does not appear in the matter where he assumes to be a witness.
4. An advocate has to be very frank towards his client otherwise it's very difficult to fight the case.
5. The duty of the advocate is to uphold the interest of his client fearlessly without making any type of excuse.
6. An advocate shall not leak or disclose the information between the client and himself.
7. An advocate shall not follow information getting from another person's insistence on his client.
8. An advocate should not charge his fees after the success of the matter undertaken.
9. An advocate shall not bid and purchase the property arising from legal proceedings.
10. An advocate should not give money to his client.
11. An advocate shall not appear for the opposite party after taking the fees and case from his client.
12. An advocate should not the bid and transfer of property arising from the legal proceeding.

The followings rules are for advocate's duty towards the opponents-

1. An advocate should not communicate from his opposition party in a private manner or shall call for the settlement of the matter related to the case.
2. An advocate should do his best to carry out all legitimate promises that are made to the opposition party.

CONCLUSION

The relationship between a client and a lawyer is depending on their trust and according to the legal privilege, it gives the client assurance of confidentiality in case of obtaining some legal advice from a lawyer. We can say that the communications have some weaknesses as protection is absent for communication with the third parties, which can be saying that it is a major or big loophole and also certain categories of intellectual property advisors that are not covered. There is a need to develop some rules and regulations regarding this problem or which can cover the loopholes or weakness that is present in the client and lawyer relationship.

And our country India is a well-developing nation that has a most detailed constitution that is in a written format almost everything is covered therefore India will find solutions regarding the loopholes that are present in some sections and modify them according to the need.

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