BLOGS

Privileged Communication under Indian Evidence Act: Definition, Admissibility, Exceptions

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Introduction

Privileged communication under the Indian Evidence Act is a critical aspect of the law that protects certain types of confidential communications from being disclosed in court. These protections are essential to ensure that individuals can communicate freely and honestly with certain trusted professionals and advisors without fear of their communications being used against them in legal proceedings.

In this article, we will explore the concept of privileged communication in India, the categories of privileged communications, and the legal provisions governing them under the Indian Evidence Act.

Types of Privileged Communication

Under the Indian Evidence Act, there are several categories of privileged communication, each with its own set of rules and exceptions:

1. Attorney-Client Privilege (Section 126)

Attorney-client privilege is one of the most well-known forms of privileged communication. **Section 126 of the Indian Evidence Act** stipulates that any communication between a client and their attorney made in the course of their professional relationship is privileged.

The rationale behind this privilege is to encourage clients to be completely candid with their lawyers so they can receive the best legal advice. This **privilege is absolute**, and communication is protected even after the client's death.

2. Doctor-Patient Privilege (Section 127)

Section 127 of the Indian Evidence Act extends protection to communications between a patient and their medical practitioner. The purpose of this privilege is to ensure that patients are honest about their medical history and symptoms, allowing doctors to provide proper care. However, this **privilege may be waived** if the patient's physical or mental condition is in question, and the information is considered essential for a case.

3. Husband-Wife Privilege/ Spousal Privilege (Section 122)

Section 122 provides that a person cannot be compelled to disclose communications made during marriage. This **privilege is not absolute** but it is subject to important exceptions. Communication between spouses is not privileged if it relates to any criminal act. Additionally, if one spouse seeks to prove the communication against the other spouse, the privilege is waived.

Even after the dissolution of the marriage or when one spouse dies, such communication (made the term of the marriage) is protected. Those made prior to marriage or after its dissolution, however, are not protected ***[M.C. Verghese v T.J.Ponnam]***.

4. Official Communication Privilege (Sections 123 and 124)

Official communication privilege protects communications between public officials, such as government officials, and their superiors. Section 123 states that no public officer can be compelled to disclose any communication made to him in confidence when he is acting in his official capacity. Section 124 extends this protection to official records. However, this **privilege is not absolute** and may be waived if the public interest requires disclosure.

Exceptions to Privileged Communication

While privileged communication under Indian Evidence Act is a vital legal concept, it is not absolute, and there are exceptions where the court may compel disclosure. Some exceptions to privileged communication under the Indian Evidence Act include:

1. Crime or Fraud Exception

One of the most significant exceptions is the crime or fraud exception. If the communication is made with the intention of committing a crime or fraud, it is not protected. For example, if a client consults an attorney with the intent to plan or carry out a crime, the attorney-client privilege does not apply.

2. Patient's Health Exception

The doctor-patient privilege may not apply if the patient's health or mental state is a matter in question in a case. In such cases, the court may compel the doctor to disclose relevant medical information.

3. Waiver

Waiver of privileged communication occurs when the holder of a privilege voluntarily gives up their right to keep certain communications confidential. A waiver is generally a voluntary act. The individual or party holding the privilege must knowingly and intentionally choose to allow the communication to be disclosed. If the privilege holder consents to the disclosure, it's considered a waiver.

When a waiver of privileged communication occurs, the communication can be admitted as evidence in court. The party who waived the privilege cannot later object to its introduction. The court and opposing parties are allowed to use this information in the legal proceedings.

Conclusion

Privileged communication is a fundamental concept in the Indian legal system, protecting confidential information shared between individuals in specific relationships, such as clients and attorneys, patients and doctors, and spouses.

It serves to ensure the integrity of these relationships and encourage open and honest communication. While privileged communication is generally protected, there are exceptions, such as the crime or fraud exception and situations where disclosure is in the public interest.

Understanding these principles is essential for both legal professionals and individuals seeking legal advice or medical treatment. The Indian Evidence Act provides a framework for balancing

the need for confidentiality with the demands of justice in a court of law.

For notes on Hearsay Evidence, click here!