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General Counsels' Association of India

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Press Release

General Counsels' Association of India (GCAI's) Statement on Supreme Court Judgment in *Suo Motu Writ Petition (Criminal) No. 2 of 2025 – Interpretation of Attorney–Client Privilege*

The General Counsels' Association of India (GCAI) welcomes the recent Supreme Court of India judgment in *Suo Motu Writ Petition (Criminal) No. 2 of 2025*, which interprets the scope of Attorney–Client Privilege under the *Bharatiya Sakshya Adhiniyam, 2023 (BSA)*.

The decision marks a historic first—the highest court of the country has explicitly recognized the role of the In-house Counsel and General Counsels within India's legal ecosystem. GCAI appreciates the Honorable Court's acknowledgment of the profession's contribution to good governance, compliance, and institutional ethics.

At the same time, GCAI believes that certain interpretational aspects warrant reconsideration. The judgment does not fully distinguish between the Advocates under Section 132 and the Legal Advisors under Section 134 of the BSA, where the latter term was deliberately framed by the Indian Parliament to cover all forms of legal advisors, including the In-house and General Counsels. The view that salaried employment diminishes professional independence or confidentiality is inconsistent with both the text of Section 134 and the best global practices. Further, the Honorable Court's reliance on civil-law jurisprudence (*Akzo Nobel Chemicals Ltd v. European Commission, ECJ 2010*) may not align with India's common-law tradition, under which jurisdictions such as the United States (*Upjohn Co. v. United States, 449 U.S. 383 (1981)*), the United Kingdom (*Three Rivers (No. 5) [2003] EWCA Civ 474*), and the Singapore (*Skandinaviska Enskilda Banken AB v. Asia Pacific Breweries, [2007] 4 SLR 786*) recognize privilege for in-house lawyers acting in a legal capacity.

GCAI respectfully submits that these anomalies call for a constructive review to ensure that India's jurisprudence on privilege evolves in keeping with contemporary corporate governance needs and international precedence.

In this respect Dr. Sanjeev Gemawat, Founder, GCAI said:

The Supreme Court's judgment is a landmark step in bringing the role of in-house counsel into judicial focus. While we welcome the clarity it brings, the interpretation of Sections 132 and 134 of Bharatiya Sakshya Adhiniyam, 2023, requires further refinement to reflect legislative intent and modern corporate realities. Drawing a salary cannot determine professional independence or confidentiality. We are confident that, through engagement with the Ministry of Law and Justice, Government of India and the Indian Judiciary and other stakeholders, these nuances will evolve into a more balanced and globally aligned framework.

Also Dr. Akhil Prasad, Founder, GCAI added:

This is an opportunity for India to shape a forward-looking policy framework for legal privilege and ethical governance. A dedicated Code of Conduct for the In-House Counsels and the General Counsels, framed under the aegis of the Ministry of Law and Justice, Government of India, would strengthen both independence and accountability—aligning Indian practice with international standards. The fact that many Companies in India, have employed In-House Counsels and the General Counsels, who are legal advisers, per section 134 of the Bharatiya Sakshya Adhiniyam, 2023, should not be denied the benefit of legal privilege, especially when similar protection is granted to legal advisors under Section 227 of the Companies Act 2013. This aspect, among others were duly highlighted by GCAI, in its application to the Honorable Supreme Court of India. We will continue to work on this issue with the stakeholders in the Government and the Judiciary.

GCAI is presently examining legal and policy options, including the possibility of seeking a review of the judgment before the Honorable Supreme Court of India and engaging with the Ministry of Law and Justice, Government of India on developing a Code of Conduct and professional guidelines for the In-house Counsels and the General Counsels.

GCAI reaffirms its commitment to constructive collaboration with the judiciary, government, and industry in advancing professional integrity, independence, and trust in India's legal institutions.

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