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THE ETHICS OF LEGAL ADVERTISING

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ABSTRACT

The essay critically examines the ethical considerations and regulatory framework governing legal advertising, with a particular focus on the restrictions imposed by the Bar Council of India (BCI). These regulations, which categorically ban direct and indirect advertising-including online platforms and certain forms of signage are intended to preserve the integrity and ethical standards of the legal profession. The essay addresses the tension between maintaining professional decorum and adapting to the modern, highly competitive legal sphere, where visibility is increasingly vital. It posits that while these restrictions are aimed at preventing the commodification of legal services and safeguarding client trust, they inadvertently limit public access to legal expertise. A comparative analysis with international regulatory approaches provides insight into alternative models, shedding light on how other jurisdictions balance advertising freedoms with ethical obligations. The essay concludes by proposing that regulatory reforms are necessary to align the BCI's stance with contemporary realities.

Keywords: *Legal Advertising, Bar Council of India, Ethical Standards, Regulatory Framework, Professional Integrity, Commodification of profession, International Analysis.*

1. Introduction

Professional ethics acts as the handbook on conduct for the legal profession, embodying the principles and standards that guide the conduct of advocates. These ethics are vital because the practice of law is not merely a business but a service to society, driven by the pursuit of justice and fairness. Lawyers occupy a unique position as *intermediaries* between the law and the public, entrusted with upholding the rule of law while ensuring the rights of individuals are

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protected. Therefore, professional ethics not only safeguard the interests of clients but also preserve the integrity of the judicial system itself.⁴

Professional ethics ensure that advocates maintain trust and confidence with their clients, and the courts. They regulate various aspects of legal practice, including confidentiality, conflict of interest, and duties to the court and society. Violations of these ethical standards can damage the reputation of the profession, compromise justice, and erode public faith in the legal system.⁵ Thus, adherence to professional ethics is indispensable for ensuring a just, equitable, and accountable legal framework.

Legal advertising, a subject of significant debate within the legal fraternity, refers to the promotion of legal services by advocates through various forms of media. While advertising is commonplace in other professions, the legal field has traditionally been governed by strict restrictions, particularly in India.⁶ *Rule 36 of the Bar Council of India Rules*⁷ explicitly prohibits advocates from soliciting work or advertising their services, upholding a longstanding belief that legal practice is a noble profession rather than a trade.⁸

Globally, the perspective on legal advertising has evolved, with some countries adopting a more liberal approach. For instance, in the United States, legal advertising is permitted, though regulated to prevent misleading claims. The debate around legal advertising often centers on the balance between public access to legal services and maintaining the profession's dignity and ethical standards.⁹

⁴ *Jingwei Xu, Zhengmin Li & Siyu Li, Legal Ethics and Professional Responsibility in the Legal Profession*, 190 SHS web of conferences (2024).

⁵ *Adv Priyanka Sharma, Everything About Professional Ethics in Law*, EzyLegal (2022), <https://www.ezylegal.in/blogs/everything-about-professional-ethics-in-law> (last visited Oct 13, 2024).

⁶ *Sylvine, Professional Ethics In Law - iPleaders*, iPleaders (2016), <https://blog.iplayers.in/professional-ethics-law/> (last visited Oct 13, 2024).

⁷ Rule 36, Section IV - Duty to Colleagues, BAR COUNCIL OF INDIA RULES (UNDER THE ADVOCATES ACT, 1961), (India), <https://www.barcouncilofindia.org/info/bar-counci-g36acc>. (last visited Oct 13, 2024).

⁸ Free Law, Free Law: Get Free Headnotes & Judgments (2024), <https://www.freelaw.in/legalarticles/Code-of-Ethics-for-Lawyers-in-India-Key-Principles-and-Guidelines> (last visited Oct 13, 2024).

⁹ MyLawman, "A bar on advertising for advocates in India under Advocates Act, 1961 and Bar Council of India Rules," Mylawman.co.in (2012), https://www.mylawman.co.in/2012/03/bar-on-advertising-for-advocates-in.html#google_vignette (last visited Oct 13, 2024).

2. Historical Context of Legal Advertising

2.1 Origin and Development of Restrictions on Legal Advertising

The restriction on legal advertising have roots deeply embedded in the historical perception of the legal profession. Traditionally viewed as a noble vocation, the practice of law has been associated with the pursuit of justice rather than commercial gain. This ethos led to the establishment of various regulations governing lawyers' conduct, aimed at maintaining the dignity of the profession.¹⁰ In many jurisdictions, early regulations sought to restrict advocates from marketing their services, as it was believed that advertising could undermine the integrity and solemnity of the legal profession.

In the late 19th and early 20th centuries, as societies began to recognize the importance of consumer rights, discussions around the regulation of legal services also emerged. However, the general sentiment remained that law was a service to be provided ethically, rather than a product to be sold, leading to the continuation of restrictions on advertising.

2.2 Evolution of Professional Ethics in the Legal Field

Professional ethics in the legal field have undergone significant evolution, influenced by societal changes, legal developments, and the increasing recognition of the lawyer's role as a public servant. Initially, legal ethics were largely shaped by the moral standards and customs of the legal community, focusing on the duty to clients, the court, and society at large. The American Bar Association (ABA), established in 1878,¹¹ which served as a model for many countries.

In India, the evolution of professional ethics has been marked by the dual influences of colonial legal principles and indigenous customs. The Indian Bar Council Act of 1926 laid the groundwork for the establishment of ethical guidelines for lawyers, which were later expanded in the Bar Council of India Rules. The development of these ethical standards aimed to promote *integrity*, *accountability*, and *professionalism* among advocates, reflecting the changing expectations of society towards legal practitioners.¹²

¹⁰ *Shaheen P. Abidi*, Exploring the Evolution of Lawyer Advertising: History, Ethics, and Regulations, Web Upon: Portland SEO, Web Design & Digital Advertising Agency (2024), <https://webupon.com/blog/why-was-lawyer-advertising-banned/> (last visited Oct 13, 2024).

¹¹ American Bar Association, *Canons of Professional Ethics* (1908).

¹² *Oishika Banerji*, Bar against legal advertising and solicitation, iPleaders, iPleaders (2021), <https://blog.ipleaders.in/bar-against-legal-advertising-and-solicitation/> (last visited Oct 13, 2024).

2.3 Role of the Bar Council of India and the Establishment of Rule 36

The Bar Council of India (BCI), established under the Advocates Act of 1961, undertakes formulating and enforcing professional ethics and standards for lawyers in India. One of the most significant contributions of the BCI has been the establishment of Rule 36 of the Bar Council of India Rules, which explicitly prohibits advocates from soliciting work or advertising their services.

Rule 36, aimed to maintain the traditional values of the profession amidst growing competition and the commercialisation of legal services. The BCI argued that allowing legal advertising could lead to misleading representations, exploitation of vulnerable clients, and a shift in focus from the delivery of justice to the pursuit of profit.¹³ This prohibition aligns with the historical context of legal advertising restrictions and echoes a broader sentiment within the legal community that advertising may compromise the ethical obligations of advocates.

Over time, the BCI's stance on legal advertising has faced scrutiny and calls for reform, particularly considering advancements in technology and shifts in societal expectations.¹⁴

2.3.1 Amendment to Rule 36

In 2008, the Bar Council of India introduced changes to Rule 36 of the Bar Council Rules, easing the earlier complete prohibition on lawyer advertising. Previously, lawyers were strictly forbidden from promoting their legal services, with any breach leading to disciplinary action. The amendment now allows lawyers to share basic details. The permissible details include the advocate's name, address, and contact information such as telephone numbers and email addresses provided, they include a disclaimer. This disclaimer must affirm that the provided information is accurate and authentic.

This amendment however, limits the scope of what can be advertised. If a lawyer exceeds the permitted information, they may face charges of professional misconduct under S. 35 of the Advocates Act, 1961, which could result in penalties, under Section 35(1) of the Advocates

¹³ *Bhumika Indulia*, *Digital Solicitation and Advertising: Everlasting Legal Controversies*, SCC Times (2024), <https://www.scconline.com/blog/post/2024/07/21/digital-solicitation-and-advertising-everlasting-legal-controversies-experts-corner/> (last visited Oct 13, 2024).

¹⁴ The Hindu Bureau, *BCI cracks down on online legal service advertisements following Madras HC ruling*, The Hindu (2024), <https://www.thehindu.com/news/cities/Delhi/bci-cracks-down-on-online-legal-service-advertisements-following-madras-hc-ruling/article68382046.ece> (last visited Oct 13, 2024).

Act, 1961 granting the State Bar Council the authority to take disciplinary action against advocates found guilty of "professional or other misconduct."¹⁵

Many legal practitioners have turned to online professional platforms in tune with the Amendment of 2008, to enhance their professional presence, sharing insights, publications etc. on relevant legal topics, and engaging in discussions that showcase their expertise.¹⁶ These methods can serve as a subtle form of self-promotion, allowing advocates to attract potential clients without directly violating advertising prohibitions.

Many law firms have adopted creative methods to comply with the Bar Council of India's advertising restrictions while maintaining an online presence. One such approach involves the use of disclaimers on their websites, which ostensibly reinforce the prohibition against solicitation.

This strategy allows law firms to display key information about their services while remaining within the formal boundaries of the regulatory framework. Such disclaimers typically clarify that the content on the website is solely for informational purposes and should not be construed as legal advice, by framing their website content as purely informational and including disclaimers that explicitly deny any intent to solicit clients, these firms effectively promote themselves in a way that appears compliant with Rule 36. This raises important questions about the actual effectiveness of the restrictions on legal advertising. While the disclaimers technically adhere to the Bar Council's guidelines, the underlying reality is that they enable firms to create an online presence and indirectly attract potential clients.

2.4 Rationale Behind Rule 36

Legal advertising raises significant ethical concerns, particularly around *misrepresentation* and *exploitation*. Lawyers have a duty to provide honest and accurate information, yet advertising can lead to exaggerated claims, false promises, and unrealistic expectations, especially when lawyers promote guaranteed outcomes. Vulnerable individuals, such as those in need of personal injury or family law assistance, may be manipulated by aggressive marketing tactics, leading them to make uninformed decisions. While jurisdictions like the U.S. and U.K. regulate

¹⁵ Supra note 10.

¹⁶ Harshima Vijaivergia and Smita Pandey, Manupatra, *Articles-Manupatra*, Manupatra.com (2024), <https://articles.manupatra.com/article-details/Rethinking-the-Prohibition-on-Advertising-for-Advocates> (last visited Oct 13, 2024).

legal advertising to ensure transparency and truthfulness, India's ban on legal advertising under Rule 36 minimizes these risks, though indirect promotion via technology still poses challenges.¹⁷

Legal advertising could shift the nature of *client-attorney relationships*, turning them into transactional interactions rather than trust-based partnerships. A focus on marketing may prioritize profit-driven motives over ethical obligations, undermining the lawyer's fiduciary duty. This could lead to conflicts of interest or reduced quality of representation. However, advocates for legal advertising argue it can improve access to justice by making legal services more visible, provided that regulations are in place to safeguard the integrity of the client-attorney relationship.¹⁸

The debate on legal advertising centers on *balancing public interest* with the profession's dignity. On one hand, advertising could enhance access to legal services by making them more visible and approachable, particularly in underserved areas. On the other hand, unregulated advertising risks cheapening the profession's image, potentially leading to aggressive self-promotion and a decline in ethical standards.¹⁹ Regulated advertising could strike a balance, promoting public interest without compromising professional integrity.

3. Legal Framework Governing Legal Advertising in India

3.1 Breakdown of Rule 36

The ethical framework governing advocates mandates strict prohibitions against solicitation and advertising, categorizing any breach as professional misconduct. This prohibition encompasses both direct and indirect forms of advertising. Advocates are explicitly barred from promoting their services through methods such as circulars, advertisements, or personal communications that are not justified by existing personal relationships.

The following practices are classified as indirect advertising and are thus prohibited:

1. Election Manifestos: Advocates are not permitted to issue circulars or election

¹⁷ Indian Lawyers: No Ads Allowed per Bar Council Rules, King Stubb & Kasiva (2023), <https://ksandk.com/regulatory/indian-lawyers-no-ads-allowed-per-bar-council-rules/> (last visited Oct 13, 2024).

¹⁸ *Isha Kalwant Singh, Advertising by Legal Professionals*, BHARATI L. REV., Oct.-Dec. 2016, at 1, <https://docs.manupatra.in/newslines/articles/Upload/C74B86B2-2614-4B56-A50D-8D498A841418.pdf>. (last visited Oct 13, 2024).

¹⁹ *Ibid.*

manifestos featuring their name, profession, and address. Such practices can mislead members of the legal community, especially those practicing in lower courts, into recommending clients to advocates practicing at higher levels.

2. **Canvassing for Votes:** Engaging in canvassing activities, such as touring regions or dispatching clerks or agents to various districts, constitutes direct outreach to advocates practicing in subordinate courts. This behaviour is viewed as an improper solicitation for professional support.²⁰

Additionally, the display of signboards or nameplates by advocates must adhere to guidelines regarding size and content. These displays should not contain any information about the advocate's affiliations, such as previous roles in bar councils, associations, judicial positions, or specialization in specific legal areas. Similarly, associations with particular individuals, organizations, or causes should not be advertised.

The Bar Council of India has further extended these prohibitions to the digital realm, explicitly banning online advertising. In a Notice dated 21st October 1999, the Council reiterated that any form of online advertisement is deemed a violation of ethical standards. This directive mandated the immediate withdrawal of legal websites and imposed the possibility of severe penalties, including temporary suspension or permanent disbarment from legal practice for non-compliance.

Moreover, the publication of profiles in online legal dictionaries is also prohibited.²¹ The Bar Council of India has consistently enforced these rules, often dismissing criticisms regarding their relevance in the modern legal landscape. These regulations aim to uphold the integrity of the legal profession and ensure that the relationship between advocates and clients remains rooted in ethical considerations rather than commercial interests.

3.2 Relevant Provisions in the Advocates Act, 1961

The BCI has consistently maintained that allowing advertising could lead to a commodification of legal services, compromising the fundamental principles of integrity and professionalism.²²

²⁰ *Aadhitya Logeshen R, Advertising by Advocates in India: The Right to Advertise Professional Ethics*, 6 INTERNATIONAL JOURNAL OF LAW 1, 1-3 (2020), <https://www.lawjournals.org/assets/archives/2020/vol6issue4/6-3-82-883.pdf>. (last visited Oct 13, 2024).

²¹ *Supra* note 10.

²² AIR 2002 BOM 220, *The Bar Council of India v. M/s. D.K. Rathi* (2002).

The rule, therefore, is designed to foster a culture of trust between clients and advocates, where the emphasis is placed on merit and reputation rather than promotional tactics.

The Advocates Act, 1961, provides the statutory framework for the regulation of the legal profession in India. Key provisions within this act reinforce the ethical obligations of advocates and the prohibition of misleading practices in legal advertising.

- *Section 7(1)(b)* of the Advocates Act²³ empowers the Bar Council of India to lay down standards of professional conduct and etiquette for advocates. This section serves as the legal basis for Rule 36 and other ethical guidelines established by the BCI.
- *Section 49(1)(c)*²⁴ of the Act further grants the BCI general power to prescribe rules regarding the manner in which advocates may engage with clients. This includes rules related to advertising and solicitation, ensuring that legal practitioners operate within the boundaries set by the Council.

Additionally, the Act emphasizes the importance of maintaining a standard of conduct among advocates, focusing on the necessity of ethical practice and the public interest. By framing legal practice within this regulatory structure, the Advocates Act highlights the commitment of the legal profession to uphold justice and protect client welfare.

3.3 Constitutional Perspective: A.19(1)(a) (Freedom of Speech) and A.19(1)(g) (Right to Practice Profession)

The legal framework governing advertising in the legal profession must also be viewed through a constitutional lens, particularly considering Articles 19(1)(a) and 19(1)(g) of the Indian Constitution.

- Article 19(1)(a) guarantees the right to freedom of speech and expression, which includes the right to convey information and engage in commercial speech. However, this right is subject to reasonable restrictions under Article 19(2), which allows the State to impose limitations on speech in the interests of public order, morality, and other concerns.
- Article 19(1)(g) ensures the right to practice any profession, which includes the legal profession. However, similar to Article 19(1)(a), this right is also subject to reasonable restrictions under Article 19(6), allowing for regulations that promote ethical standards and public interest.

²³ § 7(1)(b), the Advocates Act, 1961, No. 25, Acts of Parliament, 1961 (India).

²⁴ § 49(1)(c), the Advocates Act, 1961, No. 25, Acts of Parliament, 1961 (India).

However, the Indian Supreme Court has taken a different stance. In *Hamdard Dawakhana v. Union of India*,²⁵ the Court held that commercial advertisements do not fall under the protection of Article 19(1)(a). The next possible challenge would be under Article 19(1)(g), which guarantees the right to practice a trade, business, or profession. Advocates could argue that the ban restricts their ability to effectively practice law and promote their services. Moreover, India's obligations under WTO laws also suggest that legal services fall under the category of business services.

4. Comparative Analysis: Legal Advertising in Other Jurisdictions

4.1 Position in the U.S.

In the United States, legal advertising has evolved significantly since the landmark Supreme Court ruling in *Bates v. State Bar of Arizona* (1977).²⁶ Prior to this case, the American Bar Association (ABA)²⁷ had imposed strict bans on legal advertising, considering it detrimental to the dignity of the profession. However, the Supreme Court in *Bates* ruled that restrictions on advertising violated the First Amendment right to free speech, thus allowing lawyers to advertise their services.

As a result, legal advertising is now permitted across the U.S., with certain ethical guidelines in place. The ABA's Model Rules of Professional Conduct govern the content and manner of advertising, ensuring that advertisements are not false or misleading. Lawyers are allowed to use various platforms—television, radio, online media—but must avoid making exaggerated claims about their capabilities. The regulatory framework in the U.S. seeks to balance free speech with professional ethics. Though advertising is generally permitted, lawyers are still expected to maintain honesty and accuracy in their promotional efforts. Ethical concerns surrounding aggressive marketing tactics persist, leading to debates about how much legal advertising should be regulated.²⁸

4.2 Position in the U.K

In contrast to the U.S., the United Kingdom also experienced a gradual liberalization of legal advertising rules, but in a more cautious manner. Historically, solicitors and barristers in the

²⁵ AIR 1960 SC 554.

²⁶ 433 U.S. 350.

²⁷ Supra note 8.

²⁸ *Miller, B.* (2019). The Evolution of Legal Advertising in the United States. *The Law Review*, 56(1), 45-78.

U.K. were strictly forbidden from advertising their services, similar to practices in other common law jurisdictions. However, changes were initiated with the introduction of the Courts and Legal Services Act 1990, which relaxed the rules to allow legal professionals to advertise, provided they adhere to guidelines set by regulatory bodies.

The Solicitors Regulation Authority (SRA) in the U.K. has issued rules regarding legal advertising, requiring advertisements to be truthful, fair, and in the public interest. While solicitors are now free to market their services, barristers still face more stringent rules, particularly since they are traditionally seen as specialists called in by solicitors for specific legal representation.²⁹

Like the U.S., the U.K. emphasizes transparency and accuracy in advertising, but remains stricter in limiting exaggerated claims or aggressive marketing tactics, preserving a balance between access to information and the integrity of the profession.

5. Regulatory Approaches to Legal Advertising

Legal advertising in India, governed by Rule 36 of the Bar Council of India Rules, remains largely prohibited to preserve the dignity of the legal profession. However, with evolving societal needs and advancements in technology, there is an increasing demand for transparency and access to legal services, which legal advertising could facilitate. As such, there is a growing need for a well-defined regulatory framework that balances the professional ethics of the legal fraternity with the benefits of advertising.

A regulatory framework is essential to address ethical concerns such as misrepresentation, exploitation, and commercialization, which unregulated advertising could exacerbate.³⁰

5.1 Lessons from Other Jurisdictions on Ethical Legal Advertising Regulations

India can draw valuable lessons from jurisdictions where legal advertising is regulated but controlled through ethical guidelines. For example:

United States: The U.S. has a comprehensive legal advertising framework governed by the

²⁹ **Fitzgerald, R.** (2014). The Role of Barristers in the New Legal Landscape: The Changing Nature of the Profession. *Legal Studies*, 34(2), 200-222.

³⁰ **Zeigler, M.** (2021). The Impact of Advertising on Legal Practice: Ethical Considerations and Professional Standards. *Law and Ethics Review*, 29(4), 385-404.

American Bar Association's Model Rules of Professional Conduct. Lawyers are allowed to advertise, but must adhere to strict guidelines that prohibit false or misleading statements and undue solicitation of clients.³¹

United Kingdom: In the U.K., legal advertising is permitted but regulated by the Solicitors Regulation Authority (SRA). The SRA has established codes of conduct that mandate truthfulness and transparency in advertisements. Furthermore, the U.K. places significant emphasis on the avoidance of comparisons and ensuring that lawyers maintain the dignity of the profession in their marketing efforts.³²

France: Legal advertising was historically restricted in France but is now allowed under controlled circumstances. French lawyers may advertise their areas of practice and qualifications but must adhere to regulations that prevent exaggerated claims or comparisons to other legal professionals.³³

Germany: Legal advertising in Germany is also regulated to avoid misrepresentation or sensationalism. Lawyers can provide factual information about their services, but aggressive advertising strategies are prohibited, and the focus remains on professionalism.³⁴

Singapore: Singapore permits legal advertising, but with significant restrictions to ensure ethical practice. Lawyers must avoid making misleading claims or offering unsolicited legal services. Additionally, legal advertisements must not undermine the reputation of the legal profession.³⁵

6. Conclusion

The prohibition on legal advertising under Rule 36 of the Bar Council of India Rules reflects the deep-seated ethos of the legal profession in India, which views advocacy as a noble calling rather than a commercial enterprise. While these restrictions aim to preserve the integrity and

³¹ Supra note 24.

³² **Pithers, G.** (2017). *The Regulation of Legal Advertising in England and Wales: A Historical and Comparative Analysis*. *Journal of Legal History*, 38(1), 75-100.

³³ **Le Roy, A.** (2019). *Legal Advertising in France: Recent Developments and Challenges*. *European Journal of Law Reform*, 21(3), 375-391.

³⁴ **Schuster, L.** (2021). *The Balance Between Legal Advertising and Professionalism in Germany*. *German Law Journal*, 22(5), 1005-1023.

³⁵ **Tan, J.** (2018). *The Landscape of Legal Advertising in Singapore: Regulations and Ethical Considerations*. *Singapore Law Review*, 39(1), 45-68.

dignity of the profession, they must also be examined in light of changing societal and technological dynamics.

The Constitution of India enshrines the right to freedom of speech and expression under Article 19(1)(a), which poses a critical question regarding the legality of such restrictions on advertising. The U.S. Supreme Court's landmark decision in *Bates v. State Bar of Arizona* ruled that restrictions on advertising violated the First Amendment right to free speech, thus allowing lawyers to advertise their services. This ruling highlights the necessity of balancing professional ethics with the fundamental rights of individuals, underscoring the potential benefits of regulated legal advertising in promoting access to legal services.

India stands at a crossroads, where maintaining professional ethics must be balanced against the evolving needs of society. The outright ban on legal advertising may no longer be practical in a digital age where access to information is critical. However, any relaxation of these restrictions should be carefully calibrated, ensuring that the core values of trust, fairness, and client protection remain intact. As of today this rule forbids direct or indirect solicitation through circulars, advertisements, personal communications, or other means. On 08.07.2024,³⁶ following the Madras High Court's judgment in WP Nos. 31281 and 31428 of 2019, the BCI reaffirmed this ban in a press release, directing State Bar Councils to enforce disciplinary actions against violators, including issuing cease-and-desist notices to online platforms.³⁷ This ensures the legal profession remains non-commercial and upholds its ethical standards.

Moving forward, a well-regulated framework that allows informative, ethical advertising could promote transparency and enhance public access to legal services without compromising the sanctity of the profession. By adopting clear guidelines and an oversight mechanism, India can strike a balance between modernizing the legal profession and upholding its cherished ethical standards.

³⁶ Bar Council Of India, Press Release Dated 08.07.2024, (July 8, 2024), <https://legaldir.in/wp-content/uploads/2024/07/BCI-press-release-dated-08072024-548486.pdf>. (last visited Oct 13, 2024).

³⁷ Ministry of Law and Justice, Regulation for Online Legal Services, Pib.gov.in (2024), <https://pib.gov.in/PressReleasePage.aspx?PRID=2043470> (last visited Oct 13, 2024).