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RIGHT TO ADVERTISEMENT OF INDIAN LEGAL PROFESSIONALS

Authored by –

Nishtha Wadhawan and J Tanisha

Abstract

Despite having a thousand lawyers enrolled with bar council every year, neither law professionals nor the law firms have the right to advertise their profession. Anything an attorney does that might sway a potential client is forbidden. This is stated in Advocates Act of 1961, and Bar Council of India ("BCI") Rules. The historic British idea that law is a "noble profession" is the foundation for the ban on advertising in the Indian society. It may be argued that in the information age, customers of legal services have the same rights as customers of other services to learn more about the attorney or law firm they are hiring and to make the best use of their money. Despite this ban, a lot of large law firms nevertheless find a way to advertise, which disadvantages smaller companies.

Keywords: Lawyers, Advocates Act, Bar council of India Rules, Advertising, Legal services.

Introduction

One of the fundamental aspects of operating any kind of business, profession, or organisation in the modern world is the right to advertise. It offers a platform for disseminating any kind of information to the general public, provided that the advertisement conforms to the guidelines established in this regard. The communication may take the form of letters, emails, newspapers, magazines, events, etc.

Article 19 (1) (a) of the Indian Constitution has been amended to include advertisements and commercial speeches. The Supreme Court acknowledged this as a component of freedom of speech and expression when it ruled in the case of Tata Press (1995 SCC (5) 139) that the general public has a right to receive commercial information and that both the speaker and the recipient of the speech are entitled to protection under Article 19 (1) (a) of the Indian Constitution. When expanding the protection provided by the aforementioned Constitutional clause, it was determined that the commercial nature of such expressions was irrelevant.

Additionally, just like any other fundamental right, the freedom of speech and expression does not come with any guarantees. In order to protect the general welfare, the state may impose reasonable restrictions on the exercise of this right under Article 19(2) of the Indian Constitution.

But in the case of legal practitioners, this freedom to promote has been completely eliminated. Any attempt by a legal expert to promote their services through a court of law is completely prohibited. This includes any form of advertising regarding legitimate services offered by someone appearing as a legal advisor in accordance with the law.¹

In India, lawyers do not have the privilege to promote and market their services in an effort to attract clients. In actuality, it is forbidden by law. This is stated in section 49 (1)(c) of the Advocates Act of 1961, read with rule 36 of the Bar Council of India ("BCI") Rules.² The aforementioned rule ["Rule 36"] is ambiguously worded and appears to completely forbid the right to advertise for lawyers. We arrived at the current state of the legislation as a result of an adjustment to the BCI regulations in 2008. As written, Rule 36 limits the amount of basic information attorneys may provide online to their name, enrollment number, professional and academic credentials, and fields of practise. As written, Rule 36 limits the amount of basic information attorneys may provide online to their name, enrollment number, professional and academic credentials, and fields of practise. Any additional information outside of what is required by Rule 36 will subject the attorney to disciplinary action under section 35 of the Advocates Act, 1961.³

¹ Kartik Gupta, *Right to Advertisement of Legal Professionals in India*, (Nov 11, 2022, 12:00 PM), <https://www.legalserviceindia.com/legal/article-3261-right-to-advertisement-of-legal-professionals-in-india.html>.

² 36. An advocate shall not solicit work or advertise, either directly or indirectly, whether by circulars, advertisements, touts, personal communications, interviews not warranted by personal relations, furnishing or inspiring newspaper comments or producing his photographs to be published in connection with cases in which he has been engaged or concerned. His sign-board or name-plate should be of a reasonable size. The sign-board or name-plate or stationery should not indicate that he is or has been President or Member of a Bar Council or of any Association or that he has been associated with any person or organization or with any particular cause or matter or that he specializes in any particular type of worker or that he has been a Judge or an Advocate General.

³ [Sakshi Saraogi, India: Reimagining The Lawyer's Right To Advertise In A COVID-19 World: The New Normal](https://www.mondaq.com/india/advertising-marketing-branding/969156/reimagining-the-lawyer39s-right-to-advertise-in-a-covid-19-world-the-new-normal), (Nov 12, 2022, 12:30 PM), <https://www.mondaq.com/india/advertising-marketing-branding/969156/reimagining-the-lawyer39s-right-to-advertise-in-a-covid-19-world-the-new-normal>

Constitutional Validity of Rule 36

According to Section 19(1)(a) of the Indian Constitution, freedom of speech and expression is guaranteed. The only circumstances in which this freedom is not guaranteed are when it is necessary for the sovereignty, integrity, and security of the nation, friendly relations with other nations, public order, morality, or situations involving defamation, incitement to commit a crime, or contempt of court. The Hon'ble Supreme Court ruled in *Tata Yellow Pages v. MTNL*⁴ that the freedom of speech and expression includes commercial communication, or advertisement. Additionally, the court determined that as the legal profession contains business propositions, advertising falls under the definition of commercial speech in the case of *Dharamvir Singh v. Vinod Majajan*.⁵

The legal profession was recognised as an industry by the courts in *Bangalore Water Supply v. A Rajappa*⁶ which shows that the idea of nobility in the legal profession's traditional beliefs has changed into a routine business-like role. A further factor that gives the profession a commercial tone is the dominance of a lawyer's responsibility to their client over their duty to justice as an officer of the court.⁷ As a result, despite criticism and debate regarding the legitimacy and chronic validity of the restriction on law firm advertising, a court of law has not ruled that Rule 36's provisions violate the constitution. In addition, the regulations of the BCI were established legally in accordance with the Advocates Act.⁸

Judicial Approach

Advertising by lawyers is considered to be repugnant behaviour, as the Madras High Court explained in 1967⁹, because the standards that lawyers jealously develop and set for themselves are unworthy of the honour, dignity, and position of the noble profession. A major portion of the population in a nation like India is uneducated, which creates an environment where dishonest lawyers may take advantage of the public, despite the fact that the practise of law is traditionally one with a focus on public service.

The Indian judiciary has significantly contributed to maintaining the honour of the legal profession and ensuring that lawyers can discharge their duty to the Court without

⁴ *Tata Yellow Pages v. MTNL*, 1995 AIR 2438, 1995 SCC (5) 139

⁵ *Dharamvir Singh v. Vinod Majajan*, AIR 1985 P H 169

⁶ *Bangalore Water Supply v. A Rajappa*, 1978 AIR 548

⁷ *K. Vishnu v. National Consumer Dispute Redressal Commission*, 2000 (5) ALD 367

⁸ *Vanshika Agarwal, The Ban on Advertising as a Canon of Ethics for Lawyers*, 4 (4) IJLMH 182 - 186 (2021).

⁹ *CD Sekkizhar v. Secretary Bar Council*, AIR 1967 Mad. 35.

interference. It was determined in the case of *R. N. Sharma, Advocate v. State of Haryana*¹⁰ that an advocate is an officer of the court and that the legal profession is not a trade or a business. Rather, it is a noble profession, and advocates must work to secure justice for their clients within the bounds of the law.

What constitutes advertising in the legal profession, however, is a significant topic. The same has been established under numerous judgements of the Indian Courts in addition to the BCI Rules. In the case of *Government Pleader v. S. A. Pleader*¹¹, it was decided that sending a post card with only his address, name, and description on it would be considered advertising on his behalf and a violation of the ethical norms of conduct for advocates.

In *Re: (Thirteen) Advocates v. Unknown*¹², it was determined that writing newspaper articles in which the author identifies himself as an advocate working in courts is a low-cost method of endorsing one's services. In *S. K. Naicker v. Authorized Officer*¹³, the Madras High Court ruled that an advocate's nameplate or sign board should be of a moderate size and that it is improper for an advocate to sign articles for publication in newspapers because both actions constitute unauthorised legal advertising.¹⁴

Position of Law in the United Kingdom

Historically, all types of advertising for lawyers were prohibited in England under the outdated Victorian laws. However, prohibitions on advertising were loosened in the 1970s due to the danger of competition and its effects. The restriction was overturned following an examination by the Monopolies and Mergers Commission in 1970 and the Office of Fair Trading in 1986, when the benefits of legal marketing were emphasised.¹⁵ A new regime for advertising was created as a result of the strict rules of advertising. The Solicitors' Publicity Code, 1990, which was most recently updated in 2016 to reflect modern practises, currently regulates advertising for all legal professionals. Additionally, the Solicitors Regulation Authority (SRA) should approve all information provided by advocates for public consumption, and the SRA should be in charge of all advertising regulations. The courts have ruled that no advertisement should compromise the reputation of the legal profession.¹⁶

¹⁰ R. N. Sharma, *Advocate v. State of Haryana*, 2003(3) RCR (Criminal) 166 (P&H).

¹¹ *Government Pleader v. S. A. Pleader*, AIR 1929 Bombay 335.

¹² *Re: (Thirteen) Advocates v. Unknown*, AIR 1934 All 1067.

¹³ *S. K. Naicker v. Authorized Officer*, (1967) 80 Mad. LW 153.

¹⁴ Isha Kalwant Singh, *Advertising by Legal Professionals*, BHARATI LAW REVIEW, Oct – Dec, 2016 at 277, 278.

¹⁵ Maya Goldstein Bolocan, *Professional Legal Ethics: A Comparative Perspective*, CEELI Concept Paper Series 18 (2002).

¹⁶ LawTeacher. *Advertising Done by the Attorneys for the Services They Provide*, (Nov. 11, 2022 01:15 PM) <https://www.lawteacher.net/free-law-essays/constitutional-law/advertising-done-by-the-attorneys-for-the-services-they-provide-constitutional-law-essay.php?vref=1>.

Position of Law in the United States of America

With a complete ban on advertising, the United States and India both have comparable limitations. Similar to the current Rule 36 in India, Canon 27 of the American Bar Association's (ABA) Profession Ethics stated that advertising by legal professionals was improper and prohibited¹⁷. After the US Supreme Court's ruling in *Bates v. State of Arizona*, this position was later modified in 1977. In one instance, two attorneys launched free legal services for those who couldn't afford representation. They admitted that the only practical way to run their business was to advertise their services, which was against the law at the time.

The Court ultimately decided that such a broad prohibition on advertising would violate the First Amendment's guarantee of the freedom of speech and expression in this case and be unconstitutional. As a result, the US Supreme Court declared¹⁸ that the freedom to advertise is a constitutionally protected right. Currently, the 1983 Model Rules of Professional Conduct govern advertising in the United States. All forms of advertising are acceptable as long as they don't contain false or deceptive information about the lawyer's services or promote professional employment for financial gain.¹⁹

Evolution of the Legal Profession

Opinions on whether or not legal professions should be allowed to employ advertisements are equivocal, with one group of people favouring this. Others think that this business-oriented perspective might compromise the goals of public policy on access to legal services. The definition of an advertisement and what its adjuncts are in the system is another area where there is uncertainty.

Due to the ambiguous rule regarding marketing in the nation, it has been observed that hoardings and posters have been used to advertise the services that attorneys perform along with their names and titles. Media reports on cases frequently feature the conclusions and rulings of illustrious clients; these are then published on media channels in the form of interviews and recordings, where they serve as a vehicle for commercialization. As a way to elevate their firm, some well-known legal firms also employ the names of illustrious attorneys. Publicizing articles published by colleagues, displaying the success of companies

¹⁷ Model Rules of Professional Conduct, 1969

¹⁸ *Bates v. State of Arizona*, 433 U.S. 350.

¹⁹ Rule 7.3, Model Rules of Professional Conduct, 1983

through the accomplishments of their employees, and giving clients with a range of disclaimers before hiring a company are still other ways of advertising. The public must recognise that not all actions can be restricted because this is then considered advertising.²⁰ However, one must face the simple reality that synchronised advertising has been curbed by a number of regulations brought about by the legal profession's and legislation connected to consumerism's swift developments.

The decision in *K. Vishnu v. National Consumer Disputes Redressal Commission & Anr.* demonstrated that the Consumer Protection Act, 1986, was a byproduct of the legal profession. Under the direction of S.V.S. Raghavan, a report was produced that came to the inevitable conclusion that legislative restrictions must be reduced because they limit the opportunities for law firms to grow and compete globally and represent India's expertise, which limits consumer freedom and choice.²¹ In view of this case, the Supreme Court defined legal services as falling under the Industrial Disputes Act, 1947, definition of an industry.

Advantages of permitting Legal Advertising

The following are some benefits of allowing legal advertising:

1. More chances for novice attorneys and independent councils

If advertising were permitted, new attorneys may promote their services and assert equal access to the legal market.

2. Rights to knowledge and awareness

The restriction on advertising prevents potential clients from having access to the best attorneys. In order to help the people make decisions, advertising is essential.

3. Recognition

Indian lawyers are less exposed to the global market than foreign legal professionals, which disadvantages them both domestically and globally. In this era of globalisation, advertising would enable Indian attorneys and law firms to draw potential overseas clients.

²⁰ Lalit Bhasin, *Law firms find loopholes to promote their services*, (Nov 11, 2:00 PM) <https://www.livemint.com/Companies/vqsXsEeGYuqPli9I8TPL00/Law-firms-find-loopholes-to-promote-their-services.html>

²¹ *K. Vishnu v. National Consumer Disputes Redressal Commission & Anr.*, (2000) ALD (5) 367

4. Rural communities' limited access to the internet

India is not a very technologically developed nation, and a large portion of the rural population lacks access to essential internet services. As a result, Rule 36, which permits attorneys to show pertinent information, is insufficient because the public cannot access other types of advertising.

Disadvantages of permitting Legal Advertising

1. Misuse

Legal Advertising will be open to terrible abuse by large law firms and wealthy attorneys if it is not adequately regulated by the appropriate authorities.

2. Priorities changing

The BCI and the Indian Courts are reluctant to permit legal advertising because it would cause lawyers to become unhealthy competitors rather than focus on providing better services.²²

Conclusion

The legal profession is unquestionably a very respectable one, thus it cannot in the slightest degree be considered as an exchange or commerce in a society like India where values and ethics are prioritised. However, according to the law, any restriction imposed due to a legitimate concern for the public must be reasonable, that is, not arbitrary or unreasonable in nature, or what is necessary due to a legitimate concern for people generally. However, an all-out boycott is not an answer and is therefore excessive in nature.

As the amount and variety of advertising continue to grow every year, the advantages and disadvantages of lawful advertising are frequently discussed. On the plus side, lawyer advertising informs the public about current legal concerns and lets them know that there are attorneys available to assist them. Additionally, lawyer advertising meets the practical purpose of enlightening people about the circumstances in which it may be necessary to seek legal advice. On the down side, legitimate advertising can be manipulated to become less

²² Aadhitya Logeshen R., *Advertising by advocates in India: The right to advertise professional ethics*. 6 INTERNATIONAL JOURNAL OF LAW, 01-03 (2020)

illuminating and more smooth. That kind of promotion has been the target of laws and regulations. The ban on legal advertisements in India has so far not shown to be healthy for the Indian economy and also for Indian consumers. There is a need for the pattern to change given the period we are in. As a result, there is a desire and need to end this boycott as well as to develop policies and a plan to monitor and manage genuine advertising. A panel might be set up to ensure consistency, but limiting authorised advertising would impede India's progress and growth. Legal advertising has both positive and negative sides, but in today's globalised society, it is necessary to promote lawyers in order to provide better services to Indian citizens and facilitate the quick resolution of issues there. If there is advertising for lawyers, everyone can easily find a lawyer, which will aid in the expansion of the legal industry in India.

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