

ISONOMY IN ADVERTISING RIGHTS: A STUDY TO INVESTIGATE NUANCES OF LEGAL ADVERTISING AND HOW IT SHOULD BE REGULATED

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Abstract

Law being considered as one of the noblest profession has been restricting the scope of advertising its services. However, this fear of commercializing the profession has in no way contributed to upholding its nobility but rather degraded its quality of services. The right kind of a lawyer can be found when information about their legal services is accessible to the right kind of audience. For making information publicly known the right kind of media has to be used. Advertising is one kind of harmless medium which not only enables people to sell their information but also ensures that it reaches the target audience. Many countries around the world have permitted at least some forms of advertising by lawyers. Introduction of guidelines and regulations regarding advertising appears to be the emerging norm. In India, the wide ambit of legal advertising is yet to be recognized and explored. It must be remembered that, lawyers are also the citizens of this country and deserve the same access to resources like others including the right to advertise. This freedom to advertise will guide people to make informed choices for hiring a lawyer. But as no freedom should be absolute, advertising of legal services is also bound have constraints. Therefore, regulating legal advertisements becomes paramount to ensure that lawyers play within the rules of the game.

Keywords: Legal Advertising, Lawyers, Judicial System, Indian Constitution, Freedom to

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INTRODUCTION

The legal profession is a fraternity by itself and is a master of its own affairs.¹ It has the power of having its own rules of etiquette, conduct and media communication. This power originates from the fact that since India achieved Independence, legal profession is considered to be a noble profession, instead of a commercial service.²

In 1967, advertisement in any form by any member of the legal fraternity was considered as misconduct³ and this view still holds true today as in October, 2019, the Bar Council of Delhi took action against many advocates and NGOs for advertising their work on social media platforms like Facebook and WhatsApp.⁴

This article describes the legal provisions and the reasoning behind them for banning legal advertisements. It analyses the view of both the proponents and opponents of this ban and also discusses the current status of legal advertising in other countries. It highlights how some members of the profession are able to find some loopholes between the rules and lastly, suggests on imposing some regulations in this sector.

POSITION OF LAW

The Bar Council of India has the general power to make rules which prescribe that a standard

¹ *C.D. Sekkizhar v. Secretary, Bar Council, Madras* AIR [1967] Mad 35

² *The Bar Council of Maharashtra v. M. V. Dabholkar*, [1976] 2 SCC 291; *Chairman, M.P. Electricity Board v. Shiv Narayan* [2005] 61 ALR 791; *Advocates Association of Western India v. Union of India*, Writ Petition No.1927 of 2011 Bombay High Court

³ Supra note 1

⁴ Sushil Batra, 'Bar Council takes against advocates, NGOs, soliciting professional work through advertisements', ANI News, (October 29 2019), Available at: <https://www.aninews.in/news/national/general-news/bar-council-takes-action-against-advocates-ngos-soliciting-professional-work-through-advertisements20191029131256/> (Accessed on: 11.06.2020)

of professional conduct and etiquette must be followed by the advocates.⁵ An action by the disciplinary committee can be taken when an advocate has been found guilty of any professional or other misconduct by a State Bar Council.⁶

Advocates Act 1961 Chapter 2 Rule 7(1)(b) provides the standards of professional conduct and etiquette for advocates as one of the functions of Bar Council of India.

Rule 36:

An Advocate shall not solicit work or advertise, either directly or indirectly, whether by circulars, advertisements, touts, personal communications, interview not warranted by personal relations, furnishing or inspiring newspaper comments or producing his photograph to be published in connection with cases in which he has been engaged or concerned. His signboard or name plate should be of a reasonable size. The signboard or name plate or stationery should not indicate that he is or has been President or Member of a Bar Council or has been President or Member of a Bar Council or of any Association or that he has been associated with any person or organisation or with any particular cause or matter or that he specialises in any particular type of work or that he has been a Judge or an Advocate General.⁷

On 28th March, 2008, following the decision of the Supreme Court in *V.B. Joshi v. Union of India*,⁸ Rule 36 of Bar Council of India Rules was amended to incorporate a proviso that permits advocates to furnish website information such as the name of the State Bar Council where they originally enrolled, professional and academic qualifications, area of practice

⁵ The Advocates Act, 1961 (Act no. 25 of 1961), s 49(1)(c)

⁶ The Advocates Act, 1961 (Act no. 25 of 1961), s 35

⁷ Rule 36, Bar Council of India Rules

⁸ *V.B. Joshi v. Union of India*, Writ Petition (Civil) No. 532 of 2000

amongst other things.⁹

PURPOSE ENVISAGED WHILE DRAFTING RULE 36

As stated earlier, Rule 36 of Bar Council of India Rules bars legal advertising in India on the simple notion of law being a noble profession. It is believed that permitting advertising in the law profession will affect the dignity of the profession as it will breed unhealthy competition among the law fraternity with regards to overcharging fees, disproportionate spending on advertisements by different firms and an overall distraction from providing quality service.¹⁰

The legal profession cannot be treated as a trade or business because as an officer of the court, an Advocate has to secure justice for those in need within legally permissible limits.¹¹

In the words of Justice Krishna Iyer- *“the canon of ethics and propriety for the legal profession totally taboo conduct by way of soliciting, advertising, scrambling and other obnoxious practices, subtle or clumsy, for betterment of legal business.”*¹² The Supreme Court in *Bar Council of Maharashtra v. M. V. Dabholkar*,¹³ observed that law is a branch of administration of justice; not a money-making trade and so commercial competition by the way of circulars and advertisements should not vulgarize the profession. So, a postcard sending the name and description of work is considered to be violative of professional rules.¹⁴

A writer, publishing an article in a newspaper under the signature of being a practicing advocate in the courts is also deemed to be cheap way of advertising, that is not encouraged.¹⁵

⁹ Bar Council of India, *Amendment to Rule 36, in Section IV, Chapter II, Part VI of the Bar Council of India Rules regarding advertisement by Advocates*, Resolution No. 50/2008 (March 24, 2008)

¹⁰ Isha Kalwant Singh, ‘Advertising by Legal Professionals’ (2016) *Bharati Law Review*, p. 277

¹¹ *R. N. Sharma, Advocate v. State of Haryana*, [2003] 3 RCR (Cri) 166 (P&H)

¹² *The Bar Council of Maharashtra v. M. V. Dabholkar*, (1976) 2 SCC 291 para. 23

¹³ *Ibid*

¹⁴ *Government Pleader v. S. A Pleader*, AIR [1929] Bombay 335

¹⁵ *In Re: (Thirteen) Advocates v. Unknown*, AIR [1934] All 1067

In *J.N. Gupta v. D.C. Singhania & J.K. Gupta*,¹⁶ the advocates had given advertisements in the newspaper to notify the public about a change in its address. Thereafter, they made a publication in the International Bar Directory, giving information about their employees under the headings- “Singhania & Company” “firms major cases”, and “representative clients” and this information related to eminent clients and cases was considered to be a professional misconduct. In another case, the Madras High Court held that writing articles for publication in newspaper under an advocate’s signature and not having a moderate- sized sign board or name plate, is considered to be a breach of professional etiquette, otherwise both the actions amount to unauthorised legal advertising.¹⁷

Under our present system, many lawyers, especially young ones, are forced to be deceptive and dishonest. Time and again lawyers run for office, saying to the world, "I want to serve."¹⁸ However, their real purpose is to get their name in front of the public.¹⁹

PERILS OF MODERN ADVERTISING

Lawyers with their advertisements can be led astray by the Internet. The danger of this modern technology is the freedom to put up a completely bogus advertisement in such a convincing way, that people can be misled. Consumers recognize the existence of puffery,²⁰ but that does not stop them from believing in false advertisements and making wrong comparisons between law firms or lawyers. Internet advertising can lead to unfair competition as there is no legal limit on the number of internet domains, a law firm or a

¹⁶ *J.N. Gupta v. D.C. Singhania & J.K. Gupta*, B.C.I. TR. Case No. 38/1994, Disciplinary Committee proceedings of Bar Council of India

¹⁷ *S. K. Naicker v. Authorised Officer*, [1967] 80 Mad. LW 153

¹⁸ James G. Frierson, *Legal Advertising* (1975) 2 Barrister 6

¹⁹ *Ibid*

²⁰ Fredrich C. Zacharias, ‘What Direction Should Legal Advertising Regulation Take’ (2005) Professional Lawyer Symposium, pp. 45,52

lawyer can own.²¹ If the legal sector will have an unregulated access to advertise anything and anywhere on the internet, then legal advertising will lead to more confusion instead of facilitating the potential consumers to make an informed-decision. Another problem with unregulated internet advertising can be that a lawyer's information can mislead the viewers living outside his jurisdiction of practice.²² Then extra efforts have to be undertaken by the potential consumers to identify which lawyer is legally practicing in their state or country.

The Bar Council of India has not recognized online portals which give a leeway to lawyers to overcrowd the webpage with pop-ups. In 2018, the Allahabad High Court issued orders to 15 online portals which included 'Justdial', 'MyAdvo', 'Lawrato', etc. to adhere to Rule 36 and Rule 37 of the BCI Rules which prohibits advertising, touting and solicitation of work by lawyers, because any deviation from it would incite legal consequences.²³

Excessive advertising can artificially inflate the expectations of consumers and leave them dissatisfied with the services rendered by their lawyer.²⁴ This will put them back in the same position of dissatisfaction as when there was a complete ban on advertising.

REFUTING THE ARGUMENTS AGAINST RULE 36

According to authors' point of view, freely available information in the form of advertisements will assist the consumers to find their right lawyer. When consumers get to see a fair competition, only then the quality of services in the legal sector will improve and

²¹ Ibid at 62

²² J. T. Westermeier, 'Ethical Issues for Lawyers on the Internet and World-Wide Web' (1999) 6(1) Journal of Law and Technology, p.5

²³ An interim order was issued in the Writ Petition, *Yash Bharadwaj v. Union of India*, WP No. 23328/2018 (MB) dated December 12, 2019. Pursuant to this order, a contempt order was passed to the same online portals on February 4, 2020.

²⁴ Terence Shrimp and Robert Dyer, How the Legal Profession Views Legal Service Advertising, (1978) 42 Journal of Marketing, pp. 74, 76

people can make decisions which they won't regret later.²⁵ As of now, a lawyer's online website and positive word of mouth publicity are the only useful tools available with people to select their lawyer. Clients will build a stronger fiduciary relationship with their lawyers when they have some basic useful information of the lawyer beforehand such as the matters he has argued before the court, government policies he has worked upon, etc. The client's decision is given primary consideration and hence advertising by lawyers will make potential clients mindful of the current legal scenario and tells them which lawyers are suitable and willing to help them.²⁶

From an economic perspective, advertising would raise the demand for legal consultancy services. The prevalent argument against legal advertising is that a lawyer cannot know in advance what his charge will be thus he has no price to advertise. However, this should never stand in the way to advertise because services without a price tag can also be advertised and a margin can always be fixed by the lawyer.²⁷ This will also increase transparency in terms of their fees and encourage competition to provide a more responsible service. Thus, both the service provider and the buyer will be contended with each other because of useful public information.

Indeed, there are concerns regarding gross misuse by lawyers such as furnishing dishonest information or shifting of focus of lawyers from sharpening their legal acumen to marketing. But they are not large enough to stand in the way of permitting legal advertising because these can be managed by the appropriate regulations and guidelines governing legal advertising. Moreover, the legal profession's advantage of helping clients and providing

²⁵ Max J. Luther, III, 'Legal Ethics: The Problem of Solicitation' (1958) 44(6) American Bar Association Journal, p. 554

²⁶ Shivam Gomber, 'Right to Advertise for Lawyers' (2016) 3 Udgam Vigyati

²⁷ Supra note 22

assistance to potential clients outweighs these concerns. For example, it would provide opportunities to young lawyers because big lawyers and firms any way advertise themselves through sponsoring and hosting events and seminars.²⁸ It would also provide Indian lawyers global recognition, owing to the prohibition of legal advertising, as they are losing out on potential clients at an international level.²⁹

CONSTITUTIONAL VALIDITY OF RULE 36

Historically, lawyers have a reputation of serving the public interest.³⁰ Well-informed decision-making in aggregate is a matter of public interest.³¹ For having a well-informed citizenry, free flow of information is necessary and hence right to free speech becomes indispensable.

Article 19 of Constitution of India provides six liberties to the people of India, one among which is freedom of speech and expression. This freedom under Article 19 can have reasonable restrictions namely, defamation, contempt of court, decency or morality, security of the state, friendly relations with other states, incitement to an offence, public order and maintenance of the sovereignty and integrity of India.³² Now, Rule 36 does not violate “public order” as public order has been held to be synonymous with public peace, safety, tranquillity and the like.³³ Moreover, according to Supreme Court of India it is possible that a right may not have express mention in Article 19 but can have implicit mention in rights of

²⁸ Supra note 10

²⁹ Findlay Christopher (ed.), *Priorities and Pathways in Services Reform — Part II: Political Economy Studies* (World Scientific Studies in International Economics, 2013)

³⁰ ‘Legal Advertising: Should Legal Advertising Be Restricted?’, Available at: <https://law.jrank.org/pages/8137/Legal-Advertising-SHOULD-LEGAL-ADVERTISING-BE-RESTRICTED.html> (Accessed on: 25.06.2020)

³¹ K.K. Matthew, ‘Commercial Advertisement and Freedom of Speech’ (1978) 4 SCC Journal p. 1

³² The Constitution of India, art 19(2)

³³ *O.K. Ghosh v. E.X. Joseph*, AIR [1963] SC 812

Article 19³⁴. Rule 36 not only affects the freedom of speech and expression of lawyers to advertise their services but also affects the rights of clients and prospective clients to information both of which are enshrined under Article 19(1)(a).

The scope of right to advertise is fully and finally considered by court in *TATA Yellow pages v. MTNL*³⁵, where the Supreme Court concluded that commercial speech cannot be denied the protection of Article 19(1)(a) just because it arose from a commercial source. Thus, legal advertising should also be granted protection under the provision because there stands no reason for not weighing it on the same scale as other types of commercial advertising.

The judiciary in many precedents like *PUCCL v. UOI*³⁶ held that right to receive information comes under the umbrella of right to freedom of speech and expression. In the concerned case, it was held that voters have the right to receive information because an informed decision can be made only by being aware of the antecedents of candidates.³⁷ Equating the same reasoning to the current issue, potential clients should not be barred to receive information about lawyers so as to make an informed choice.

In addition to violating free speech, Rule 36 also violates the right to practice any profession or to carry on any occupation, trade or business. It does not satisfy the reasonable restrictions to this right provided under Article 19(6).³⁸ For an activity to be against public interest, it has to be immoral, obscene or presents something which goes against public morality.³⁹ However,

³⁴ *Maneka Gandhi v. Union of India*, AIR [1978] SC 597; *Kharak Singh v. State of Uttar Pradesh*, (1964) 1 SCR 332; For conjoint reading see also *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamal*, (2005) 8 SCC 534

³⁵ *Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd.*, AIR [1995] SC 2438, p. 2446

³⁶ *People's Union of Civil Liberties v. Union of India*, AIR [1997] SC 568

³⁷ *Ibid.*

³⁸ The Constitution of India, art 19(6)

³⁹ *Chintaman Rao v. State of M.P.*, AIR [1951] SC 118

advertising is not against public interest and is in fact, a resource or mechanism which helps in mechanisms and resources for effectively carrying on a trade or occupation⁴⁰. Thus, there stands no logical and legal explanation of restricting legal advertising through Rule 36.

LAWYERS TAKING ADVANTAGE OF LOOPHOLES IN RULE 36

Even on the face of a ban on advertisements, some lawyers are able to see some options in-between.

Law firm directories available on the internet give the exact same profile as the firm does on its own website. The information available on such directories is only limited to name, email-id and telephone number. But the number of cases the lawyer has dealt with and his contributions to the field of law through his research papers are unknown to potential consumers. Although this kind of information should be available to all, it is not permitted under the law. Hence, going by the principle laid down by Rule 36, such kind of unregulated internet advertising are directly contravening the law. This is because, thus, this information in the author's opinion is completely in consonance with the law. But what comes in contradiction is that this online information can be easily accessed at the website of the firm to which that lawyer is affiliated or This information on the website is comes with a disclaimer that it does not violate Rule 36 and it does not amount to advertising, but in fact it can be accessed by just a click of the mouse. They in no way fall short of displaying the concerned lawyer's supremacy over more number of activities than others in the fraternity, along with numerous claims which work in the same way as an advertisement works in selling its product.

On a different note also in the world of internet, it is very difficult to say that what is

⁴⁰ *Sakpal Papers v. Union of India*, AIR [1962] SC 305

preached is practiced, as there is a priority listing of the websites even on the google search engine and sponsored websites appear on the top of the search list. There is also a case of Google AdWords which captures a consumer's typing and search history on their devices and then enables them to see the related ads to ensure more efficient and competitive advertising. This however, is not practiced in India in the field of legal advertising⁴¹ but its impact if allowed can be horrendous.

When the BCI has put regulations on the legal advertising, often it is found that there are no restraints on different modes of indirect advertising other than print media. For example, lawyers can advertise through election manifestos. Even the recent trend of having yourself listed on those lead generation sites like Just Dial, Sulekha Yellow Pages,. Getlocal etc. flouts the rules.

Even the recent trend of having yourself listed on those lead generation sites like JustDial, Sulekha Yellow Pages, Getlocal etc. flout the rules. Can these be regarded as same as listing yourself on the directory? The authors highly doubt so because listing in these can have priority appearance, once a lawyer manages to pay a hefty fee to these sites. And the other question which also arises is what about the rating they receive? Can these ratings also work as a type of advertisement for the lawyer? If it is seen from the angle of public interest it helps the masses to choose better but at the same time, it also contradicts the age-old principle of law being a noble profession and soliciting work being considered a misconduct.

INTERNATIONAL SCENARIO

United Kingdom

⁴¹ Connor Mullin, "Regulating Legal Advertising on the Internet: Blogs, Google & (and) Super Lawyers" 20 *Georgetown Journal Legal Ethics* 835 (2007).

Traditionally there was no rule against legal advertising. Although, there was no express legislation, the courts used to exercise its powers to discipline solicitors until a ban on advertising was introduced in 1934.⁴² The reasoning behind such ban was majorly economic, like undercutting the prices of established or informal fee schedules⁴³, to combat downward pressure put on conveyancing fees by the building societies,⁴⁴ aggravated conditions because of Great Depression⁴⁵ etc. However, with time restrictions, the rules started getting relaxed. For instance, by 1974, the Law Society through its “Guide to Professional Conduct” allowed listing of lawyers’ and firms’ names in directories, advertising by local law societies and advertising for work by lawyers in legal press⁴⁶ etc.

UK is divided into three separate jurisdictions of England and Wales, Scotland, and Northern Ireland.⁴⁷ Each jurisdiction has its own legal system and legal profession, with England and Wales and Northern Ireland recognising the two separate branches of barrister and solicitor and Scotland recognising the branch of advocate.⁴⁸ It was in 1984 that The Law Society Council decided to lift the traditional ban on legal advertising thus on October 1, 1984 the Council granted solicitors to advertise in England and Wales⁴⁹ considering government’s

⁴² Brian Abel-Smith and Robert Stevens, *Lawyers and the Courts* (Heinmann Educational Books, London, 1967), p. 204

⁴³ “The Solicitors’ Practice Rules”, (1936) 182 Law Times, p. 266

⁴⁴ Supra note 42

⁴⁵ John Flood, ‘David B.L. Podmore, Solicitors and the Wider Community: Book Review’ (1980) 6(4) American Bar Foundation Research Journal, p. 1178

⁴⁶ Law Society, United Kingdom, *A Guide to the Professional Conduct of Solicitors* (1974)

⁴⁷ Hamish Amandson, *Free Movement of Lawyers* (Butterworths Law, London, 1992), p. 23

⁴⁸ Maimon Schwarzschild, ‘Class, National Character, and the Bar Reforms in Britain: Will there Always be an England?’ (1994) 9 Connecticut Journal of International Law, pp. 185, 223-24

⁴⁹ ‘Council Statement: Individual Advertising by Solicitors’ (1984) 81 *Law Society Gazette* 1802. The Law Society of England and Wales is an association founded in 1825 which governs solicitors in England and Wales. It has exercised control over aspects like code of ethics and practice rules of solicitors

intent to break up the solicitor's conveyancing monopoly.⁵⁰ In Scotland also advertising by both the barristers and solicitors is allowed and governed by Solicitors (Scotland) (Advertising and Promotion) Practice Rules 1995.⁵¹ While the laws of Northern Ireland are closely aligned with England and Wales,⁵² Solicitors in Northern Ireland are allowed to advertise but barristers are not and are their advertising practices are governed with The Solicitors Practice Regulations of 1997⁵³. Although, the right to advertise in UK was only restricted to press or radio, direct mailing to their professional connections and advertising on premises.

The Parliament of United Kingdom enacted the Legal Services Act of 2007⁵⁴ which sought to regulate legal services and provide free legal aid to reach the weaker sections of the society. The Bar Standards Board was created in 2007 as a representative arm of the General Bar Council of UK and had departments like professional practice, professional control, strategy and communications.⁵⁵ As of today, legal advertising is entirely regulated with the Bar Council and the Law Society has diverse roles which aim to reconcile public and professional interest.⁵⁶ However the current trend in UK can be culled out using the revised CCBE Code and the Solicitors' Publicity Code for England and Wales 2001 where a workable approach is adopted to check if a communication is not false or misleading; it is allowed to be

⁵⁰ S.H.Bailey and M.J. Gunn (eds.) *Smith & Bailey on the Modern English Legal System* (2nd ed, Sweet and Maxwell, London, 1991), pp. 137-38

⁵¹ Solicitors (Scotland) (Advertising and Promotion) Practice Rules, 1995

⁵² CCBE Code of Conduct for Lawyers in the European Community, 2002, Available at: http://www.ccbe.org/en/publications_en.htm (Accessed on: 21.05.2020)

⁵³ Louise L. Hill, 'Publicity Rules of the Legal Professions within the United Kingdom' (2003) 20 Arizona Journal of International Law and Competition, p. 323

⁵⁴ Legal Services Act, 2007, c. 29

⁵⁵ Bar Standards Board, Available at: <https://www.barstandardsboard.org.uk/> (Accessed on: 21.05.2020)

⁵⁶ Andrew Boon, *The Ethics and Conduct of Lawyers in England and Wales* (3rd ed, Hart Publishing, London, 2014)

advertised.⁵⁷

United States

The American Bar Association (ABA) proffered its advertising ban in 1908.⁵⁸ Thus, initially in United States, legal advertising was banned completely with the exception of business cards and letter heads.⁵⁹

However, as the scenario progressed in UK, with time US also saw progress as relaxation in the ban increased and advertising was permitted on various to the levels of media forums such as television and radio.⁶⁰ There were a series of decisions in US Supreme Court in 1960s which forced ABA to permit more and more exceptions to the ban and also paved the way to the long standing judicial dilemma regarding advertising ban.⁶¹ On June 27, 1977, in a 5 to 4 vote, in *Bates and O' Steen v. State Bar of Arizona*⁶² the Supreme Court of United States lifted the traditional ban on legal advertising, characterising it as a violation of attorney's First Amendment Rights of free speech under the United States Constitution. Although, the Supreme Court agreed that there should be some reasonable restrictions in terms of time, place and manner of advertising. The framework for guidelines was left to individual states.

Australia

Rule 36 of the Legal Profession Uniform Law Australian Solicitors' Conduct Rules

⁵⁷ Supra note 53

⁵⁸ Lori B. Andrews, *Birth of a Salesman: Lawyer Advertising and Solicitation* (ABA Press, Revised Edition, 1981), p. 1

⁵⁹ JM Altmans, 'Considering the A.B.A.'s Canons of Ethics' (2003) 71 *Fordham Law Review*, p. 6

⁶⁰ Harxus B. Steinberg, 'Lawyers and their Work by Quintin Johnstone and DanHopson, Jr.: Book Review Lawyers and Their Work' (1968) 17 *Catholic University Law Review*, p. 281

⁶¹ John B. Attanasio, 'Lawyer Advertising in England and the United States' (1984) 32(3) *The American Journal of Comparative Law*, p. 493

⁶² *Bates and O' Steen v. State Bar of Arizona* (1977) 433 U.S. 350

2015 provides that:

“36.1 A solicitor or principal of a law practice must ensure that any advertising, marketing, or promotion in connection with the solicitor or law practice is not:

36.1.1 false;

36.1.2 Misleading or deceptive or likely to mislead or deceive;

36.1.3 Offensive; or

36.1.4 Prohibited by law.

36.2 A solicitor must not convey a false, misleading or deceptive impression of specialist expertise and must not advertise or authorise advertising in a manner that uses the words “accredited specialist” or a derivative of those words (including post-nominals), unless the solicitor is a specialist accredited by the relevant professional association.”⁶³

Additionally, Australian Consumer law (formerly known as Trade Practices Act 1974) ⁶⁴ prohibits legal advertising of misleading or deceptive conduct (sec 18), false or misleading representations about services (sec 29), and misleading conduct as to the nature of services etc. (sec 34). In 1996 the Federal Bureau of Consumer Affairs issued Guidelines for the Advertising of Legal Services.⁶⁵ These guidelines aim to assist lawyers to avoid making misleading or deceptive representations⁶⁶. Hence, in Australia also the legal advertising is allowed with some very basic restrictions.

⁶³ Legal Profession Uniform Law Australian Solicitors’ Conduct Rules, 2015 (27 May 2015), Available at: <https://www.legislation.nsw.gov.au/#/view/regulation/2015/244> (Accessed on: 25.06.2020)

⁶⁴ The Competition and Consumer Act, 2010 of Australia; Originally enacted as the Trade Practices Act, 1974.

⁶⁵ Queensland Law Society, “What are the rules about solicitors’ advertising generally?”, Available at: https://www.qls.com.au/Knowledge_centre/Ethics/Resources/Advertising/What_are_the_rules_about_solicitors%E2%80%99_advertising_generally (Accessed on: 25.06.2020)

⁶⁶ Ibid

THE IDEA OF REGULATING ADVERTISEMENTS

There poses a serious issue to the BCI rules because of the presence of number of advertising mediums in the recent times like print media, radio, television, web pages, emails, chat rooms, social media etc.

The main contention of opposing of the advertising in legal profession is that unregulated advertising would denigrate the profession and cause harm to the public rather than assuring truth and honesty.⁶⁷ That's why regulating under the strictest rules is necessary to ensure that people are not engaged in unnecessary litigations. Advertising "25 percent off this week if you want to sue your neighbor" obviously would not be proper, nor in the public interest.⁶⁸ Prohibition on legal advertising, especially quality claims made by lawyers protects the public from puffery, but consumers today are already accustomed to discount the puffery in communications about products.⁶⁹ In fact, self-laudatory statements made by lawyers have the potential of being misleading and will automatically be prohibited by appropriated regulations requiring advertisements to be true, accurate and non-misleading.⁷⁰

In the present scenario regulation is even far more difficult than the early times because of two reasons first that the justification for regulation on the basis of image concerns is no longer valid, second deals with the specific dangers that modern advertising creates.⁷¹ Elaborating on the first reason today almost all law firms have websites which are self-laudatory and in defence they just display a disclaimer before.

⁶⁷ Supra note 18 at p. 9

⁶⁸ Ibid

⁶⁹ Lori B. Andrews, 'Lawyer Advertising and the First Amendment' (1981) *American Bar Foundation Research Journal*, pp. 967, 1005

⁷⁰ Ibid

⁷¹ Supra note 24

Sadly, in this modern legal profession a lawyer's image is not only based on what he does but also on various other things. For instance, how he conducts himself in public, his image on television, literature, what other people say about him, even the shows like *Boston and Suits* have been influencing the image of lawyers in public eye. In short, it is simply unrealistic to expect legal advertising rules and enforcements of those rules to shore up the profession's image.

Even if legal advertising is regulated, one does not know how it will affect the demand and prices of various legal services, how will the behavior of potential consumers change and most importantly, whether it will improve the decision-making process of potential consumers. Moreover, implementation issues like what can be allowed to advertise, which kind of media platform will be allowed to advertise on and who in legal services should be allowed to advertise arise.⁷²

The authors are against the total prohibition on legal advertising and support advertising within restrained limits. Following are some recommendations for regulating and increasing the scope of advertising in law:

1. Advocates should not use other lawyer's or law firm's names to advertise. One lawyer should not belittle the other, also he should not be allowed to put in the name of the losing lawyer if he is mentioning any of his important case in his advertising claims.
2. The legal profession is no longer service-oriented, but it has also become a trade.⁷³ Lawyers are entitled to charge the appropriate fees from their clients, but they must also use their skills to dutifully render free legal aid.

⁷² Terence Shrimp and Robert Dyer, 'How the Legal Profession Views Legal Service Advertising' (1978) 42 *Journal of Marketing*, pp. 74, 76

⁷³ *C. Manohar v. B.R. Poornima* 2005 (1) ALD Cri. 56

Article 39-A of the Constitution of India provides that the State should by way of legislations or schemes, or any other way ensure that access to justice is not denied to any citizen because of their economic condition or other disabilities. Moreover, Rule 46 of the Standard of Professional Conduct and Etiquette requires lawyers to provide free legal assistance to the indigent and poor as this is their obligation towards the society⁷⁴. The government should ensure access to legal services by regulating the astronomical fees charged by lawyers.⁷⁵ Hence, the lawyers and law firms with the help of the government should advertise if they undertake any kind of legal aid or pro-bono services.

3. The restriction on showing of number of cases litigated, number of cases won, academic works, area of specialisation, awards won etc. on the visiting cards etc. should be done away with the eye on publishing of correct information which as stated above can be done by the body like censor board only, some certification mark can be devised for the authenticity of the claims and genuineness.
4. A restriction should also be imposed on the amount of expenses on advertisement that can be incurred in a given financial year. Of course, it has to be made in slabs related to duration of practice and area of expertise and should be subject to a sudden surge or decline in prices due to changes in the environment.
5. A regulatory body however should be set up so that advertising by lawyers doesn't go unrestrained and the authors envision the regulatory body to function like censor board does but should be state based for easy administration as the quantum here is humongous. These bodies can be made exclusively to keep a tab on legal advertising

⁷⁴ Standard of Professional Conduct and Etiquette, Bar Council of India Rules, Rule 46

⁷⁵ *B. Sunitha v. State of Telangana*, (2018) 1 SCC 638

and can have a check on the genuineness of the claims or if they resort to any unethical practices while advertising.

6. Besides regulating the content and expenses of advertisement, regulating the type of media used for advertising is also important⁷⁶. In print media, advertisements in newspapers can be allowed with large number of explanatory materials for the readers. In mass media, a lawyer engaged in arbitration can advertise in an arbitration journal instead of publications to readers who will never read arbitration-related services. Direct mailing to potential clients could also be allowed so that lawyers can better communicate their views.
7. Social media has helped people including lawyers to create a social identity. But unregulated advertising through social media platforms like WhatsApp, Facebook, Instagram, etc. will over-crowd this open space and increase the chances of spreading misinformation. The very goal of helping people to make more informed choices by advertising legal services would fail, if people are mis-guided by the false advertisements from lawyers. Thus, instead of unrestricted advertising on such social media platforms, website advertising, app advertising and promoting legal services through Google Ads should be allowed.
8. To maintain the bargaining power of Indian lawyers, the advertising by foreign firms should not be allowed. Though it will be not of much relevance as of current time because in India there are only very few areas they are allowed to function and they have a very narrow client space, mostly with the upper-upper class people or big firms.

⁷⁶ Supra note 45 at 1015.

9. Indeed, allowing advertising of legal services may give a backseat to young and newly graduated lawyers as compared to the already established lawyers. This is mainly because of their limited expenditure capacity on advertising and selling their work. The new legal advisors might have a great potential but they are not able to demonstrate it and promotions through advertising can help them to reach the general population at a relatively lower cost. Here, the government can lend its support by helping the young lawyers to advertise and increase their bargaining power in front of big established names by creating a state based databases on their government websites which will have their names, area of specialisation, fees, contact details etc. and these record can automatically be deleted once they reach certain years of practice or have litigated certain number of cases.
10. Although in present time's lawyers contribute extensively to the websites like LiveLaw, BarandBench, Mondaq, Legally Services India, etc. and they also provide recognition to them by publishing their name and little about them, their area of expertise etc. Nowadays, blogs have become an important medium for serious legal scholarship⁷⁷ and now far from conventional wisdom when blogging was just a distraction it now has the capability to affect their chances of being tenured.⁷⁸ Thus, Legal advertising in these sources is also going to help this section of the lawyers as they can use this as a source of cheap advertising for themselves, for example the page can have a link to their professional website. Also, since he will be contributing to the content on these sites, these sites will not be charging any kind of fees for putting up the lawyers contact link. However, these sites should be strictly regulated

⁷⁷ See Lawrence B. Solum, 'Blogging and the Transformation of Legal Scholarship' (2006) 84 Washington University Law Review, pp. 1071, 1072

⁷⁸ See Christine Hurt and Tung Yin, 'Blogging While Untenured and Other Extreme Sports' Berkman Centre for Internet and Society (April, 2006)

so that they do not charge any lawyer or engage in any kind of business lobbying for publishing their content because then it will degrade their quality of content.

11. Another way of increasing the advertising reach of the lawyers could be inviting them on YouTube channels and radio talk shows just like doctors are invited to give their insights about the profession and make people aware. This will have two-fold benefits, first in terms of their advertising and second and even more important, the general public will learn about the laws of the country. It has been found in many places that people are not even aware of their most basic rights available to them for taking a legal action.⁷⁹ For instance, a working labourer does not know anything about the Minimum Wages Act.

CONCLUSION

Advertisements, particularly modern advertising has proved to be a very effective way to disseminate useful information about a product and help generate more profits. A lawyer's efforts to make people aware of his legal work must involve non-laudatory, non-overreaching and truthful mode of representation⁸⁰

It is evident that advertising by lawyers in some way has been considered to be a professional misconduct in India as well as in other countries. India has imposed a ban by incorporating a legal provision along with official rules to establish which activities will fall within the ambit of professional misconduct. The scenario however is changing; different jurisdictions across the globe have recognised that a dynamic profession like law has to place itself on a relevant and competitive pedestal. UK and Australia have imposed the least amount of restrictive

⁷⁹ Sonja J.M. Cooper, 'Comments on Lawyer Advertising Papers' (2013) 14(1) *Journal of Law and Literature*, pp. 207, 227

⁸⁰ Harold G. Christensen, 'Advertising by Lawyers' (1978) 1978(3) *Utah Law Review*, pp. 619, 634

measures to regulate advertising while, USA has given the full freedom of advertising to legal practitioners.

Freedom of speech and expression and the right to carry out an occupation, trade or business is an inherent right guaranteed by democracies around the world and is recognized to be not absolute. The right to advertise subject to certain regulations stems from these very basic rights. Indeed, some lawyers have exploited loopholes in the provisions of law and used modern advertisement strategies like social media, legal directories and business listing websites. However, a law is created for the purpose of helping people and furthering the good intentions of the concerned community, in this case the legal community. The possible exploitation does not outweigh numerous advantages as explained in this article. As said by Marcus Tullius Cicero, “the good of the people is the greatest law”.

A gradual shift from a complete ban on advertisements to allowing some effective modes of advertising does not seem unfair. Lawyers should be permitted to advertise to the extent that it furthers the central lawyer mission of effecting an equitable distribution of justice without unacceptably impeding other lawyerly functions.⁸¹ As there are existing guidelines to regulate the conduct of advocates, regulations can be put in place for monitoring advertising and solicitation work done by them. A regulatory body has to act fairly and not capriciously or arbitrary,⁸² and this is ensured because every action taken by the citizens and the State in a democracy is subject to a judicial review. The above-mentioned suggestions along with other probable regulations on advertising can be applied to all providers of legal services as only then; justice will be served to the members of the legal profession as well as the society at large.

⁸¹ Supra note 69

⁸² *Century Plyboards (India) Ltd. v. The Advertising Standards Council of India* 2000 (1) BomCR 136