

## THE EVOLUTION OF LAWYER ADVERTISING REGULATIONS IN INDIA: BALANCING PROFESSIONAL ETHICS AND MODERN REALITIES

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### INTRODUCTION

The laws on lawyer advertising in India delineate the complex relationship between deep-seated professional ethics and an evolving legal practice environment. The paper shall do so while examining in detail the historical background, current legal framework, and debate that surrounds lawyer advertising in India. How to reconcile the need for maintaining the integrity of the profession with that of ensuring access of the public to legal information has increasingly emerged as one of the important challenges that the legal profession needs to address in view of the technological improvements and globalization facing the profession.

### HISTORICAL OVERVIEW AND LEGISLATIVE FRAMEWORK

It had its origin in the UK customs, which had a great influence on the Indian legal profession during the British colonial period.<sup>1</sup> This very ethos – which viewed the legal profession as a noble calling rather than as a business venture – was enshrined in independent India by the Advocates Act 1961.<sup>2</sup> It gave powers to the Bar Council of India to regulate the behavior of advocates – including their advertisement.<sup>3</sup>

Such Bar Council of India Rules were formulated by the BCI while exercising its powers under Section 49(1) (c) of the Advocates Act. These rules are propagated to consist of model behavior and etiquette, and Rule 36 explicates the issue of soliciting or accepting any employment applications by advocates. 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

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<sup>1</sup> Advocates Act 1961, s 49(1)(c).

<sup>2</sup> Advocates Act 1961, s 49(1)(c).

<sup>3</sup> Bar Council of India, 'Bar Council of India Rules' <http://www.barcouncilofindia.org/about/professional-standards/rules-on-professional-standards>

concerned." The exhibition of nameplates, signboards, or stationery that indicates affiliations, past success, or specialty is not allowed, together with other forms of advertisement.<sup>4</sup>

### **JUSTIFICATION OF PROHIBITION**

The BCI justifies the prohibition on advertisement by lawyers through a fairly elaborate reasoning, predicated upon various salient considerations, which involve:

- **Preservation of Professional Dignity:** The advocate's profession is not conceived to be a trade or business, but a 'calling' directed in service. Advertisement is regarded as having a capacity to denigrate the lofty and dignified status of the profession.
- **Preventing Unfair Competition:** This is feared to be one reason whereby unrestrained advertising could create an unfair playing field where bigger, better-funded companies would have an advantage against smaller businesses or individual advocates due to aggressive marketing.
- **Protecting the Public Interest:** The BCI claims that with advertising, false statements or exaggerations could result, thus endangering those in the public who depend on legal services.
- **Maintenance of Moral Standards:** It is apprehended that the commercialization of legal services through advertisement will undermine moral values and encourage people to give precedence to personal advantage over professional duty.<sup>5</sup>

The above reasons bring to light a deeply ingrained perception about the very nature of the Indian legal profession, a perception that gives greater importance to custom and moral values than to practices inspired by the dictates of the market.

### **CASE LAW AND THE JUDICIAL INTERPRETATION**

The Indian courts have struggled with lawyer advertising many times and struck a balance, often tenuous, between the ban and constitutional protections for free speech and the ability to pursue one's profession.

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<sup>4</sup> Bar Council of India, 'Bar Council of India Rules' <http://www.barcouncilofindia.org/about/professional-standards/rules-on-professional-standards>

<sup>5</sup> Bar Council of India, 'Bar Council of India Rules' <http://www.barcouncilofindia.org/about/professional-standards/rules-on-professional-standards>

The legality of Rule 36 of the BCI Rules was upheld by the Supreme Court of India in the judgment of "Tata Yellow Pages v. MTNL". Although the court accepted that commercial speech, including the right to advertise, was specifically protected under Article 19(1)(a) of the Indian Constitution, it held that this right might be subject to reasonable limitations to control professional behavior.<sup>6</sup>

The case of "V.B. Joshi v. Union of India" was a major turn of events in the legal advertising scenario of India. The Supreme Court commanded the BCI to reconsider its rules for modifying the same, so that advocates could place basic information on websites, pursuant to a writ petition challenging the absolute prohibition on advertising.<sup>7</sup>

This was the reason for the change in Rule 36 in 2008. The new rule allows activists to post specific content on their websites as long as they provide a disclaimer of authenticity. The following are some of the things that can be done:

- Name
- Address
- Telephone numbers
- Email address
- Enrolment number and date
- Name of the State Bar Council of enrolment
- Educational qualifications
- Areas of practice<sup>8</sup>

The amendment retains the important restrictions of promotional activity but elucidates the emerging realities of practice in the digital age. It is a cautious movement toward the liberalization of solicitors.

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<sup>6</sup> Tata Yellow Pages v MTNL (1995) AIR 2438.

<sup>7</sup> V.B. Joshi v Union of India Writ Petition (Civil) 182 of 2004.

<sup>8</sup> Bar Council of India, 'Bar Council of India Rules' <http://www.barcouncilofindia.org/about/professional-standards/rules-on-professional-standards>

## CURRENT EVENTS AND ONGOING DEBATES

The debate remains unabated in India despite the amendment in 2008. The restrictions as they exist are archaic and incompatible with the requirements of modern legal practice and client expectations, argue the critics. It is their contention that allowing more extensive advertising would make legal services more accessible to the public, foster healthy competition among lawyers, and enable attorneys to better inform prospective clients about their qualifications and services.<sup>9</sup>

Those on the liberalization side of the issue cite the United States, which allows attorney advertising subject to some limitations. They argue that a more liberal approach, when associated with suitable safeguards, will benefit the public and the profession by increasing choice and transparency. On the other hand, the Traditionalists are of the opinion that the existing restrictions are essential to uphold the dignity and prestige of the legal profession. They argue that there is a risk to the quality of legal services and commercialization of legal service could happen by removing the restrictions on advertising.

The matter remains further complicated by the advent of the online and digital media age. The 2008 amendment still does not address the issue of using social media and other digital marketing techniques, even when it allows for a minimal website material. It, therefore, created grey area where a few lawyers and law firms get away with crossing the boundary, and some err on the side of caution. Another theme is access to justice. Those supporting reform claim that restrictions on advertising fall more harshly on solo practitioners and small firms who cannot as easily obtain clients without the benefit of effective advertising. The public is therefore inhibited from accessing a broad range of potential legal service providers.<sup>10</sup>

## COMPARATIVE PERSPECTIVE

A look at the laws of some other countries relating to lawyer advertising provides indispensable background information to the Indian scenario:

United States: Since the landmark judgment of 'Bates v. State Bar of Arizona'[27] in 1977, it has been allowed to advertise lawyers. Lawyers there are allowed to broadcast their services

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<sup>9</sup> Advocates Act 1961, s 49(1)(c).

<sup>10</sup> Bar Council of India, 'Bar Council of India Rules' <http://www.barcouncilofindia.org/about/professional-standards/rules-on-professional-standards>

through several media, but they have to proceed according to guidelines so that incorrect or misleading information may not spread.

United Kingdom: The UK has very liberalized its lawyer advertising laws since the 1980s. There, lawyers and barristers are now permitted to advertise, but regulations exist to ensure that the ads are truthful and do not lower the standing of the legal profession.

Australia: Generally, lawyer advertising is allowed there, with rules more oriented to preventing deceptive or fraudulent claims than to forbidding them outright.

Singapore: Although historically conservative in this area, Singapore has gradually eased its laws on the issue of advertising by lawyers. Lawyers are now allowed to publicize their services, so long as they observe rules that ensure truthfulness and good taste and decorum in their advertising.<sup>11</sup>

These international examples show a trend toward more lenient laws on advertising by attorneys, many of which have protections to maintain professional standards and protect the public interest.

### **CONSEQUENCES AND POINTS TO REMEMBER**

There are many flaws in the present regime of regulation of lawyer advertisements in India.

Access to Justice: The bar on advertisement may have the effect of lesser information to the public about the availability of the services. This affects the access to justice to the public; more so in the case of relatively deprived sections. Such promotional restrictive rules can impact the impairment of competition and innovation of the law profession, hence its effectiveness and quality of service delivery.

Professional Development: These means, young attorneys and small firms without the ability to effectively market themselves cannot easily establish themselves.

Customer Choice: Insufficient availability of information may limit the capacity of customers to make informed choices regarding legal representatives.

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<sup>11</sup> Advocates Act 1961, s 49(1)(c).

Globalization of Legal Services: Indian law firms may be placed at a competitive disadvantage vis-à-vis multinational competitors who can advertise to a greater extent and are better placed to do so with the legal services market becoming increasingly global.<sup>12</sup>

These implications mean that the current regulatory framework may have unintended consequences for the legal sector as a whole and, by extension, the legal services market in India.

### **POSSIBLE REFORM PATHS**

Taking into account the current discourse and the dynamic character of the law, the following paths of reform could be taken:

**Gradual Liberalization:** Gradual, systematic deregulation of advertising which would involve some controlled expansion of the types of promotional activity considered acceptable. It would involve gradual broadening of the categories of information which lawyers are permitted to communicate with the public.

**Emphasis on substance Regulation:** Instead of making strict prohibition, this system focuses on the regulation of the content of advertisements so as not to carry any misleading or false information. In that respect, it may allow more pervasive advertising while maintaining safeguards against unscrupulous conduct. Setting clear parameters on how lawyers and law firms are to use social media and digital platforms for marketing purposes. These guidelines could take into account the unique opportunities and challenges posed by internet marketing and communications. Researching how most effectively to balance the public's right to know about legal services with professional ethics. This might include consulting with access to justice advocates and consumer groups, to ensure any changes made serve the greater public interest.

**Comparative Analysis:** The worldwide best practices would be undertaken in-depth to guide future reforms within the Indian setting. For instance, it would be necessary to study how other jurisdictions that have relaxed their lawyer advertising laws made such decisions and implemented them. Any reform attempts would have to address the changing requirements of

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<sup>12</sup> Bar Council of India, 'Bar Council of India Rules' <<http://www.barcouncilofindia>.

the public as well as the profession while taking into account the particular cultural and professional setting of the Indian legal system.

## CONCLUSION

The ban on advertisement by lawyers in India represents the continuance of a comprehensive interplay between the evolving market dynamics, state control, and professional ethics. While these restrictions were initially based on highly commendable objectives concerning the protection of the integrity and dignity of the legal profession, such restrictions are now being increasingly questioned in the backdrop of changing social orientations and international trends. The legal advertising regulatory framework in India may require a revisit if the legal profession evolves and grapples with new challenges arising from globalization and technology. Any potential reforms must attempt to achieve a balance that works between the maintenance of professional standards and ethics, the promotion of access to justice, and the legitimate promotion of legal services.

The way forward shall be based on deliberation and consultation with a variety of stakeholders including the Bar Council of India, practicing lawyers, consumer rights activists, and the community at large. Proper balancing of the impact of current regulations and the exploration of possible routes of reform may result in a regulatory regime in India that most tends to uphold core values of the legal profession and furthers the public interest and administration of justice. The ultimate aim should be to retain the ethical foundations that have traditionally been the hallmark of the Indian legal profession while creating an environment that encourages openness, accessibility, and excellence in legal services. How India chooses to regulate advertising by lawyers will be key to how its legal services business develops and how well it is able to adapt to the shifting demands of society as the global legal scene continues to change.