

ADVERTISING BY LEGAL PROFESSIONALS

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ABSTRACT

The paper supports the current prohibition imposed on lawyers and strives to analyse the possible repercussion of parochial approach taken by the Bar Council of India and whether it violates the fundamental rights of Lawyers. Moreover, can public policy be struck down because of the anomaly with fundamental right and to further emphasize the said which can have an overriding effect and paramount importance.

RESEARCH METHODOLOGY

The researcher has adopted the doctrinal research methodology in the compilation, organization, interpretation and systematization of the primary secondary sources in order to carry out the study.

INTRODUCTION

In India legal advertisement is considered abhorrent and disloyal to profession mainly because it will lead to commercialization of profession and will tarnish the concept of novelty associated with the profession. Moreover, it will also lead to different misleading nature of advertising which will undermine the quality of services and most importantly will increase unhealthy competition by which lawyers rather than providing services will be concerned to give lucrative offers and various packages subsequently undercutting the rates.

The prohibition of legal advertisement has its origin in England, founded by the Victorian notions which held that advertisement by lawyers will lead the profession from professionalism to commercialization and will also undermine the lawyer's sense of dignity and self-worth. However, there is change in stance in the 20th century and advertising has been validated to some extent which will be governed by a regulatory body.

Even Justice Krishna Iyer also supports the motion and has stated "the canon of ethics and propriety for the legal profession is taboo conduct by the way soliciting, advertising, scrambling and other obnoxious practices, subtle or clumsy, for betterment of legal business. Law is not a

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trade, briefs no merchandise and to the heaven of commercial competition or procurement should not vulgarize the legal profession”.³

The initial rule of BCI has put a blanket ban on advertisements by lawyers. However, the amendment in 2008 has relatively relaxed the provisions and therefore lawyers afterwards were allowed to organize websites, which specified only their contact information, area of specialization and qualification. The current status quo since then has not been changed much and therefore is in very well-articulated conditions without any significant misuse.

BAR COUNCIL OF INDIA RULES

Under the Advocates Act, the Bar Council of India (BCI) has the power to make rules in order to discharge its functions under the Act, based on which, it has formulated the BCI Rules.⁴ As per the Rule 36 of the BCI Rules, an advocate is prohibited from soliciting work or advertising, either directly or indirectly, whether by circulars, advertisements, touts, personal communications, interviews not warranted by personal relations, furnishing inspiring newspaper comments or producing his photographs to be published in connection with cases in which he has been engaged or concerned. Even the sign board, name plate or stationery of an advocate should not indicate that he is or has been the 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 work or that he has been a Judge or an Advocate General. However, in 2008, the Rule was amended, pursuant to a resolution passed by the BCI on 30th April, 2008⁵ before a three member bench of the Apex Court. According to the amended Rule, advocates are allowed to furnish information on their websites⁶, in conformity with the Schedule, as per which the following information can be furnished on the websites:

1. Name
2. Address, telephone numbers, e-mail id's
3. Enrolment number, date of enrolment, name of the State Bar Council where originally enrolled, name of the State Bar Council on whose roll they currently stand, name of the Bar Association of which the advocate is a member
4. Professional and academic qualifications
5. Areas of practice

³Bar Council of Maharashtra v. M. V. Dabholkar, 1976 AIR 242

⁴Section 49(1), Advocates Act, 1961

⁵Resolution No. 50/2008 dated 24th March, 2008

⁶Rule 36, Section IV, Chapter II, Part VI, Bar Council of India Rules, 2008

Legal professionals furnishing the above-mentioned information on their websites are also required to provide a declaration that the information provided by them is true.⁷

POSITION IN UNITED KINGDOM

Owing to the traditional Victorian notions, legal advertising was prohibited in UK, ensuing the review by the Monopolies and Mergers Commission in 1970 and the Office of Fair Trading in 1986, whereby the advantages of letting legal professionals advertise were highlighted, the ban in the UK was lifted.⁸

In UK, the law govern the legal advertising is contained under the Solicitors' Publicity Code, 1990, which has been amended and published in 2016 according to the changing needs of the hour. Under Chapter 8 of the Code, publicity by a legal professional ought not to be misleading, but should provide sufficient information to ensure that clients and others can make informed choices,⁹ thus addressing the right to information of the clients.

POSITION IN UNITED STATES OF AMERICA

The position in USA was similar to the position in India till 1977. Ordinance 27 of the Professional Ethics of American Bar Association¹⁰ stated that it was unprofessional to solicit professional employment by advertisements. However, it has now become a constitutionally

⁷ Declaration, Rule 36, Section IV, Chapter II, Part VI, Bar Council of India Rules, 2008

⁸ Bolocan, supra note 6, at 22

⁹ Rule 8.1, Solicitors' Publicity Code, 2016

¹⁰ Model Rules of Professional Conduct, 1969

protected right following the decision of the US Supreme Court in **Bates v. State Bar of Arizona**¹¹.

In this case, the attorney open the new law firm to help those people who did not came under the legal aid and on other hand could not afford the legal services. The only way for attorney to function by way of advertising though they know that this is violation of law. The court held that the prohibition of advertising is unconstitutional and violation of freedom of speech and expression. This is the first case to establish attorneys right of advertising.

CHANGING FACE OF THE LEGAL PROFESSION

In case of **K.Vishnu v. National Consumer Disputes Redressal Commission &Anr.**,¹² it was held that the legal profession is an administration with the end goal of the Consumer Protection Act,1986. Under the Chairmanship of S.V.S. Raghavan the report of committee on competition policy stated that “the legislative restrictions in terms of law and self-regulation have the combined effect of denying opportunities and growth of professional law firms, restricting their desire and ability to compete globally, preventing the country from obtaining advantage of India’s considerable expertise and precluding consumers of free and informed choice”¹³.

Furthermore, Supreme Court has also held that the legal profession has to be covered under the definition of “industry” under the Industrial Disputes Act, 1947.¹⁴

¹¹433 U.S. 350

¹²(2000) ALD (5) 367

¹³ 8.2.5, Chapter VII, Competition Policy and Professional Services, Report of High Level Committee on Competition Policy and Law- S.V.S. Raghavan Committee, 2000

¹⁴Bangalore Water Supply & Sewerage Board v. A Rajappa, 1978 AIR SC 548

From these decisions, we can conclude that legal services are becoming subject to consumer protection and trade laws of India, moving towards the inevitable path of commercialisation.

CONSTITUTIONAL VALIDITY OF RULE 36 OF BAR COUNCIL OF INDIA

Article 19(1)(a) of the Constitution of India guarantees the freedom of speech and expression, the only exceptions being in the interest of sovereignty, integrity and security of the State, friendly relations with foreign states, public order, decency or morality or in relation to contempt of Court, defamation or incitement of an offence¹⁵. In *Dharan Vir Singh* case the court held that rendering professional legal services is a business proposition, and advertisement of the same as such comes within the definition of commercial speech.¹⁶ The Supreme Court further strengthened the argument by observing that the right to freedom of speech cannot be taken away by placing restrictions on the business of citizens.¹⁷

Hence the researcher thinks that the ban on advertising under Rule 36 is unconstitutional and excessive in nature and also not consistent with reasonable restrictions under Article 19(2).

CONCLUSION

The law prohibiting legal advertising in India is founded on the British Victorian system. Our law shows the trend of resisting change as we are not developed with the changing nature of legal services. Even when we are prohibiting legal advertising, the advertising is presently taking place

¹⁵Article 19(2), Constitution of India, 1950

¹⁶*Dharan Vir Singh v. Vinod Majahan*, AIR 1985 P&H 169

¹⁷*Sakpal Papers v. Union of India*, AIR 1962 SC 305

indirectly at the very large scale. Due to which the profession is already subject to the disadvantage of legal advertising. However due to restriction we are unable to take the positives of the legal advertising. In the age of information and commercialisation, the reasons based on the ground that law is a “noble” profession cannot be sustained because consumers of legal services are entitled to obtain the best value for their investment, similar to any other service.