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**UNDERSTANDING THE COMPLEXITIES OF ADVERTISING IN THE
LEGAL PROFESSION: WHY LAWYERS IN INDIA CANNOT
ADVERTISE THEIR SERVICES**- Sumreet Kaur¹**ABSTRACT**

Advertising has become a critical instrument for publicising a firm or its products and services in an era of new and rising enterprises where the sector thrives on fierce competition. It is a marketing strategy that helps consumers and the general public to become familiar with items on the market and to take advantage of various services. Professionals in practically every industry are devising novel marketing methods in order to develop their firms and advertise their services to the general public. However, advertising is severely forbidden in many professions in India. Lawyers and law firms are not permitted to engage in advertising activities to market their services in the legal profession. Lawyers are not allowed to do anything that can sway a potential client. The advertising ban stems from the historic British belief that law is a "noble profession." It may be claimed that in the information era, a consumer of legal services, like a consumer of any other service, has the right to get information about the lawyer or law firm and to spend his money wisely. Regardless of the restriction, many large legal firms find a way to advertise, putting small firms at a disadvantage.

INTRODUCTION

In India, advertisement is handicapped in the Legal profession. The Lawyers cannot publicise their services to solicit the clients. Advertising in the legal profession is itself nocuous. The concept of legal marketing as well as legal advertising is still on the stage of ambiguity, its

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scope is still gloomy. Despite the fact that India has a large number of lawyers, the international society continues to overlook them due to a lack of knowledge about their practise. The Indian legislative and government have stuck to the British-era view that practising law is a noble profession, and hence, advertising its legal services may degrade the nobleness of this profession. To allow the legal services sector to thrive, the government must accept the reality that practising law is a business, and that attorneys and law firms should be permitted to market their services. Recently, the Bar Council of India had issued public notice stating the misconduct carried out by the lawyers via publishing advertisements on social networking sites, including Facebook and Whatsapp. The notice further read that the misbehaving lawyers who break the Bar Council Norms would be prosecuted under the terms of The Advocates Act, 1961. An Advocate is only permitted to advertise their work through the medium which is prescribed by the Bar Council of India.

SUITABLE ACT AND SECTION WHICH GOVERN THE PROFESSIONAL STANDARDS FOR ADVOCATES

In India, the professional conduct and standards for advocates are governed by the Advocates Act, 1961. There is also a legal prohibition against advertising legal services to attract clients. This is stated in Rule 36 of the Bar Council of India ["BCI"] Rules, which is read in conjunction with Section 49 (1)(c) of the Advocates Act, 1961. Rule 36 of the Bar Council of India, states that "*An Advocate shall not solicit work or announce, either directly or laterally, whether by leaflets, announcements, dispatches, interviews not warranted by particular relations or inspiring review commentary or producing his photos to be published in connection with cases in which he has been engaged or was related. His nameplate or signboard should be of a decent size. The sign-board, name-plate, or stationery should not state that he is or has been President or Member of a Bar Council or Association, or that he is or has been associated with any person or organisation, or with any particular cause or matter, or that he specialises in any particular type of worker, or that he is or has been a Judge or an Advocate General.*" Lawyers are completely prohibited from advertising themselves under the forenamed provision. This rule is quite equivocal and still quests for clarity. The opaque and rigid nature of this rule, was challenged in a catena of cases, resulting in conflicting rulings on this issue. Justice Krishna Iyer, observed in the case of *Bar Council of Maharashtra v M. V. Dabholkar*(1976)

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2 *SCC 291* of the Hon'ble Apex court that "Law is no trade and commercial competition and procurement could vulgarise profession." In the case of *Tata Yellow Pages v. MTNL (1995) 5 SCC 139*, on the other hand, the Hon'ble Supreme Court held that, that commercial speech was a fundamental right that was required to be protected by Article 19(1)(a) of the Indian Constitution.

However, because the case was not heard by a full bench, the verdict had no effect on declaring Rule 36 of the BCI Rules unlawful. As a result, before 2008, all such attempts to challenge the statute were futile. Rule 36 was eventually changed by Resolution No. 50/2008 enacted by the BCI in response to a three-judge bench ruling of the Supreme Court in the matter of *V.B. Joshi v. Union of India Writ Petition (Civil) no. 532 of 2000*. Advocates were allowed to disclose information such as their names, PQE (Post Qualification Experience), and fields of practise on websites in order to "publicise attorneys and expose nuanced facets of their profession" under the modification. Perhaps, an alteration in the amendment of 2008 was made which allowed substituting publicizing services. The proviso to Rule 36, reads:

"That this regulation shall not prevent advocates from providing online information as specified in the Schedule after informing and receiving approval from the Bar Council of India. Any other information in the particulars that has not been accepted by the Bar Council of India would be considered a breach of Rule 36, and such advocates will be prosecuted for misconduct under Section 35 of the Advocates Act, 1961". Furthermore, Hon'ble Justice Kapadia ruled that advocates would be permitted to post their PQE and areas of specialisation on websites, as permitted by Rule 36. There are several corporate networking platforms that demand attorneys to expose their information and embellish it further, such as LinkedIn and a plethora of other legal websites as well. The breadth of marketing and networking has expanded as a result of the influx of young attorneys. This has enabled specialists to ripen the juiciest fruit and take advantage of the situation. Advocates and Senior Advocates extol their performance and practice in columns published on various legal websites. These sources have grown into a sort of surrogate advertising as more and more data is consumed.

ANALYTICAL EXAMINATION OF LEGAL ADVERTISING IN DIFFERENT COUNTRIES

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In the United State of America (U.S.A), until 1977, the situation was comparable to that in India. The American Bar Association's Professional Ethics Ordinance 27 said that soliciting professional employment through ads was improper. Following the US Supreme Court's judgement in *Bates v. State Bar of Arizona* 433 U.S 350, it is now a constitutionally protected right.

In the United States, the Model Rules of Professional Conduct, 1983, govern legal professionals' advertising. In line with the Rules, a lawyer may market his services by written, recorded, or electronic communication, including public media, if the following conditions are met:

- No false or misleading claims about the lawyer or the lawyer's services should be made.
- A lawyer may not solicit professional employment in person, over the phone, or through an electronic contract if his or her principal goal is financial gain.

In Australia, The Australian Solicitors' Conduct Rules 2015 under the Legal Profession Uniform Law states that:

Any advertising, commercialism or any sort of promotion related to legal practice should not be concocted, misleading or misrepresented in such a way to deceive the society, as per the statute.

In United Kingdom, The marketing of legal services is controlled by the Solicitor's Publicity Code, 1990, which has been amended on a regular basis. According to the Code, legal services advertisements shall not be deceptive and should include adequate information to enable customers to make an educated decision, thereby meeting the clients' right to information. This sets aback to the ancient notions of the United Kingdom, pursuant to archaic Victorian beliefs, advertising of legal services was outlawed. However, in 1970, the Monopolies and Mergers Commission and in 1986, the Office of Fair Trading published assessments that emphasised the benefits of allowing legal services to be advertised. This turned the situation in the UK on its head, and the age-old Victorian beliefs were disproved.

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As far as the European countries are concerned, in the past years, legal professions in European nations frowned upon or outright barred lawyers from promoting. The adoption of the Code of Conduct for Lawyers in the European Union (CCBE Code), has allowed the legal fraternity to advertise. As a result, several EU Member States have discarded their long-standing prohibitions on lawyer advertising in favour of allowing some sort of lawyer advertising.

Section 2.6 of the Council of Bars and Law Societies of Europe (CCBE) Code of 2006 provides for A lawyer's personal publicity in any type of media, such as the press, radio, television, electronic commercial communications, or elsewhere, is permissible if it complies with the standards of Section 2.6.1(which states that A lawyer is entitled to inform the public about his or her services provided that the information is accurate and not misleading, and that the information is respectful of the obligation of confidentiality and other core values of the profession). The practise of barring advocates from advertising has been abolished by the sources of jurisprudence on which these outdated conceptions about the legal profession are founded, such as the British Common Law.

In Singapore, their Legal Profession Act allows the lawyers to advertise their services, the Section 4 of the Legal Profession (Publicity) Rules says: Subject to these Rules, an advocate or solicitor may publicise his or her firm's profession, or enable his or her employees or agents to do so.

AN OVERVIEW OF ALLOWING THE ADVERTISEMENT OF LEGAL SERVICES

Undoubtedly, there are quantum of ways which will expedite the competition in the legal field, once the aforesaid restriction has been eliminated. The ability to promote legal services in a controlled manner will be a boost to attorneys who are just starting out in their professions.

As a result, the restriction on advertising in the legal profession should be lifted in order to increase competition in the field. Advertisements should be allowed if they give valuable information to litigants and allow them to compare the qualifications of possible lawyers. If the Bar Council of India believes it is the right course of action, it may approve ads in a controlled way. The Bar Council might set forth the requirements that must be followed when promoting legal services, without really negating the benefits of advertising legal services.

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The expertise and abilities of the smaller firms and the comparatively newer attorneys are sometimes overshadowed by the larger firms and veteran lawyers. Allowing them to promote their services will provide a significant boost to the legal business and attract more talent. Law profession is mostly predicated on a big client base and a good reputation, both of which are difficult to come by for a new practitioner. India is becoming a key player in global commerce, and if the legal sector ought not to fall behind, in this changing environment, it must adapt to new ways of doing business and allow legal service providers to market themselves. Even after producing a large number of attorneys each year, India has unable to have an effect on the global legal landscape. There isn't a scarcity of either skill or resources. It is only the non-commercial context that prevents Indian attorneys and legal firms from achieving worldwide renown. Allowing advertising will reduce the inequality caused by the current "advertising tactics." Despite the restrictions set by the Rules, attorneys continue to employ self-promotional techniques to promote themselves. By allowing the mechanics of regular market forces to work on the delivery of legal services, advertising has the potential to change the techniques of supplying and delivering legal services. Lawyers will compete by offering reduced pricing for legal services as a result of advertising. Middle and low-income customers who do not presently purchase critical legal services will be able to do so if legal services become more inexpensive. The BCI Rules were amended in 2008 to allow legal service companies to establish an internet presence. However, it overlooked the reality that the vast majority of Indians do not have access to the internet. In such a situation, it is necessary to rely on traditional advertising methods rather than catering to the country's small elite minority. As many opposed to the idea have pointed out, there are a few drawbacks to advertising legal services. They include the danger of misuse, as well as the fact that an impartial decision of advocate or legal assistance would be undermined, the focus would move from enhancing legal competence to rivalry among legal practitioners. However, in the current legal environment, such activities continue to exist. It's long time to lift the veil of ignorance we've erected, and instead of pushing the truth of the legal profession's commercialization under the rug, we must acknowledge and control it.

RESTRICTIONS ON ADVERTISING IN THE LEGAL PROFESSION IN INDIA: AN EPILOGUE

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The Hon'ble Apex Court of India, in the case Bangalore Water Supply & Sewerage Board v. A. Rajappa, AIR 1978 SC 548, had considered the Indian Legal Industry as a part of an industry. Advertisements raise public knowledge about the availability of various brands of products/services, giving consumers a wide range of alternatives to pick from and keeping them fully informed. Making a regulation barring the marketing of legal services and then taking no active efforts to enforce the prohibition is not smart on the part of the Legislature and the Judiciary. There's no obvious line between what counts as advertising and what doesn't. We've seen huge flex boards with lawyers' names and photos, lawyers' interviews in national newspapers and on television, law firm partners and associates publishing names of lawyers and law firms representing clients in high-profile cases, and newspapers mentioning the names of lawyers and law firms representing clients in high-profile cases. All of this amounts to legal services promotion. However, it must be understood that the BCI cannot monitor every advertising made by every lawyer in the country. Consumer protection regulations and trade laws are increasingly being used to legal services. This necessitates that the legislature and government recognise the economic aspect of legal profession. There shouldn't be a full prohibition on advertising as long as it isn't only for the sake of advertising. Advertisements should be allowed if they spread legal awareness and provide litigants the chance to examine their options and the qualifications of their possible counsel. Consumers are deprived of crucial information about the advocates as a result of the advertising ban. As a result, consumers are frequently unable to make an educated decision from a competitive market since information about the service is unavailable. Furthermore, limiting professional companies' ability to tell potential clients about the full range of their services and potential harms competition. As a result, the rules placed on the legal services industry are anti-competitive and incompatible with the purposes and objectives of competition policy as well as the Competition Act of 2002. Consumers may benefit from truthful and objective advertising by overcoming information asymmetry and making better informed purchase decisions. Consumers can benefit from advertising since it informs them about the various services available and allows them to make more educated selections. Advertising limitations, on the other hand, hinder competition by raising the costs of gathering information about various services, making it more difficult for customers to choose the quality and price that best matches their needs. If the Bar Council believes it is the best course of action, there may be controlled ads. The Bar Council might establish the rules

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that must be followed when promoting legal services, without essentially invalidating the cause of those who favour such advertising.



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