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Prohibition of Advertisement in Legal Service- Sector

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ABSTRACT:For any legal help every person advice from advocates because every person believe on Indian Judicial system and Indian Judiciary never discriminate on all the grounds of discrimination of colour, caste, religion and so on. Before the amendment, advocates do not have a right to advertise their name, designation, on websites. But after amendment they have a right to go their name online, using nameplates, distributing visiting cards to their clients and so on. In this research paper the author talks about the originality of Indian Legal Profession regarding prohibition of advertisement in their profession, how they can be treated as backbenchers in the society, and what are the various obstacles facing by them to promote their profession. By all this process a client can easily contact their advocates and get any legal advice when there is an infringement. In any profession there must be equality, fairness, loyalty, reasonable fee so that a poor people also get a remedy.

KEYWORDS:Advertisement, Awareness, Trade name, Laws, Technology

I. INTRODUCTION

In Indian society, lawyers have played an important role for the development. Every citizen of India believes on Indian Judicial System i.e. if their rights are violates then they have a right to help from advocates and advocate ensure them a good advice and fight only for their violation of rights. The concept of barred of advertisement in legal service is very old. In India, advocates don't have a right to publish their name in market. They are barred from advertising their services also on website or any social media platform. But there are many ways also where lawyer can advertise his name in market in a clever manner. For example, they sent some documents in envelop by putting his name and office address on it, or during elections they made identity cards for vote or print their visiting cards or published their names in big hoardings by indirect means. In the bar council of India laws, this principle was also prohibited, but after amendment in 2008 the bar council of India removed some restrictions on advertising their name on websites, advocates can now publish their names on websites with the permission of the BCI. BCI, rules 36 states that 'a lawyer shall not specifically or indirectly request work or advertise,' whether in circulars or other ways, through personal correspondence, interviews, visiting cards, pamphlets, etc. This also disallows the advocate from employing any means for intimation of client. This also prohibits them to publish their names in magazines, journals, on visiting cards. Even they don't put his name on name plates.

By this amendment now advocates furnish the information on their chosen websites, over telephone conversations, email conversations. There are many committees also framed to discuss and solve this issue. One of the committee i.e. of former CJI Justice Kapadia suggests that advocates may also write their names as well as areas of specialization and years of experience over on all places.

The legal service market is equally advantageous for all users of legal services in the emerging industry, without prejudice. Consumer rights are free and equal in today's market and should not be negated by any other factor.

Due to wide graphs in technology, now advocates can use their name, services, specialization on different types of platforms. It is easy way for client to search the name on social media platforms and search the website on what specializations they are actually focuses on.



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II. OBJECTIVES OF THE STUDY

- To study and understand the comparison of advertisement of branding
- To understand the laws related to advertisement
- To provide certain reforms

III. RESEARCH METHODOLOGY

This study describes the outcome of the concept of advertisements. What is the best way to publish their legal profession? How to publish an advertisement the collection of study is from primary data as well secondary data through newspaper, articles.

IV. DISCUSSION

In India, there are thousands of lawyers get enrolled in a month but they don't have a right for advertisement they don't use their trade name, their designation and so on these are all basic things which are major hurdles to publish anything on social media platforms. The profession of advocacy is very noble profession in past years but now a day's advocate has a right to go their names of trade online or offline but within guidelines under bar council of India rules.

1. Indian laws vs. foreign laws

In rule 36 of BCI there is prohibition on advertisement of publishing of names, designation and so on over on websites and social media platforms through offline and online. However, after amendment came in 2008 lawyers have a right to publish their trade names on website, newspapers, and visiting cards etc. There are many laws also constituted to get equal rights to advocates.

The Laws of UK or US are common law in those countries, they also moved on from the old law to new laws. However, in India advocates are prohibited from advertising. If we can take the reference of Advocates Act where Sec. 4 speaks about establishment of a statutory body to be known as Bar Council of India. Further, if we could read sub-clause 1(b) and 1(c) of Sec 7 and Sec 49 respectively we have clear picture that Advocate Act strictly prohibits the advocates from making any advertisement through e-advertisement like web-sites.¹

The legal profession is regarded as one of the noblest and highly respected professions in India. Lawyers are expected to assist in providing justice to the victims and provide pro bono services that come under minorities or poor class. Advertising is commercializing your business. It is believed that if advertising is not prohibited, then the lawyers or law firms will be more inclined towards creating an image or a brand and maintaining a clientele rather than focusing on rendering legal services efficiently. The advertisements can be misleading and might lead to unprotected competition, and its expenditure may result in inappropriate fee hike and deterioration in the quality of services provided by the lawyers. It is regarded as unprofessional and unethical. In mostly cases the population of India is illiterate and will fall prey to false advertisements.

Another major reason why lawyers and law firms are not allowed to advertise in India is the inconsistency in the legal fraternity. The famous law firms have enough resources and finances for advertising their business in a good manner, whereas small sized law firms or law offices don't have such resources or finances for advertisements. This leads to unfair trade practices and unhealthy competition. Big law firms get an opportunity to exploit the smaller firms and also the people who are enticed by such advertisements.

2. Views of legal profession

There are many views which lay down the concept of making an arrangement that allows promotion or commercialization of legal professionals. Some intellectual are of the view that legal professional is a trade business; so it can be permissible to advocates for advertisements. This study also clears the concept of advertisement by legal professionals to regulate their name, place, occupation, areas of specialization etc.

The principle is simple, i.e. one cannot advertise himself as an advocate in any manner whether it be newspaper, websites, interviews on television shows, writing an article with his designation showing "practicing lawyer". Further, any disclaimer to enter the website, showing landmark cases of the law firm or lawyers on their website and listing out the achievement accomplish till date are also way pf promoting and advertising and thus are not allowed.

¹ Rules of professional conduct, 1983



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3. Present situation

In present situation advocates are facing so many challenges how to give best shape in practice. As seen in today's time during covid-19 the practice of advocates are shattered down. Few of them commits suicide, few of them face financial problems. Lawyers, newly enrolled in bar that are relatively make a fresh start also facing lots of problems during pandemic. Due to these critical situations they have lack of resources support how to find and start his new profession during this pandemic.

In old days, lawyers don't have a right to go their trade name online; they don't have rights to publish their work, use templates, which is a big challenge to them to get new clients in the global world. The concept of work from home also changes the work style of professionals. Some of them follow the rule so that they can be free from mental stress and pressure some of them work in lazy style. They work only for formalities. No interaction of clients and advocates every client as well and advocates present themselves through virtual mode. The technology is also challenging for old lawyers because they are not aware from latest gadgets they help only from their children's or any family members. Few of them welcome this concept as this technology because they don't want to go any place they only visit their office and attend the virtual sessions. During this pandemic condition the speed of data is too slow because all courts goes online and all advocates attend the virtual sessions. Few of them attend webinars day by day and give some views on various topics. By this pandemic, clients also face lots of problems not meeting with their advocates not get legal advice and discuss their problems with them.

Enrolment with any state bar council of India means that after getting degree of law the degree holder shall maintain a certain standard of conduct and professional at all the times. From the year 2010 the mandatory rule for lawyers is that a person calls advocates who attend the exam of All India Bar Examination conducted by bar council of India and it is very necessary for all law professions they have to clear this examination. The student has two attempts in a year and six attempts in three years if a candidate not clear this exam during this time then he appears again in the same exam with a fresh registration. After cleared this exam he has a right to appear before all courts in India and practice before all courts. From 2015, onwards, the Bar Council of India has taken notice of the following passed the certificate of practice and place of practice (verification) Rules, 2015.

4. Functions of State bar Council

- Admitting person as an advocate
- Preparing and maintaining data of such roll
- To consider and discover the case of misconduct against advocates
- To monetarize effective imposition of welfare schemes
- To promote the growth of Bar Associations
- Organize legal aid camps

5. Duties of advocates

- Litigation fairness
- Loyalty
- Confidentiality
- Reasonable fee

6. Part IV of the BCI rules define "Practice of law" which provide the rule of legal education which includes.

- Practicing before court, tribunal, administrative body
- To provide legal advice
- Involved in legal drafting
- Actively participate in legal proceedings
- Actively participate in arbitration proceedings

7. Article 124 (3) of the Indian Constitution lays down the qualification for the appointment of the judge of the SC. It set down the following criteria as a qualification:

- He must be citizen of India; and
- He has been holding office as Judge of HC for at least 5 years' or
- He has practiced for at least 10 years as an advocate of any High Court; or
- He has practiced as an advocate in 2 or more courts in succession for at least 10 years.



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8. Similarly, for the appointment of the judge of the High Court Article 217(2) of the Indian Constitution lays down the certain qualification as mentioned below:

- He must be citizen of India; and
- He has been holding office as Judicial Office in India for at least 10 years', or
- He has practiced for at least 10 years as an advocate of any HC; or
- He has practiced as an advocate in two or more courts in succession for at least 10 years

9. *Constitutional validity under rule 36*

Freedom of speech and expression Article 19 (1) (a):

It define the concept of freedom of speech and expression. But use in a limited manner there is a restriction of false advertisement on social media platforms. Government of India also implemented many laws under this act so that citizen aware about the real news.

Freedom of Trade, Business and Profession Article 19 (1)(g):

Each citizen shall have a right to choose his own livelihood. It provides that each citizen has right to choose his own business or to take up any job or service. This constitutional right also implied that for carrying out trade or occupation in effective manner one can take help of all the instrument and resources like advertisement and promotion. However, such a promotion and advertisement should not be against the general public interest. That also means any restriction imposed on this constitutional right would be only in the favor of general public interest and nothing else. The phrase “against the general public interest” means something which is unethical, immoral, and illegal or contains scandalous contents. If there is an alternative to create a specialist government agency that would investigate the content of the advertising, any blanket bar on this right would be unfair.

10. *Service as defined under Competition Act, 2002 read with Consumer Protection Act, 1986:*

As enumerated in the Competition Act, 2002 [Section 2(u)] service includes the following-

- work of any types or kind;
- provided to concern users
- which includes- professional activities of any industrial or commercial matters

This was highlighted in the case of the Bangalore Water Case.² In this case it was held that the term “industry” as defined in the Industrial Dispute Act, 1947 also includes legal professions. It is pertinent to note that India being signatory of WTO is bound by the WTO Services Sectoral Classification List which highlight the work related to laws and legal as a business services.

Advertisements, as shown, are a platform for assessing the effectiveness of products and services. They create consumer awareness about the availability of various product / service brands, providing them with a wide range of choices to choose from and keeping them completely updated. Advertising is one of modern technology 's central and required instruments, economies, so that it conforms to moral principles based on basic human growth, which are the fundamental tool for the use of capital and the efficient response to socio-economic needs. People generally think why they are not publishing any professional services in market, why the rules are so strict, and so on.

Punishment of misconduct Rule 35 of BCI Rules: if an advocate violates the rule 36 of BCI Act, such advocates have to face troubles and they will be liable for such misconduct. That misconduct can be count in professional or in any other categories. If an advocate found guilty under such rules, then under such category his license will be suspended for a definite time or bar council of India have also a right to remove his/her name from the state electoral list.

11. *BCI RULE 36:*

It can be summarized as follows:

It prohibits that an advocate either directly or indirectly shall not advertise his work. He shall not use any instrument for publishing his relation with the cases in which he has been taking participate as an advocate. It also laid down that the name plate/sign board of an advocate should be of appropriate dimensions. He shall not use any object to indicate his designation these all are rules fall under professional misconduct and amount to misconduct.

Section 4 of Chapter 2 of BCI Rules which discuss clearly as “Duty to colleagues”. It was implemented to maintain decency in the legal profession. No one is allowed seduce the clients of other so as to harm the business of his colleague's members. This is also implemented for the purpose of preventing other from taking undue advantages.³

² AIR 1978 SC 969

³ Bar council of India rules discussed in Bar Council of India Act (Rules)



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12. Consumerism and Informed Choice:

The trendy legal services market is similarly favorable to all users of services given by law professional, without any prejudice. Consumers have a right to free and equal competition in today's competition in the world of consumerism and it is fundamental and cannot be refused based on any other grounds. This trade perspective of legal professional focuses on the advantages of legal service for customers, in particular on the standard of service offered in specific areas. One of a consumer's rights is informed choice. Ban on advertisement also prevent clients from accessing useful data with respect to lawyers in the market. Thus in this competitive market the clients were deprived from making suitable choices of lawyers for representing in the court.

13. Advertisement on Internet:

Advertisement on internet is also very common barrier in the publication of any services over on internet. The concept of global market was no Indian advocates become inevitable to advertise their services online in international market. This result shows that if Indian advocates have no permission of advertising in international market then they also losing some clients. As generally seen that in the era of cyber world every person has access of concerned information. We would like to accesses web pages and other tools for searching any items rather than searching from printed material which is more relevant with a simple concept of legal process outsourcing increasingly because if a person done his work from foreign then it is very costly and if he done the same work in India then in comparison with foreign service Indian service is too cheaper and less effective. Due to the ban on advertising the legal professional we lose the foreign clients as when they performed search on the web there is no result with respect to Indian Lawyers or Law Firm. The Multinational Companies looking for legal assistance in the Asia then refer other Asian Countries where advertising is legal since they appeared first on their search result. This ultimately results in slowing down the economic revenue from which might be generated from the legal professionals if the Indian Lawyers and Law firms would appear first in their search results. But now after amendment in 2008, the Government of India lift up the issue by allowing the advocates to advertise their name, specializations, experience and so on. The government allows them to search their own website on different search portals, legal directories. But there is lack of awareness among citizens that this concept will be implemented.

14. Advantages:

Opportunities to novice lawyers:

Opportunities must be given to novice lawyers to advertise their name, trade, on websites so that they can get their clients easily in an emerging trend. In India big law firms have all resources so that they can go their website online from different modes such as participation, publications, advertisement.

Right to information and awareness:

Right to information is very necessary for all the persons whether clients, advocates etc. if wrong information shall be furnished then those persons deprived from aware about all these.

Global recognition:

Another advantage of advertisement is global recognition. It permits Indian professionals to join global market but when this concept came then bar council of India oppose for this.

Awareness of education:

As seen generally in India mostly big law firms give their participation in writing articles, presentations on various law journals legal website from which a common person must aware from the concept of legal rights.

Awareness of rights:

Constitution of India provides various rights to the Indian citizen, but the most important thing is the public must aware from these rights what are the rights why they are beneficiary if there is a violation or breach then under which article a citizen shall get rights.

15. Disadvantages:

Lack of internet access: In today's time every second legal profession must aware from the latest technologies. With the help of different legal website platform, he creates his website and furnish all relevant data on it such as name address specializations team and so on so that a person while search the name and details of advocate then he gets all information about it and take an advice from him.

Lack of services:

Service as defined under Competition Act, 2002 read with Consumer Protection Act, 1986: As enumerated in the Competition Act, 2002 [Section 2(u)] service includes the following works:

- Work of any types or kind.
- Provided to concern users which includes.



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- Professional activities of any industrial or commercial matters.
- If citizens not get the best services from the side of advocate, then why should he pay for that.

Restrictions on advertisement:

Before amendment there is banned on advertisements on the working areas, names, and specialization etc. of the legal professionals. Advocate cannot publish their identity on the internet services at that time.

Lack of giving false information:

Through internet sources there are various lose poles where citizens get false information. For example, when he searches for advocate name on search engine then he gets different results for that person. Or somewhere he gets publicities or inaccuracies of misleading statements.

16. Reforms:

It can be suggested that it is necessary to allow the advertisement and commercialization of the legal professionals. However, one should keep in mind while uplifting the ban that it should not be arbitrary and the monitoring of such advertisement should also be implemented simultaneously.

17. Judicial position:

Promoting the administration of justice is the fundamental role of legal promotion. If the practice of law is therefore a public service of great consequences and a monopoly is constitutionally given by the country, the lawyer is obliged to uphold certain requirements that make them worthy of the community's trust in him as a means of social justice.

A customer needs to please from many products in today's time because he all knows very well what is good and what is bad for him, today consumers have many choices to buy on the market, but he would like to select only the one that is best from all perspectives. The right to free and equal competition is fundamental rights of consumers and thus cannot contested on any other grounds.

- In the case of *K. Vishnu v. NCDRC and Anr.* (2000) ALD (5) 367 discussion was made on the status of legal profession whereby it was held that it is like an institution or authority whose primary goal is to provide service to its consumers i.e. clients.
- *R.N Sharma, Advocate v. State of Haryana* it was opined that that an advocate is an officer of the court. The court has further observed that the legal profession is neither a trade nor a business. Yet, the question is, what is an advertisement in the legal profession?
- *Bar council of Maharashtra v. M.V. Dadholkar*: there were certain observations made by Justice Krishna Iyer that “no advocate must have allowed advertising for the betterment of the profession.” He also stated law is not a trade and hence commercial competition should not overuse of it. These observations clear one concept i.e. the courts too refrain the advocates from advertising themselves. The courts are of view that advertisements will lead to downfall of the ethics of lawyers.
- *Tata Yellow Pages v. MTNL*: SC has observed that commercial speech can be covered under Article 19 of the Indian Constitution. This includes promotion. From this case it seems that rule 36 is unrestricted in nature. It also seems quite unconstitutional.
- *Government Pleader vs. S. A Pleader*: Here it was opined that it would be amount to be advertisement and would be considered as violation of the Professional standards if a pleader would send postcard merely providing his address, name and description.⁴

V. CONCLUSION

So far, the ban on legal advertisement in India has not proven to be beneficial for both the Indian economy and Indian consumers. As observed by the Raghavan Committee that ban on advertising being a regulating framework has affects the growth of the legal professionals. It further highlights that such a legal outline also restricts the layers and law firms within the territory of India. They lost the opportunity of gaining the clients from across the globe. At the same time ban on advertisement also prevent clients from accessing useful data with respect to lawyers in the market. Thus in this competitive market the clients were deprived from making suitable choices of lawyers for representing in the court. It can be suggested that it is necessary to allow the advertisement and commercialization of the legal professionals and amend the legislation that excludes modernity from the legal profession and prohibits it from advertising. However, one should keep in mind while uplifting the ban that it should not be arbitrary and the monitoring of such advertisement

⁴ AIR 1929 Bombay 335



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should also be implemented simultaneously. That means while amending or enacting new comprehensive law one should make a balance between the right to trade and promote competition in the market.

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