THE 'DOMINANT PURPOSE' TEST AND DIGITAL TOUTING: REDEFINING RULE 36 OF THE BCI RULES IN THE ERA OF LEGAL INFLUENCERS AND SHORT-FORM MEDIA

Smriti Nikam & Satyam Kumar, University of Mumbai Law Academy

ABSTRACT

The rapid emergence of legal influencers and short-form digital media has fundamentally transformed the manner in which advocates engage with the public, challenging the traditional ethical boundaries governing the legal profession in India. Rule 36 of the Bar Council of India Rules, 1975, prohibits advocates from advertising or soliciting professional work, yet its application to algorithm-driven digital platforms remains uncertain. This paper examines the growing tension between an advocate's constitutional right to impart legal knowledge under Article 19(1)(a) and the professional obligation to refrain from commercial solicitation under the Advocates Act, 1961. Through an analysis of the contemporary regulatory landscape, including **Anil Pandey v. Bar Council of India**, the Madras High Court's intervention against online lawyer-ranking platforms, and **Bar Council of India v. A.K. Balaji**, the paper argues that the existing framework is ill-equipped to distinguish genuine public legal education from disguised client acquisition. It further evaluates the Bar Council of India's July 2026 Circular on digital conduct and identifies both its strengths and limitations. To address this regulatory uncertainty, the paper proposes a "Dominant Purpose" Test, under which digital legal content is assessed on the basis of its primary objective rather than its format. The paper concludes by advocating for a comprehensive Digital Ethics Code that preserves professional dignity while accommodating responsible legal education in the digital age.

Keywords: Bar Council of India, Circular, Legal Influencers, Legal Solicitation.

INTRODUCTION

The Indian legal fraternity has, over the last decade, migrated with startling speed from the traditional chamber-and-print model of practice to the visual grammar of Instagram Reels, YouTube Shorts and other short-form digital media. Before the rise of digital media, an advocate's practice grew almost entirely through word of mouth. A lawyer's reputation was built slowly, over years of appearances in court, through the quality of arguments made before judges, and through the outcomes secured for clients and it spread the old-fashioned way, through satisfied clients recommending them to family, friends, and colleagues, or through referrals from other lawyers and judges who had observed their work firsthand. A young advocate typically had no independent client base at all; success meant putting in years as a junior in a senior's chambers, absorbing not just legal skill but the senior's own network of referrals over time. Visibility came from a name plate outside chambers, a listing in the local bar association directory, or perhaps a mention in a newspaper report of a case, never from anything resembling self-promotion.

Where a lawyer’s professional identity was once built through court appearances, currently, it is increasingly built through a follower count, an algorithmically curated feed, and the virality of a sixty-second clip explaining a provision of law. This shift is not confined to a handful of enthusiastic early adopters; for a significant section of the younger Bar, it has become a primary mode of professional visibility.

The targeted videos in this hot topic are a genre of short-form video content, essentially vlogging formats, that law students and young lawyers make about their day-to-day work life, similar to "day in my life" content you'll see from consulting interns, med students, or corporate employees, just adapted to a courtroom setting. "A day in the life of a lawyer" / "internship diaries" typically follow a loose vlog structure: the student films themselves getting ready in the morning, commuting to court or chambers, walking through the court corridors or the chamber office, sitting in on hearings or client meetings, sorting through case files or briefs, and then wrapping up with an evening reflection or a "lessons learned" voiceover. It's often set to trending music, cut quickly between scenes, and captioned with hashtags like #lawstudent #courtlife #internshipdiaries #legalinfluencer. Some are fairly benign, genuinely just a glimpse into the grind of an internship, useful for other students figuring out what the profession looks like day-to-day. Others lean harder into aesthetics: shots of the student in their black coat and bands walking dramatically through court corridors, flipping through impressive-looking files, or name-dropping the senior advocate or firm they're interning under, styled less like a diary entry and more like a personal brand reel.

The regulatory concern the BCI circular raises isn't with the format itself but with what gets swept up in it- using court premises, case files, client-related documents, or a senior advocate's chamber as a backdrop for a personal following; wearing gowns and bands (which are meant only for court appearances) for the camera; or filming inside courtrooms and corridors in ways that weren't authorized. That's the substance behind the "day in chamber" / "internship reveal" ban in the circular. It's less about students documenting their learning experience and more about court spaces, professional attire, and client-adjacent material being repurposed as content props for audience-building, which is what the circular treats as inconsistent with the dignity of the profession and the confidentiality obligations that come with an internship.

The difficulty this creates is definitional rather than merely regulatory. Genuine public legal education, a lawyer explaining the process of filing an FIR, the rights of a tenant, or the essentials of a consumer complaint, serves an undeniable constitutional and social good, particularly in a jurisdiction where legal literacy remains low and access to justice is mediated by information asymmetry. Yet the very platforms that carry such content are engineered around engagement, and engagement, in turn, is monetised through visibility, brand recall and, ultimately, client acquisition. The line between a lawyer imparting legal literacy as a citizen exercising the right to free expression and a lawyer engaged in commercial client acquisition prohibited under the Advocates Act, 1961[1] has, as a result, become almost impossible to draw with precision. This paper argues that the existing statutory framework , chiefly Rule 36 of the Bar Council of India Rules, 1975[2], is doctrinally unequipped to draw this line in an age of algorithmic content distribution, and proposes a 'Dominant Purpose' test as a more workable alternative, tracing its foundations to the Bar Council of India's own Circular of July 2026, discussed in Part V.

This tension is not unique to the legal profession. The petitioners in the most recent case of **Anil Pandey v. Bar Council of India**[3] themselves drew a comparison with a circular issued by the All-India Institute of Medical Sciences prohibiting the creation of reels and social media

[1]The Advocates Act, No. 25 of 1961 (India).
[2]Bar Council of India Rules, 1975 (India).
[3]*Anil Pandey and Anr. v. Bar Council of India*, Writ Petition (Civil) No. 817 of 2026.

content within hospital premises, arguing that institutions performing a public function, whether a hospital ward or a courtroom , require protection from commercial exploitation of the physical and symbolic space in which that function is discharged. The comparison is instructive: no one seriously argues that a doctor is barred from posting an educational video explaining the symptoms of dengue fever, yet a video filmed inside an operating theatre, using patients or hospital branding as a backdrop for a personal following, raises concerns that are qualitatively different. The challenge for Rule 36, examined in Part II below, is to draw an equivalent distinction for the legal profession without collapsing the category of 'legal education' into the category of 'advertisement' altogether.

CURRENT STATUTORY FRAMEWORK & THE ANACHRONISM OF RULE 36

It becomes important to dive deep into Rule 36, rather than just a naïve examination of the same. Rule 36 of Chapter II, Part VI of the Bar Council of India Rules, 1975, framed under the Advocates Act, 1961[4], prohibits an advocate from soliciting work or advertising, whether directly or indirectly, through circulars, personal communications, touts, or the furnishing of newspaper comments and photographs in connection with cases handled.[5] The provision was amended in 2008 to permit a narrow category of self-disclosure , an advocate's name, contact details, qualifications and areas of practice may now be displayed on a website, but the underlying architecture of the Rule remains anchored in a world of print advertisements, visiting cards and signboards outside chambers.

The anachronism becomes apparent the moment one asks how Rule 36 is meant to apply to a recommendation engine. Traditional solicitation was a 'push' activity: the lawyer originated the communication, whether a circular, a newspaper insertion or a personal visit, and directed it at a prospective client. Short-form digital media inverts this structure entirely. A lawyer uploads a video explaining, say, the anticipatory bail process; an algorithm, applying signals entirely outside the lawyer's control, decides which of the platform's users will be shown that video, how many times, and alongside what other content. The lawyer does not solicit a particular viewer; the platform's ranking system 'pulls' an audience toward the content based on predicted engagement. Rule 36, drafted for a regime of deliberate, targeted, one-to-one or one-to-few communication, has no vocabulary for a decentralised, probabilistic and audience-

[4]The Advocates Act, No. 25 of 1961, § 24 (India).
[5]Bar Council of India Rules, 1975, r. 36 (India).

agnostic mode of distribution of this kind. The result is that a rule meant to prevent touting is being stretched, awkwardly and after the fact, to regulate a phenomenon it was never designed to comprehend, leaving both the regulator and the regulated without clear notice of where the boundary lies.

JUDICIAL INTERVENTION: ANIL PANDEY v. BCI (2026) & TRACING THE PRECEDENTS

The doctrinal uncertainty identified above was brought squarely before the Supreme Court in July 2026. In **Anil Pandey and Anr. v. Bar Council of India**[6], advocates Anil Pandey and A.R. Tripathi, invoking Article 32 of the Constitution, sought a direction to the Bar Council of India to frame a comprehensive Digital Ethics Code governing advocates' conduct on social media. The petition alleged an 'unprecedented proliferation' of promotional reels, influencer-style videos and monetised legal content across platforms such as Instagram, YouTube and Facebook, a substantial portion of it filmed inside court corridors and waiting halls, with advocates appearing in full court attire, gowns and bands ordinarily reserved for appearances before the Bench, used instead as branding props for the camera. The petition also pointed to contact numbers and consultation prompts embedded within videos framed, on their face, as educational content. A Bench of the Chief Justice of India, Surya Kant, and Justices Joymalya Bagchi and V. Mohana issued notice to the Bar Council of India, directing it to file its response by 15 September 2026.

The **Anil Pandey** petition did not arise in a vacuum. It drew heavily on the Madras High Court's judgment dated 3 July 2024, which held that online platforms such as Quikr, Sulekha, JustDial and Grotal, by ranking and recommending lawyers to prospective clients for a fee, were facilitating solicitation and advertisement in violation of Rule 36, prompting the Bar Council of India to issue cease-and-desist notices to these platforms.[7] The Madras High Court's reasoning rested on the settled proposition, restated by the Supreme Court in **Bar Council of India v. A.K. Balaji**[8], that the Indian legal profession is treated as a noble service to society rather than a trade or business , a status that justifies restrictions on advertising and solicitation

[6] *Anil Pandey and Anr. v. Bar Council of India*, Writ Petition (Civil) No. 817 of 2026.

[7] *P.N. Vignesh v. Bar Council of India & Ors.* (Madras High Court, judgment dated 3 July 2024); see also Bar Council of India Press Release dated 8 June 2024 directing cease-and-desist action against Quikr India Pvt. Ltd., Sulekha.com New Media Pvt. Ltd., Just Dial Ltd. and Grotal.com for violation of Rule 36 of the Bar Council of India Rules, 1975.

[8] *Bar Council of India v. A.K. Balaji & Ors.*, (2018) 5 SCC 379.

which would be difficult to sustain for an ordinary commercial enterprise. This characterisation was reaffirmed more recently in **Bar of Indian Lawyers v. D.K. Gandhi**[9], where the Supreme Court held that services rendered by an advocate fall outside the definition of 'service' under the Consumer Protection Act[10] precisely because the profession is *sui generis* and not amenable to being treated as a commercial contract for service. Read together, these precedents supply the doctrinal premise underlying the ***Anil Pandey*** petition: if the legal profession may constitutionally be regulated more strictly than ordinary trade precisely because of its non-commercial, public character, content that dresses commercial solicitation in the language of legal education cannot claim protection merely by virtue of its educational framing.

COMMERCIAL SPEECH VS. PUBLIC LEGAL LITERACY

At the constitutional core of this dispute lies an unresolved tension between Article 19(1)(a) and the reasonable restrictions permissible under Article 19(2) of the Indian Constitution. Article 19(1)(a) is one of the six fundamental freedoms guaranteed to citizens under Article 19 of the Indian Constitution, and it protects the right to "freedom of speech and expression." In practice, courts have read this fairly broadly over the decades to cover far more than just spoken or written words: it extends to the press and publishing, to films, art, and other creative expression, to the right to receive information (not just impart it), to silence in certain contexts, and even to commercial advertising in some circumstances.[11] It's often described as one of the most foundational rights in the Constitution because free expression underpins the functioning of a democracy, allows citizens to criticize the government, participate in public debate, and hold power accountable.

Article 19(2), however, makes clear that this right is not absolute. It allows the State to impose "reasonable restrictions" on the exercise of the right under 19(1)(a), but only on specific, enumerated grounds: the sovereignty and integrity of India, the security of the State, friendly

[9]*Bar of Indian Lawyers v. D.K. Gandhi PS National Institute of Communicable Diseases & Anr.*, 2024 SCC OnLine SC 928.

[10]Consumer Protection Act, No. 35 of 2019 (India).

[11]See, e.g., *Romesh Thapar v. State of Madras*, (1950) 1 SCC 594 (India) (press and political publication); *Sakal Papers (P) Ltd. v. Union of India*, AIR 1962 SC 305 (India) (newspaper circulation and content control); *Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India*, (1985) 1 SCC 641 (India) (taxation and freedom of the press); *Secretary, Ministry of I&B v. Cricket Ass'n of Bengal*, (1995) 2 SCC 161 (India) (right to receive information via broadcasting); *S. Khushboo v. Kanniammal*, (2010) 5 SCC 600 (India) (artistic/creative expression and public morality); *Tata Press Ltd. v. MTNL*, (1995) 5 SCC 139 (India) (commercial advertising as protected speech); *Bijoe Emmanuel v. State of Kerala*, (1986) 3 SCC 615 (India) (right to remain silent in context of national anthem).

relations with foreign States, public order, decency or morality, contempt of court, defamation, or incitement to an offence. The key word here is "reasonable", a restriction can't be arbitrary, excessive, or disproportionate to the problem it's trying to address, and it has to actually fall within one of those listed grounds rather than being a general catch-all for anything the government finds inconvenient or embarrassing. Courts examine whether a restriction is reasonable both in terms of the procedure used to impose it and the substance of the restriction itself.[12]

Together, these two provisions set up the basic structure through which Indian free speech law operates: 19(1)(a) states the right in broad terms, and 19(2) defines the narrow, specific boundaries within which the State can limit it. Any law or executive action restricting speech has to be tested against this framework, first asking whether it actually falls under one of the 19(2) grounds, and second, whether the restriction imposed is proportionate and reasonable rather than a blanket or vague prohibition. This is the same basic framework that comes up whenever the line between protected expression and permissible regulation is being drawn, including in the professional-conduct context this paper deals with.

If we simplify the target videos of the circular, one can notice that in such content, usually, a lawyer might be explaining, in a ninety-second video, the difference between anticipatory and regular bail is, on one reading, doing nothing more than a journalist or a school-teacher would do: imparting information about the law to a lay audience that has a constitutionally recognised interest in receiving it. On another reading, the same video, precisely because it is produced by a person professionally positioned to convert that audience's attention into paying clients, is commercial speech dressed as civic education.

Indian constitutional jurisprudence has not spoken with one voice on how commercial speech is to be treated. In **Hamdard Dawakhana v. Union of India**[13], a Constitution Bench held that advertisements for drugs and medicines did not constitute speech protected under Article 19(1)(a) at all, reasoning that such publicity served the commercial interest of the advertiser rather than the informational interest of the reader. Three decades later, in **Tata Press Ltd. v.**

[12]See, e.g., *Chintaman Rao v. State of M.P.*, AIR 1951 SC 118 (India) (laying down that restrictions must be reasonable in both nature and extent and not arbitrary or excessive); *State of Madras v. V.G. Row*, AIR 1952 SC 196 (India) (articulating the "reasonableness" test under art. 19 and stressing that courts must consider the nature of the right, the purpose of the restriction, and the procedural safeguards); *Modern Dental College & Research Centre v. State of M.P.*, (2016) 7 SCC 353 (India) (applying a structured proportionality analysis that looks at both the procedure adopted and the substantive impact of the restriction).
[13]*Hamdard Dawakhana (Wakf) Lal Kuan v. Union of India*, AIR 1960 SC 554.

Mahanagar Telephone Nigam Ltd.[14], the Supreme Court departed from this position, holding that commercial advertising is itself a form of speech protected under Article 19(1)(a), because the public has a corresponding right to receive truthful commercial information, subject only to reasonable restrictions targeting false or misleading content.

Applying the ***Tata Press*** framework to legal-services content would suggest that a lawyer's explainer video, provided it is accurate and non-misleading, ought to enjoy constitutional protection akin to any other form of commercial speech. Yet the reasoning in ***A.K. Balaji*** and ***D.K. Gandhi*** cuts the other way: because the legal profession has consistently been held to occupy a different constitutional register from ordinary trade , owing to the fiduciary, non-transactional relationship between advocate and client , the State arguably retains wider latitude to restrict advertising by lawyers than it would for a commercial vendor of goods. The unresolved question, which the Bar Council of India's response in ***Anil Pandey*** will have to confront, is whether a bright-line distinction between 'awareness' and 'solicitation' can survive contact with a medium where the two are algorithmically inseparable, or whether the graduated reasonable-restriction standard under Article 19(2) instead demands a more granular, content-based test of the kind proposed in Part VI below.

CRITICAL ANALYSIS OF THE JULY 17, 2026 BCI CIRCULAR

Days before this paper went to press, and evidently in response to the pendency of ***Anil Pandey***, the Bar Council of India issued a circular dated 17 July 2026, laying down a detailed framework for the digital and social media conduct of advocates, law students and interns.[15] The Circular directs advocates to refrain from making reels, videos or promotional content within court premises, courtrooms, corridors, Bar rooms or chambers 'in a manner inconsistent with dignity and decorum', and expressly prohibits the use of bands, gowns or robes as props for public display or social-media performance, treating such use as inconsistent with the prescribed dress code for advocates.[16] It further bars the use of court signage, cause lists, case files or chamber settings as backdrops for personal branding or follower-seeking content, and clarifies that live-streaming of proceedings, permitted for reasons of transparency, cannot be treated as a licence

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[14] *Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd. & Ors.*, (1995) 5 SCC 139.

[15] Bar Council of India, Circular on Digital and Social Media Conduct of Advocates, Law Students and Interns, dated 17 July 2026, issued in exercise of powers under Sections 7(1)(b), 7(1)(g) and 49(1)(c) of the Advocates Act, 1961.

[16] See Rules 5 and 7, Section I, Chapter II, Part VI, Bar Council of India Rules, 1975 (dress code for advocates).

to clip, sensationalise or monetise fragments of a hearing.

Significantly, the Circular does not impose a blanket ban on legal content. It expressly permits short-form legal education , reels, shorts, brief videos, carousels, posts and podcast clips, provided such content is accurate, non-soliciting, and does not convert a complex legal question into a misleading outcome assurance. The line is crossed, on the Circular's own terms, when content becomes promotional, sensational, misleading, commercially exploitative, or is otherwise unsupported by the statutory provisions or precedents it purports to explain.

For law students and interns, the Circular goes further, banning 'day in the life of a lawyer' and 'day in chamber' style reels outright, and requiring a sworn undertaking, executed prior to enrolment or the commencement of any internship, affirming the student's commitment to digital restraint and professional confidentiality.[17] Read charitably, the Circular operationalises something very close to the 'Dominant Purpose' framework this paper proposes, distinguishing accurate, non-transactional legal education from monetised self-promotion. Read less charitably, an outright ban on internship content risks being both overbroad and difficult to enforce, given that the distinction between a harmless glimpse of chamber life and impermissible branding is itself a question of degree that a categorical prohibition is ill-suited to answer , raising the question whether the Council's response is a necessary protective measure for institutional decorum or an overbroad reaction that stifles the transparency it elsewhere claims to protect.

The Circular appears to contemplate a stronger institutional framework for monitoring digital conduct. However, the publicly available summaries primarily emphasize substantive behavioural standards rather than detailed enforcement architecture. As further implementation guidelines emerge, Bar Councils may consider specialised digital ethics mechanisms.

THE 'DOMINANT PURPOSE' TEST AS A PROPOSED SOLUTION

The Bar Council of India's own Circular, in listing permitted and prohibited categories of content, gestures toward but does not formally consolidate a coherent legal test. This paper proposes that the criteria embedded in the Circular be doctrinally organised into a 'Dominant Purpose' test, to be applied by Bar Councils, and where necessary by courts, in adjudicating

[17] Supra note 15.

complaints of digital touting under Rule 36.

Under this test, content is to be examined for its dominant purpose rather than its stated genre or label. Where a video, reel or post confines itself to an objective breakdown of a statute, a judgment or a legal procedure, without any call-to-action directing the viewer toward the creator's own practice, its dominant purpose is educational, and it should be treated as protected speech under Article 19(1)(a), consistent with the reasoning in ***Tata Press***. Conversely, where the content features client testimonials, success-rate claims, direct calls to a named chamber or firm, embedded contact numbers, or links to paid consultation booking, its dominant purpose is commercial solicitation , regardless of any educational framing layered over it , and it should attract liability for professional misconduct under Section 35 of the Advocates Act, 1961.[18]

The test is deliberately calibrated to the objective indicia already present in the July 2026 Circular, rather than to any subjective inquiry into the advocate's intention, which would be both evidentially difficult to establish and vulnerable to self-serving denial. What matters is not the advocate's stated motive, but whether the content, viewed as a whole, functions as a vehicle for client acquisition. This approach also has the advantage of being platform-neutral: it applies with equal force whether the content is distributed through an algorithmic feed, a static website, or a printed pamphlet, and therefore does not depend on the artificial 'push' versus 'pull' distinction identified in Part II as the source of Rule 36's present incoherence.

CONCLUSION & THE WAY FORWARD

The legal profession in India has long defined itself, and been defined by the courts, as a public service rather than a commodity to be marketed. ***A.K. Balaji*** and ***D.K. Gandhi*** both reaffirm that this characterisation carries real doctrinal consequences, justifying restrictions on advertising and solicitation that would be constitutionally suspect if applied to an ordinary trade. Nothing in the arrival of short-form digital media disturbs this underlying premise. What has changed is only the technology through which the line between education and solicitation is tested, not the constitutional or ethical stakes of the inquiry itself.

Rule 36, drafted for an era of newspapers and visiting cards, cannot by itself answer whether a reel explaining a provision of the Negotiable Instruments Act[19] is public legal education or

[18]Section 35, Advocates Act, 1961 (25 of 1961).
[19]Negotiable Instruments Act, No. 26 of 1881 (India).

disguised client acquisition. The Bar Council of India's Circular of 17 July 2026 represents a genuine, if imperfect, first attempt to translate the Rule's underlying purpose into a digital-era vocabulary. What remains is for the Council, guided by the pending proceedings in ***Anil Pandey***, to consolidate its own categorical distinctions into a formal, judicially cognisable 'Dominant Purpose' test of the kind proposed in this paper , one that protects genuine legal literacy content, does not chill responsible use of live-streaming and transparency initiatives, and reserves the disciplinary machinery of Section 35 for content whose true, if disguised, purpose is the solicitation of clients. A realistic Digital Ethics Code, rather than an unenforceable prohibition on the profession's presence on the internet, is the only sustainable way forward.