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## **ADVERTISEMENT AND SOLICITING BY ADVOCATES: CHANGING TIMES AND EVOLVING NEEDS**

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### **ABSTRACT**

The profession of legal practitioners, particularly advocates has, since time immemorial, been treated as one with high standards of integrity and ethics. Jurisdictions across the world have attempted to maintain the same by placing restrictions and strictly regulating the conduct of legal practitioners and India remains no exception. The Bar Council of India, the body responsible for regulating the affairs concerning advocates, lays down certain rules for the conduct of an advocate which include a bar on advertisement of their “work” (Rule 36 of BCI Rules). This paper aims to analyse this strict prohibition upon advocates preventing them from advertising and soliciting their work. The scope of this paper includes the laws governing the same and their constitutional basis along with the history of the measure, its pros and cons and changing adaptations worldwide. The research paper also suggests possible courses of action and changes in the existing status quo to accommodate changing times and needs of India (considering our demography) as we head towards the path of becoming a superpower.

**Keywords:** legal practitioner, advocates, rules for conduct, work, advertising, soliciting.

## Objective-

The profession of legal practitioners, particularly advocates has, since time immemorial, been treated as one with high standards of integrity and ethics. Jurisdictions across the world have attempted to maintain the same by placing restrictions and strictly regulating the conduct of legal practitioners and India remains no exception. The Bar Council of India, the body responsible for regulating the affairs concerning advocates, lays down certain rules for the conduct of an advocate which include a bar on advertisement of their “work” (Rule 36 of BCI Rules). This paper aims to analyse this strict prohibition upon advocates preventing them from advertising and soliciting their work. The scope of this paper includes the laws governing the same and their constitutional basis along with the history of the measure, it’s pros and cons and changing adaptations worldwide. The research paper also suggests possible courses of action and changes in the existing status quo to accommodate changing times and needs of India (considering our demography) as we head towards the path of becoming a superpower.

## Introduction-

Since ancient times the Indian concept of ‘Dharma’ or righteousness has guided the institutions of justice with the earliest conceptualization in the Rig Veda focussing on Rta or the cosmic morality and Yajnavalkiya Smriti (composed between 3-5<sup>th</sup> century CE - Gupta Period) propounding the idea of possession of qualities of Satvasampanna (quality of sattva or equanimity) and Avyasana (without evils) by Kings (traits of selflessness) to uphold justice. The idea that legal profession is noble and one with honour stems from it’s association with justice believed to be the epitome of human conscience. In modern practice, Justice Krishna Iyer’s opinion, “*the canon of ethics and propriety for the legal profession totally taboo conduct by way of soliciting, advertising, scrambling and other obnoxious practices, subtle or clumsy, for betterment of legal business. Law is not a trade, briefs no merchandise and to the heaven*

of commercial competition or procurement should not vulgarise the legal profession.”<sup>1</sup> is testamentary to the aforementioned. India has 1.2 million<sup>2</sup> lawyers and the commercialisation of the legal profession has always been discouraged to maintain the integrity of the profession and the quality of legal professionals, since there exists a common assumption that commercialization negatively impacts the honour of the legal profession . But at the same time this leads to an information insufficiency regarding the legal sphere in India turning it into a luxury for the common man, infringing his right to information. This also leads to insufficient information about Indian legal practice on a global front as advocates are even prohibited from publicising their experiences and views in the capacity of an advocate.

## **Research Methodology-**

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

## **Historical Development of the Idea-**

In modern practice, the origin of prohibitions on advertisement and soliciting by advocates is believed to be in England, attributed to the traditional Victorian notions regarding the nobility of the legal profession which was subsequently borrowed by India along with other common law countries. USA strictly prohibited the same under Canon 27 of the Professional Ethics of American Bar Association, similar to Rule 36 in India, deeming it unprofessional until 1977. In Hong Kong, advertisement by advocates is prohibited on television, radio and cinema though advertising in prints is admissible subject to the laws<sup>3</sup>.

## **Law Prohibiting Advertisement by Advocates in India-**

The Bar Council of India Rules (Published in the Gazette of India in September 1975), Part VI, Section IV- Duty to Colleagues, Rule 36 says that<sup>4</sup> -

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<sup>1</sup> *Bar Council of Maharashtra v. M. V. Dabholkar*, 1976 AIR 242

<sup>2</sup> Singh, Isha Kalwant, *Advertising by Legal Professionals*, Oct.–Dec. 2016 Bharati L. Rev. 274.

<sup>3</sup> Logeshen, Aadhitya, *Advertising by Advocates in India: The Right to Advertise Professional Ethics*, 6 Int'l J. L. 1 (2020)

<sup>4</sup> Rule 36, The Bar Council of India Rules , 1975

An advocate is not allowed to seek professional work or promote himself through any form of solicitation or advertisement, whether direct or indirect. An advocate shall not issue or cause to be issued any circular, advertisement, publicity matter or use of touts, or make any unsolicited personal approach or give interviews to the press unless justified by personal relationship. An advocate shall not write or permit to be written, any comment in Newspapers relating to any case in which he has appeared or otherwise been involved, nor allow any photograph to be published in connection with any such case. The signboard or nameplate of the advocate's place of work must be of a reasonable and suitable size and must not contain any statement, which would give a false implication. The signboard or nameplate should not disclose the fact that the advocate is/has been the President/Member of Bar Council/Bar Association or that he was/are associated with any person or organization or cause or matter. Also, it should not indicate any specialisation in legal work nor give reference to having been a Judge/Advocate General at any time.

However, such restrictions do not bar advocates from having a Website in respect of the information as permissible under the concerned Schedule, after intimation and with the approval of Bar Council of India. Any other information contained in the Website would be in contravention of the terms of Rule 36 of the aforementioned regulation and shall render the concerned advocates liable for disciplinary action including censure under Section 35 of the Advocates Act, 1961 for being professional misconduct. The permitted website information under this provision, specified in the schedule, includes-

1) Name

2) Address, Telephone Numbers, and E-mail ID

3) Enrolment Details:

(a) Enrolment Number

(b) Date of Enrolment

(c) Name of the State Bar Council where originally enrolled

(d) Name of the State Bar Council where presently enrolled (if enrolled).

4) Professional and Academic Qualifications

5) Areas of Practice which include a wide range of legal specialties such as civil, criminal, tax etc.

Every such disclosure of information must be attached with an authenticity declaration duly signed by the professional.

As can be noted, advertisement of work by advocates in the form of circulars or print media and even personal communications is prohibited by the aforementioned provision. The sign boards of advocates must be of a reasonable size and must not indicate his/her position either in the BCI or otherwise or his specialization within the legal field. In the case of *Bar Council of Maharashtra v. M.V. Dabholkar*<sup>5</sup> Justice Krishna Iyer held that, “*The canons of ethics and propriety for the legal profession totally taboo conduct by way of soliciting, advertising, scrambling and other obnoxious practices subtle or clumsy, for betterment of legal business. Law is no trade, briefs no merchandise and so the leaven of commercial competition or procurement should not vulgarise the legal profession.*” The court emphasized on the fact that legal ethics existed even before the BCI rules came into picture and must be adhered to.

### **Constitutional Basis of Rule 36-**

The power to make laws in the context of the legal profession is bestowed directly upon the parliament under Schedule 7, List III- Concurrent list, Entry- 26, that is- Legal, medical and other professions. Besides, The Advocates Act was enacted in the year 1961 by the Parliament under the legislative field of List-I entry 77 and 78 to constitute one common Bar for the whole of the country and to provide machinery for its regulated functioning.<sup>6</sup> The Act establishes Bar Council of India under section 4 and states General power of the BCI to make rules under section 49. Rule 36 has been particularly made under section 49(c) of The Advocates Act. In the case of *Gaurav Kumar v. Union of India, 2025*<sup>7</sup>, in the context of BCI rules, the court held that, “*The delegated legislation must be consistent with the law under which it is made and cannot go beyond the limits of policy and standards laid down in the law.*”

However, Article 13 of the Constitution clearly states that all laws in force which are inconsistent with Part III shall be void to the extent of such inconsistency. Rule 36 creates a class distinction between advocates and other professionals. In the case of *Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd., 1995*<sup>8</sup>, the Supreme Court held that “Commercial Speech”

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<sup>5</sup> *Bar Council of Maharashtra v. M.V. Dabholkar, (1976) 2 SCC 291*

<sup>6</sup> *Gaurav Kumar v. Union of India, (2025) 1 SCC 641*

<sup>7</sup> *Gaurav Kumar v. Union of India, (2025) 1 SCC 641*

<sup>8</sup> *Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd., (1995) 5 SCC 139*

is a part of freedom of Speech and Expression guaranteed under Article 19(1)(a) of the Constitution. But Rule no. 36 bars advocates from exercising his right on the pretext of preserving the nobility of the legal profession. The assumption that commercialization particularly advertising, would negatively impact the integrity of advocacy as a profession is unreasonable which will be dealt with in detail shortly. This leads us to another basic question as to which professions are 'noble' in this criteria? The absence of an intelligible differentia and a reasonable nexus<sup>9</sup> in the above classification violates Article 14 of the Constitution.

Rule no. 36 is not in consonance with the right of "Commercial Speech" of the advocates aforementioned. In the case of Tata Press Limited it was held that restrictions on commercial speech are mentioned in Article 19(2) of the Constitution. Commercial Speech which is deceptive, unfair, misleading and untruthful, would be hit by Article 19(2) and can be regulated or prohibited by state. But a complete bar on it for advocates is disproportional.

This leads to another inconsistency that is of the 'Right to freedom to practice any profession' under article 19(1)(g) of the Constitution<sup>10</sup>, of the advocates as well as 'Right to Information' of the people of India (who are all governed by the Indian law and out of which 50% population faces significant legal problems every 2 years<sup>11</sup>) under Article 21 of the Constitution. Rule no. 36 imposes restrictions on the freedom of advocates to profess advocacy, as Right to Commercial Speech is quintessential for any economic activity. *"Advertising as a "commercial speech" has two facets. Advertising which is no more than a commercial transaction, is nonetheless dissemination of information regarding the product advertised. Public at large is benefited by the information made available through the advertisement. In a democratic economy free flow of commercial information is indispensable. There cannot be honest and economical marketing by the public at large without being educated by the information disseminated through advertisements. The economic system in a democracy would be handicapped without there being freedom of "commercial speech". Therefore, any restraint or curtailment of advertisements would affect the fundamental right under Article 19(1)(a) on the*

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<sup>9</sup> *The State Of West Bengal vs Anwar All Sarkarhabib Mohamed* 1952 AIR 75

<sup>10</sup> *Olga Tellis & Ors vs Bombay Municipal Corporation & Ors.* 1985 (3) SCC 545

<sup>11</sup> Varsha Aithala & Karthik Suresh, *Knocking on Closed Doors: India's Challenges in Accessing Legal Services* (2022), [https://www.nls.ac.in/wp-content/uploads/2022/01/Knocking-on-closed-doors\\_Aithala\\_Suresh\\_2021.pdf](https://www.nls.ac.in/wp-content/uploads/2022/01/Knocking-on-closed-doors_Aithala_Suresh_2021.pdf).

*aspects of propagation, publication and circulation.* (Para 23 of *Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd.* Judgement)”).

The excessive restraints which shall be dealt in detail in the next section, lead to a dearth in the circulation of legal information and information regarding the legal profession, among the general public, which should be readily available, negatively impacting their Access to Justice. In the case of *Justice KS Puttuswamy(Retd.) vs UOI*<sup>12</sup>, a three-pronged test of – (i) Legality (ii) Legitimate Aim (iii) Proportionality, was established to determine the constitutionality of a reasonable restriction. Rule no. 36 does not fulfil the test of proportionality as the bar on advertisement has been interpreted broadly to include even articles published in newspapers in the capacity of an advocate.

### **Whether Advocacy as a profession is an economic/commercial activity or not is another question stuck in a legal paradox.**

In the case of *K. Vishnu v. National Consumer Disputes Redressal Commission & Anr.*<sup>13</sup>,2000, it was held that legal profession in practice has the same end goal as in the Consumer Protection Act, 1986. In the case of *Bangalore Water Supply & Sewerage Board v. A Rajappa*<sup>14</sup>, the supreme court held that legal profession comes under the definition of ‘industry’ under the Industrial Disputes Act, 1947. At the same time in the case of *R. N. Sharma, Advocate v. State of Haryana*<sup>15</sup> it was held that an advocate is the officer of the court, and advocacy is not in the nature of trade and business.<sup>16</sup>

### **Does commercialisation negatively impact the integrity of the Legal profession and public welfare at large?**

L. Shannon Jung, Tibor R. Machanand, Sanford A. Marcus in their thesis, define “Commercialization” as any development or marketing of a good or service on an exchange basis which may or may not be pecuniary<sup>17</sup> and which develops from human interaction, under

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<sup>12</sup> *Justice K.S. Puttaswamy (Retd.) v. Union of India*(MANU/SC/1044/2017)

<sup>13</sup> *K. Vishnu v. National Consumer Disputes Redressal Commission & Anr.*,(2000) ALD (5) 367

<sup>14</sup> *Bangalore Water Supply & Sewerage Board v. A Rajappa*, 1978 AIR SC 548

<sup>15</sup> *R. N. Sharma, Advocate v. State of Haryana*2003(3) RCR (Criminal) 166 (P&H)

<sup>16</sup> Singh, Isha Kalwant, *Advertising by Legal Professionals*, Oct.–Dec. 2016 Bharati L. Rev. 274.

<sup>17</sup> L. Shannon Jung, Tibor R. Machan, Sanford A. Marcus, *Commercialization and the Professions*, , Vol. 2, No. 2 (Winter 1983), *Business & Professional Ethics Journal*, pp. 57-81, 83-91 (34 pages)

human control but seldom, may have consequences beyond human control. In their Journal Article, it is highlighted that commercialization has been an inevitable process and that historically (most recently and evidently in the 20<sup>th</sup> century), in the development and spread of those professions which began with a pure aim of public welfare, commercialisation became a significant process. This observation leads us to the most basic truth of human nature, which is self-interest. Thus, it wouldn't be wrong to conclude that any profession which grows, needs commercialization for its benefits to reach up to the masses who are also responsible for the process and not just affected by it, as claimed by Shannon Jung. The morality of commercialization is a question of perspective. In words of Paul Camenisch, prioritizing public rewards over public interest will lead to professions losing their soul. But, historical observations suggest that public rewards are proportional to the quality of work. Human incentive needs a push in terms of a reward. Strict restrictions, as seen in Rule no. 36 will not only crush incentive but also prevent the public from reaping the fruits of its development. Without flow of information, it will not be feasible for the people (both clients and non-clients) to make an informed choice. Thus, commercialization is not bad and does not affect the integrity of a profession but instead helps it grow. The motive of public interest is not parallel to commercialisation and both can be achieved together, with limited interference by the state, as can be seen in the Solutions section.

### **Inclusive definition of 'Work' according to precedents-**

In the case of *CD Sekkizhar v. Secretary Bar Council*<sup>18</sup>, the court held that advertisement is a reprehensible conduct that leads to jealousy which is very unbecoming of a lawyer. It may also lead to unscrupulous advocates exploiting the public.

In the case of *Bar Council of India v. A.K. Balaji*<sup>19</sup>, the Supreme Court held that right to practice includes both litigation and non-litigation works like consultation, drafting, involvement in a legal discussion etc. It was held that, "*Ethics of the legal profession apply not only when an advocate appears before the court. The same also apply to regulate practice outside the court. Adhering to such Ethics is integral to the administration of justice. The*

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<sup>18</sup> *CD Sekkizhar v. Secretary Bar Council, AIR 1967 Mad. 35*

<sup>19</sup> *Bar Council of India v. A.K. Balaji, (2018) 5 SCC 379*

*professional standards laid down from time to time are required to be followed. Thus, the view that practise of law includes litigation as well as non-litigation is upheld.”*<sup>20</sup>

In the case of *Noratanmal Chouraria vs M.R. Murli & Anr*<sup>21</sup>, the court interpreted the term ‘misconduct’ broadly to include any behaviour personal or professional that leads to the damage of reputation of the legal profession. Thus implying that the code of ethics applies to advocates in all spheres which includes those working as arbitrators, mediators and negotiators or as respective counsels.

### **Inclusive definition of ‘Advertisements’ according to precedents-**

In the case of *Government Pleader v. S. A Pleader*<sup>22</sup>, it was held that mere sending of a postcard containing the name, address and description constitutes advertisement. Publishing articles in newspaper under an advocates signature<sup>23</sup> or where the writer mentions that he/she is an advocate<sup>24</sup>, amounts to endorsement. In the *CD Sekkizhar*<sup>25</sup> case, it was held that advertising in the form of canvassing and announcements is also prohibited even if done as a part of an election manifesto.

In the case of *State of Uttar Pradesh and Anr. v. Johri Mal*<sup>26</sup>, an issue considered was whether the filing of an application in response to a notice amounts to advertisement under the meaning of Rule 36. In the case of *B. Rajeswar Reddy and Ors. V. K. Narasimhachari and Ors*<sup>27</sup>, the court held that “ *...filing of application, pursuant to a notification issued by the Metropolitan Sessions Judge, by the advocates offering their services for the post of Public Prosecutor and Additional Public Prosecutor would not by itself amount to solicitation of work within the meaning of Rule 36.*”<sup>28</sup>

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<sup>20</sup> Singh, Isha Kalwant, *Advertising by Legal Professionals*, Oct.–Dec. 2016 Bharati L. Rev. 274.

<sup>21</sup> *Noratanmal Chouraria vs M.R. Murli & Anr*, 2004 AIR SCW 2894

<sup>22</sup> *Government Pleader v. S. A Pleader*, AIR 1929 Bombay 335

<sup>23</sup> *S. K. Naicker v. Authorised Officer*, (1967) 80 Mad. LW 153

<sup>24</sup> *In Re: (Thirteen) Advocates v. Unknown*, AIR 1934 All 1067

<sup>25</sup> *CD Sekkizhar v. Secretary Bar Council*, AIR 1967 Mad. 35

<sup>26</sup> *State of Uttar Pradesh and Anr. v. Johri Mal*, Civil Appeal 963-64 of 2000

<sup>27</sup> *B. Rajeswar Reddy and Ors. V. K. Narasimhachari and Ors*, [ 2001 (6) ALT 104]

<sup>28</sup> Singh, Isha Kalwant, *Advertising by Legal Professionals*, Oct.–Dec. 2016 Bharati L. Rev. 274.

In the case of *J.N. Gupta v. D.C. Singhania & J.K. Gupta*<sup>29</sup>, the court stated that an advertisement for the purpose of informing about the change in the practicing address of advocates, shall not constitute a violation of Rule 36. It was also held that any publication in a National or International Bar Directory would not constitute a violation of Rule no. 36 if it is done with the intent of providing information regarding the address or telephone numbers of advocates.<sup>30</sup>

## **Pros and Cons of Rule 36-**

### **Pros-**

- 1) **Reduction in Chances of Misuse-** Allowing advertisement by advocates would increase the risk of gross misuse by them, as it would give them a chance to influence and mislead clients, taking advantage of legal loopholes. It might also curb Fair decision making by clients, as they may be swayed by catchy punch lines and tempting signboards, instead of basing their decision on substantial grounds.
- 2) **Prevents Distractions from the Main Aim of Quality Service-** Allowing advertisement by advocates would lead to the professionals focusing on their endorsement skills to survive in the market, apart from their basic Advocacy skills. This shifting focus may lead to a decline in the quality of services provided by the professionals.

### **Cons-**

1) **Information Assymetry-** There is no denying that the nature of a client-attorney relation is that of a consumer and a professional. Minimal flow of information from the advocates end, barred by law, causes an imbalance of information in the legal sphere, which in turn makes the clients vulnerable to exploitation by the well informed professionals. Besides, since advocates are not even allowed to publish articles in the capacity of an advocate, the flow of authentic legal info is also minimal, making the client overly dependent on the professional.

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<sup>29</sup> *J.N. Gupta v. D.C. Singhania & J.K. Gupta, BCI TR. Case No. 38/1994*

<sup>30</sup> Logeshen, Aadhitya, *Advertising by Advocates in India: The Right to Advertise Professional Ethics*, 6 Int'l J. L. 1 (2020).

**2)Moral Hazard-** Since there is no check on the advocates while they provide their services, considering that the due diligence of clients is ruled out and the BCI cannot monitor every little action of every advocate in the country, the advocates tend to take advantage of the information asymmetry, fueled by human nature, to take excessive risks at the cost of their clients. For instance, if an advocate must appear in court on a particular date, but he/she is not prepared with the case, they may still appear in the court to get a date shift as per their convenience rather than keeping the interests of the client on top.

**3)Lack of Opportunities to Novice Lawyers-** It is evident that any new lawyer who starts practice finds it very difficult to build a client base, irrespective of their skill level. Besides, big law firms have resources to advertise their services through other means such as sponsoring events, hosting conferences etc, which leads to a very strong monopoly. Allowing advertisement would make it possible for novice advocates to make place for themselves in the legal sphere.

**4)Lack of Access to Justice-** As mentioned earlier there are 1.2 million advocates in India. With such a huge population, there is a clear scarcity of advocates to represent people in various cases, not to mention the massive backlog of cases and judicial delays. On top of this, lack of information regarding available professionals and legal info as a whole, makes Access to Justice unfeasible.

**5)Comparative Global Disadvantage-** Rule no. 36 places Indian advocates in a tough spot in comparison to the foreign advocates as many countries allow advertisements by advocates. This leads to a situation in which the world knows more about the legal sphere in other countries, which helps developing an international image and overall respect for their judicial system. In the case of *Bar Council of India v. A.K. Balaji*<sup>31</sup>, the court allowed foreign lawyers to practice international arbitration on a fly-in and fly-out basis. For the smooth practice of Arbitration as well, a proper flow of legal information is a prerequisite. This also causes Indian lawyers to lose potential international clients.

## **Changing Adaptations Globally-**

GATS (General Agreement on Trade and Services), which came into being post Uruguay Round of Negotiations, annexed to WTO (World Trade Organization) in 1995, recognizes 12

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<sup>31</sup> *Bar Council of India v. A.K. Balaji*, (2018) 5 SCC 379

service sectors, of which one category is Business Services, further divided into six categories. One of these sub categories includes- provision of professional services including legal services. GATS emphasizes on liberalizing the service sphere which would include allowing of advertisement in the legal profession<sup>32</sup>. Various countries around the world have worked on this.<sup>33</sup>

UK has lifted the ban on advertisements by its solicitors post review reports by Monopolies and Merger's Commission 1970 and the Office of Fair Trading in 1986, highlighting the advantages of the action. In the year 2016, the Solicitor's Publicity Code 1990, was amended to adapt to the changes in the legal landscape and which led to the SRA(Solicitor's Regulation Authority) Standards and Regulations 2019, with a more flexible approach towards regulation.

In the SRA Standards and Regulations 2019, Code of Conduct for Solicitors, RELs, RFLs and RSLs, Paragraph 8.6-8.11<sup>34</sup> Client Information and Publicity mentions the following-

Solicitors must present information to clients clearly and accessibly, enabling informed decisions on needed services, case handling, and options available.<sup>35</sup> The professionals must supply the best possible details on matter pricing—both at engagement and as it progresses—including likely overall costs and incurred expenses.<sup>36</sup> All practice publicity must be accurate and non-misleading, especially on charges and interest payable to or by clients.<sup>37</sup> Solicitors must avoid unsolicited approaches to the public to advertise their business's, or employer's legal services, except to current or former clients.<sup>38</sup> They are supposed to ensure clients understand service regulation by explaining: (a) tasks you perform as an authorised person; (b) which services from you, your business/employer, or separate businesses are regulated by an approved regulator; and (c) never represent unauthorised businesses or employers, including separate

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<sup>32</sup> *MTN.GNS/W/120, Secretariat Note, July 1991, See General Agreement on Trade in Services, 1995(WTO)*

<sup>33</sup> Subhadarsi, Amrit, *The Indian Legal Service Market and GATS*, Academike (Feb. 4, 2015), <https://www.lawctopus.com/academike/indian-legal-service-market-gats/>.

<sup>34</sup> *Paragraph 8.6 - 8.11, Code of Conduct for Solicitors, RELs, RFLs and RSLs, SRA Standards and Regulations, 2019*

<sup>35</sup> *Paragraph 8.6, Code of Conduct for Solicitors, RELs, RFLs and RSLs, SRA Standards and Regulations, 2019*

<sup>36</sup> *Paragraph 8.7, Code of Conduct for Solicitors, RELs, RFLs and RSLs, SRA Standards and Regulations, 2019*

<sup>37</sup> *Paragraph 8.8, Code of Conduct for Solicitors, RELs, RFLs and RSLs, SRA Standards and Regulations, 2019*

<sup>38</sup> *Paragraph 8.9, Code of Conduct for Solicitors, RELs, RFLs and RSLs, SRA Standards and Regulations, 2019*

ones, as SRA-regulated<sup>39</sup>. Finally, they must confirm clients know the regulatory protections afforded to them.<sup>40</sup>

IN the USA, post the case of *Bates v. State Bar of Arizona*<sup>41</sup>, the US Supreme Court recognised the advertisement by advocates as a constitutionally protected right holding that blanket ban on it would be a violation of the First Amendment that is Freedom of Speech and Expression, though it can be regulated by the state. The Federal Supreme Court observed: “*The belief that lawyers are somehow above "trade" is an anachronism, and for a lawyer to advertise his fees will not undermine true professionalism.*”<sup>42</sup>

Currently, advertising by advocates in the USA is regulated by the Model Rules of Professional Conduct, 1983 of the American Bar Association. In Information about Legal Services from Rule 7.1 - 7.6, a lawyer is allowed to advertise services through written, recorded or electronic communication including public media<sup>43</sup> with regulations for payment for those advertisements. Lawyers are allowed to solicit professional employment through other lawyers or those related subject to conditions<sup>44</sup>. Lawyers can communicate their field of practice and can claim specialization if they have been certified by the appropriate state authority or by ABA<sup>45</sup>. They are allowed to use firm name, letterhead or other professional designations<sup>46</sup>. However, at the same time lawyers cannot make false or misleading communications regarding their services and cannot solicit by coercion<sup>47</sup>. The trade name a lawyer uses must not imply any connection with a government agency or charitable legal service organisations<sup>48</sup>.

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<sup>39</sup> *Paragraph 8.10*, Code of Conduct for Solicitors, RELs, RFLs and RSLs, SRA Standards and Regulations, 2019

<sup>40</sup> *Paragraph 8.11*, Code of Conduct for Solicitors, RELs, RFLs and RSLs, SRA Standards and Regulations, 2019

<sup>41</sup> *Bates v. State Bar of Arizona* 433 U.S. 350

<sup>42</sup> Jain, Mayank, *Advertising by Advocates—A Critical Appraisal*, Scribd (July 14, 2008), <https://www.scribd.com/doc/3935967/Advertising-by-Advocates-in-India>.

<sup>43</sup> *Rule 7.2, Model Rules of Profession Conduct, 1983*

<sup>44</sup> *Rule 7.3, Model Rules of Profession Conduct, 1983*

<sup>45</sup> *Rule 7.4, Model Rules of Profession Conduct, 1983*

<sup>46</sup> *Rule 7.5, Model Rules of Profession Conduct, 1983*

<sup>47</sup> *Rule 7.1 and Rule 7.3, Model Rules of Profession Conduct, 1983*

<sup>48</sup> *Rule 7.5, Model Rules of Profession Conduct, 1983*

In Italy, the legal marketing has been legalized by the Bersani Decree of 2004, enforced in 2007. Similar relaxations can be seen in other European Countries like Germany and Spain and Asian countries like Hong Kong, Singapore and Malaysia.<sup>49</sup>

In Malaysia, the Legal Profession (Publicity) Rules passed in 2001, regulates advertisements in both legal and non-legal directories, and publications of journals, brochures etc. by lawyers and interviews in both electronic and print media. It even has rules regarding sending of greeting cards on special occasions by lawyers. There is no excessive ban on advertising, only regulation. In Hong Kong, lawyers are allowed to advertise through print media, though advertising through television, radio and cinemas is prohibited.<sup>50</sup>

## **Status Quo in India and the Changing Trends-**

Currently in India, the constitutionality of Rule No. 36 is clearly upheld as seen previously. In the context of GATS, since Article XIV [specifically clause (a) *necessary to protect public morals or to maintain public order*], states General Exceptions, exempting members from enforcement of provisions of the agreement<sup>51</sup>, India still chooses not to allow advertisement by legal professionals. Yet, even after the ban, one can see lawyers advertising their profession through their visiting cards and signboards and soliciting clients through personal networks, not allowed under the current law. Advocates also resort to indirect means of soliciting such as filing “publicity interest litigations”. It is obvious that it is not possible for the BCI to monitor the actions of each and every advocate.

However, there have been changes in the approach towards it, as can be seen in the report of the High Level Committee on Competition Policy and Law, under the Chairmanship of S.V.S.<sup>52</sup> Raghavan, which concluded 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*

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<sup>49</sup> Jain, Mayank, *Advertising by Advocates—A Critical Appraisal*, Scribd (July 14, 2008), <https://www.scribd.com/doc/3935967/Advertising-by-Advocates-in-India>.

<sup>50</sup> Jain, Mayank, *Advertising by Advocates—A Critical Appraisal*, Scribd (July 14, 2008), <https://www.scribd.com/doc/3935967/Advertising-by-Advocates-in-India>.

<sup>51</sup> *General Agreement on Trade in Services, art. XIV, 1995(WTO)*

<sup>52</sup> Singh, Isha Kalwant, *Advertising by Legal Professionals*, Oct.–Dec. 2016 Bharati L. Rev. 274.

*advantage of India's considerable expertise and precluding consumers of free and informed choice".<sup>53</sup>*

On 30<sup>th</sup> April 2008, a resolution was passed by BCI in front of a three-judge bench of the Supreme Court to amend Rule 36. This led to the allowance of publication of Name, Address, Contact details, Qualifications and Areas of Practice of advocates on their websites. This relaxation is a significant step towards a positive change.<sup>54</sup>

## **Recommendations and Solutions-**

As is rightly said by John Milton, "*Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties.*"<sup>55</sup> Therefore, striking a delicate balance between the right of advocates to advertise freely and public welfare is quintessential. Here are a few ways by which this can be achieved-

1) Advocates should be allowed to publish and communicate the following in written, oral or electronic form, apart from their Name, Address, Contact details and Areas of Practice on currently permitted signboards,-

a) Designations, whether in BCI or otherwise

b) Fee Structure

c) Articles in journals, newsletters, magazines or any written form, with an aim to provide information, in the capacity of an advocate.

d) Give and publish interviews, with an aim of providing information.

e) Solicit work through fellow professionals and related and known people without denigrating the reputation of the legal profession.

f) All of the above-mentioned things should be allowed online.

2) No misleading or false information must be circulated by an advocate and if done, he/she must be held liable for the violation of the Code of Ethics established by the BCI.

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<sup>53</sup> 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

<sup>54</sup> Logeshen, Aadhitya, *Advertising by Advocates in India: The Right to Advertise Professional Ethics*, 6 Int'l J. L. 1 (2020).

<sup>55</sup> Singh, Isha Kalwant, *Advertising by Legal Professionals*, Oct.–Dec. 2016 Bharati L. Rev. 274.

3) The BCI must establish rules to regulate the flow of information rather than placing a blanket ban, with an aim of ensuring the integrity of the legal profession, taking inspirations from UK, USA and Hong Kong.

4) The fees of Advocates must be left to the free market forces of demand and supply and must only be regulated when needed,

for the protection of the interests of the clients. For instance, in case of clients who cannot afford the fees of advocates, they must be given regulatory protection under the principle of public welfare, through Legal Aid Policies and Programmes or in case of excessive pricing of services.

5) Stricter Pro Bono requirements must be put in place. For example, the requirement of handling minimum 15 % and 20% of the cases taken up in an year by an individual practitioner and registered law firm respectively, for the Pro Bono Clients.

6) Issuance of Pro Bono Cards by BCI- to ease the process of identifying those who fall in the said category. BCI should establish a criteria to determine who to issue Pro Bono cards to. For instance, a possible criteria can be, each Indian with an annual income below Rupees 2,50,000 is eligible to get a Pro Bono Card.

7) Stricter Regulation of the ethical conduct and duty towards clients by establishing specific penalties for every reasonable misconduct.

8) BCI should promote online availability of advocates for an increase in Access to Justice. This includes provision of enough information online to establish a space for the interaction of attorneys and clients.

9) BCI should promote informative articles and blogs by advocates to ensure authentic flow of legal information.

## **Conclusion-**

It can be concluded that the ban on advertisement by advocates under Rule 36 is legally and constitutionally valid according to relevant judicial precedents in India, though this doctrinal analysis points to several legal inconsistencies in the reasoning that commercialisation leads to an erosion of nobility of a profession. Commercialisation is an inevitable process fueled by human nature and must be embraced pragmatically as it also ensures flow of genuine information needed by clients to practice due diligence. An intricate balance between right of

advocates to advertise freely, right to information of the general public and public welfare is the need of the hour, as can be seen in the changes adopted by both Western and Asian countries, relaxing advertisement prohibitions on their lawyers.

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