

WHAT AILS THE INDIAN LEGAL SECTOR?

The legal profession in India is one of the most lucrative and cumulative profession, with approximately more than six million advocates practising in this arena. However, the profession is bound by shackles of regulations in the country.

By Rakesh K Singh

Over a past decade there has been a sea-change in the legal profession and it has become very competitive and promising. With the advent of globalization and the consequent development of corporate and other allied laws and regulations, the importance of corporate legal advice from lawyers has evolved into a much bigger practice than the litigation practice and consequently has led to the establishment of an overwhelming number of law firms.

Unfortunately, though the demand in the Indian legal sector is met by domestic lawyers, there is still a dearth of proficient professional legal services due to the lack of fierce and adroit competition.

The first and the foremost legislative enactment which, according to many, seeks to hinder the development of the Indian legal sector is the Advocates Act, 1961. The Act seeks to regulate and consolidate the laws relating to legal practitioners and at the same time also provides for the constitution of State Bar Councils and an All India Bar Council.

Next in the line is the Bar Council of India Rules, 1975, which also, according to many, has left no stone unturned in impeding the liberalization of the sector. It is pertinent to mention here that there exist certain provisions in the Act and the Rules which blatantly imposes

restrictions on trade oriented legal service sector by not just precluding foreign players from practising law in India but also by creating heavy restrictions for domestic players as well. These restrictions have no doubt profoundly hampered the rate of development in the sector and the interests of patrons of legal services.

PROVISIONS PRECLUDING GROWTH OF LEGAL SECTOR

The first and the foremost provision which aims at shackling the liberalization of the legal sector in India is Section 24 of the Advocates Act. Section 24 provides that only Advocates recognized under the Act can practise law and further mandates that a person shall be qualified to be admitted as an Advocate on State rolls, if he fulfils the conditions – a) He is a citizen of India, and b) He has obtained a degree from a law school recognized for the purposes of this Act by the Bar Council of India.

On a plain reading of the said Section 24, it becomes quite evident that the Act stipulates that foreign citizens, other than the citizens of the reciprocating country, have no right whatsoever to practise the profession of law in India.

Secondly, in India there is an absolute bar on advocates from advertising and soliciting for any purpose indicating their areas of

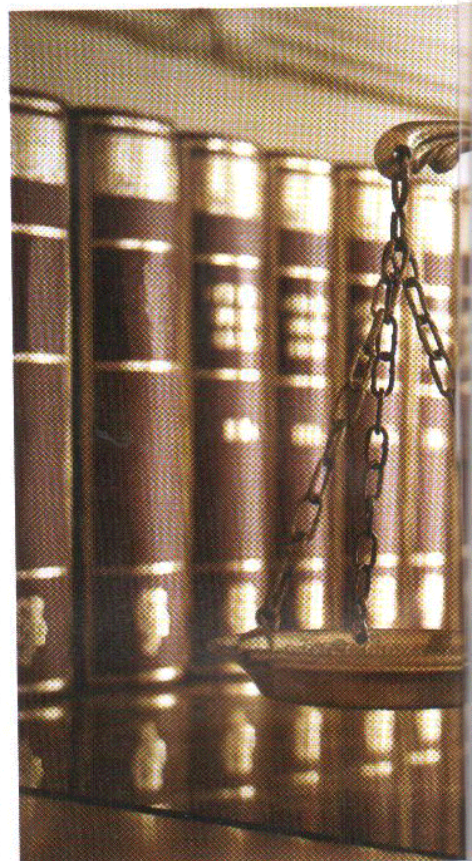
specialization. It is submitted that the bar on advertising has created a situation which is adverse to the interests of the patrons of this legal service, since non – advertising precludes consumers from making an informed choice.

Moreover, the restriction on domestic firms and Advocates from advertising their areas of expertise has also hampered the healthy competition which would otherwise have prevailed.

Thirdly, in India only a natural person can practise law and the same is apparent from the combined reading of Sections 24, 29 and 33 of the Advocates Act. As a result, there



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is no scope for an artificial juristic body to act as a lawyer. In other words, a legal service provider cannot be incorporated as a company and still continue to practise the profession of law in India, as per the provisions of the Advocates Act, 1961.

Fourth, the Rules in clear and unequivocal terms prohibit Advocates from entering into partnership or any other arrangement for sharing remuneration with any person or legal practitioner who is not an Advocate. In other words, lawyers are precluded from entering into any kind of co-operation with non-lawyers.

ARTIFICIAL ENTRY BARRIERS

The restraining provisions not just impose shackles on lawyers from

having a healthy legal practice, but at a same time also prove to be adverse to the interests of the patrons of legal services. Moreover, it is to be noted that the provisions of the Advocates Act, which seeks to impose "artificial entry barriers", is in contravention of competition policy and the Competition Act, 2002.

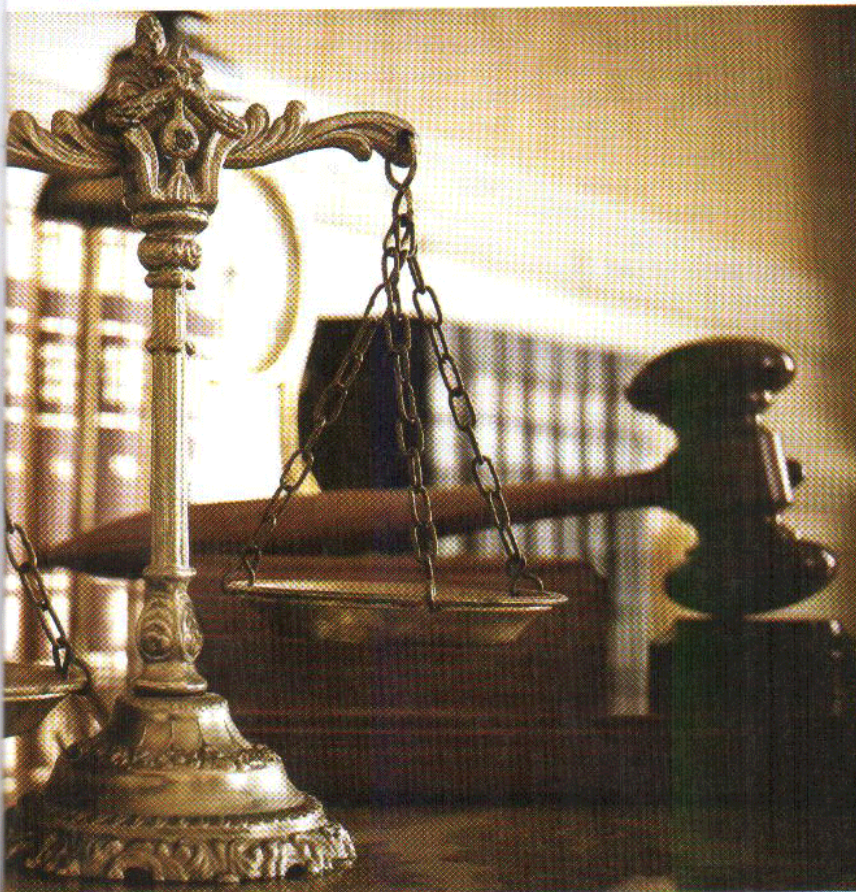
The Competition Act, 2002, provides for several factors that shall be considered in deciding whether an agreement has a considerable adverse effect on competition. These factors include creation of barriers to the new entrance into the market, accrual of benefits to consumers, improvements in production or distribution of goods or provision of services and lastly promotion of technical, scientific and

economic development by provision of services. It is to be noted that the Raghavan Committee on Competition has very aptly observed that there is an intention on the part of established elements of legal profession to limit competition by restricting new entrants.

Thus, the legal regulations sought to be imposed by the Act and the Rules on expanding nature of legal services sector have had an adverse effect on healthy competition in India and in turn the factors provided under the Competition Act, 2002.

It is interesting to note here that the report of the High Level Committee on Competition Policy and Law under the chairmanship of SVS Raghavan has very categorically summed up the effect of the existing regulatory system in professional services as follows: "... the legislative restrictions in terms of law and self-regulation have the combined effect of denying opportunities and growth of professional firms, restricting their desire and ability to compete globally, preventing the country from obtaining advantage of India's considerable expertise and precluding consumers from opportunity of free and informed choice."

The bar on advertising has created a situation which is adverse to the interests of the patrons of this legal service, since non – advertising precludes consumers from making an informed choice.



CHANGING FACET

Way back in 1976, during hearing of the case *Bar Council of India vs MV Dhabolkar*, Justice Krishna Iyer had noted, "The law is not a trade, not briefs not merchandise, and so the heaven of commercial competition should not vulgarise the legal profession."

However, contrary to the observation, there has been a sea-change in the erstwhile circumstances, not just in Western countries but even in our homeland, and the never ending processes of commercialization and globalization have resulted in the integration of the domestic economies of countries with that of the world economy, which in turn has resulted in showing the signs of the trade facet of the legal profession all around the globe. ■

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