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## Globalization Of the Bar: India's Shifting Stance on Foreign Legal Practitioners

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### ABSTRACT

The move by Bar Council of India (BCI) to allow foreign law firms to practice non-litigious issues in India has led to a hue and a cry among the legal fraternity. It has fragmented the legal community with supporters backing the move with the rationale that it would improve the standards of legal services in addition to increasing global competitiveness. Critics on the other hand, have called it a retrograde measure as it undermines the Advocates Act and also opens the doors for uneven competition. This paper explores the historical restrictions on foreign law firms with a deeper analysis of legal and constitutional framework governing the practice of law in India. It ultimately asks the central question: Is the Indian legal market matured for foreign law firms and what safeguards should be applied to ensure that such a move strengthens rather than weakening the Indian legal ecosystem.

**KEYWORDS:** Bar Council of India, legal profession, Indian legal system, globalization, constitutional and economic frameworks.

### INTRODUCTION

India's legal profession is undergoing a watershed moment with the Bar Council of India (BCI) allowing international law firms to practice, inter alia, non-litigious work like international commercial arbitration, foreign direct investment. For decades these firms were prohibited from

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practicing with Section 24, Section 29 and Section 33 of the Advocates Act acting as the legal catalyst for its enforcement. This was given further impetus with the Supreme Court ruling in *Bar Council of India v. A.K Balaji & Ors* in 2018 which reiterated the fundamentals of the aforementioned provisions. This policy shift by the BCI has reignited a deeply dividing debate with the proponents of the move seeing it as a step towards professionalism, efficiency, and India's growing commitment towards globalization. Critics however view this move as a writing on the wall for erosion of ethical standards and constitutional values in addition to the looming threat to local practitioners. The BCI has addressed the criticism and has branded the critics as an elite cohort of people which does not augur the views of the majority of the people who are either indifferent or are welcoming this move.<sup>2</sup> In addition to market access the character of the bar is also at stake with potential marginalization of local law firms and advocates who may not be able to compete with the resources of foreign entrants. This article explores whether India's evolving stance strikes the balance between embracing global practices and safeguarding national integrity.

## HISTORICAL AND LEGAL FRAMEWORK

Over the years India's legal architecture has been governed by the Advocates Act of 1961 which permits only Indian citizens enrolled in a State Bar Council to practice law before courts and tribunals as present in Section 29 of the act. The statute does not explicitly define 'practice of law' hence is left to judicial interpretation. In the absence of a clear demarcation between litigation and non-litigation practice the judiciary has helped in defining the scope of legal services. The Bombay High Court in *Lawyers Collective v. Bar Council of India* in 2009 declared that any foreign law firm providing consulting services and engaging in legal advisory services within India is violative of Advocates Act and must cease its operations.<sup>3</sup> The Court considered these services within the ambit of 'practice of law' and reiterated that foreign nationals not enrolled under the act could not

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<sup>2</sup> Bar Council of India, Press Release: BCI Allows Foreign Lawyers and Law Firms to Practice Foreign Law in India (Mar. 13, 2023), <https://www.barcouncilofindia.org/press-release>.

<sup>3</sup> Christine Garg, **Affiliations: Foreign Law Firms' Path into India**, 56 N.Y.L. Sch. L. Rev. 1161 (2011–12).

be permitted to render these services. Further clarity on this issue was brought by the Madras High Court's 2012 judgment in *A.K Balaji v. Union of India* where the operations of several law international firms and their collaboration with Indian firms.<sup>4</sup> The judgment echoed the dictum pronounced by the Bombay High Court and declared that foreign law firms is barred from having a liaison's office in India and maintained that no form of legal practice could be conducted by them. However, the judgment introduced a special exception of permitting fly in, fly-out visits by foreign lawyers to advise their clients on matters related to foreign law, international arbitration and similar short-term engagements.<sup>5</sup>

The matter reached the Supreme Court in 2018 which adopted the protectionist principle laid down by the High Courts but left the broader public policy implications with the Bar Council of India. The Court reaffirmed that the term 'practice of law' was comprehensive and encompasses both litigious and non-litigious work hence foreign lawyers cannot practice the same in India unless statutorily permitted.<sup>6</sup> These judicial dictums showcase a strict interpretation of Article 19(1)(g) of the Constitution which provides Indian citizens the Right to profession, trade, and business subject to reasonable restrictions under Article 19(6). This stance was justified to ringfence small and medium Indian law firms from being overrun by large International Institutions. In this backdrop, any move taken towards liberalizing the legal industry should be in consonance with the Constitution and must align with the regulatory objectives of the Advocates Act. The regulatory debate is now focused on the fact whether non litigious work can be categorized differently from court work and whether a different legislation or policy must be drafted to accommodate foreign participation without weakening Indian sovereignty.

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<sup>4</sup> Arush Khanna, **Foreign Lawyers and Firms in India: It's Time the Profession Was Globalized – But It Has to Be Done Right**, *Indian Express* (Mar. 29, 2023)

<sup>5</sup> **Foreign Lawyers and Law Firms Set to Enter India. But Red Tape and Caveats Await Them**, *The Print* (May 2025), available at <https://theprint.in/judiciary/foreign-lawyers-and-law-firms-set-to-enter-india-but-red-tape-and-caveats-await-them/2629649>.

<sup>6</sup> *Ibid.*

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## BAR COUNCIL GUIDELINES AND THEIR IMPACT

After decades of exclusion the Bar Council of India in May 2025 published the amended *Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2022*<sup>7</sup> which reflects an era of liberalization which is controlled and cautiously enforced. The finalized rules were on the basis of a draft prepared in 2023 for foreign legal practitioners to engage in India which is based on a reciprocity basis hinging on a “give and take” approach with different jurisdictions. Under the 2025 framework, foreign lawyers and law firms are allowed to register with BCI and are given authority to brief their clients on foreign law, international law and international arbitration while strictly scrutinizing the concept of practicing in various tribunals and courts across the nation. This differentiation helps in restoring the sanctity of domestic litigation for Indian advocates.

These rules formalize the fly-in/fly-out model where foreign practitioners may visit India temporarily with a ceiling of 60 days per year. Further, these rules introduce new regulations which allows Indian entities to offer Indian and international legal services upon registration. Another concept was introduced titled dual qualified lawyers which gives Indian advocates registered abroad the power to advise clients abroad while retaining their rights in India. The rules are also stringent and robust on ethical supervision where foreign practitioners are bound by BCI’s Code of Ethics with disciplinary actions based on misconduct are pronounced by the BCI at its whims.

The BCI reiterated that these rules are in tandem with the global norms as seen in Singapore and USA wherein the monopoly of Indian advocates is preserved over domestic litigation while also giving a certain degree of leeway in highly regulated arenas for foreign practitioners.<sup>8</sup> In summary,

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<sup>7</sup> **Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2022**, Gazette of India

<sup>8</sup> **BCI rebukes SILF over opposition to foreign law firm entry, reaffirms commitment to legal reform**, Econ. Times (June 29, 2025), <https://economictimes.indiatimes.com/news/india/bci-rebukes-silf-over-opposition-to-foreign-law-firm-entry-reaffirms-commitment-to-legal-reform/articleshow/122145772.cms>.

the rules put forth by BCI represent a structured and balanced opening where foreign legal expertise in non-litigious arena is welcomed while protecting core Indian jurisdiction over legal practice. The success of these rules however depends on the modus operandi of enforcement and maintaining professional standards without disruption.

## ARGUMENTS FOR LIBERALIZATION

The 2023 guidelines on Registration and Regulation of Foreign Lawyers and Law Firms marks a significant policy shift which high emphasis on globalization which is in line with the needs of the Indian economy. While these reforms prohibit foreign lawyers from practicing in Indian courts, they allow them to advise on matters related to arbitration and international law which are within the territory of India. A careful prognosis of the situation shows us that these reforms rejuvenate and are vital for the functioning of the Indian economy in addition to bridging the professional gap between various countries. This includes advising issues related to cross-border matters where availability of specialized legal opinions are sparse.

With India becoming a popular destination for Foreign Direct Investment (FDI) and a participant in multinational transactions, a growing demand for expertise in international and foreign law is the need of the hour. Currently, clients depend on the law firms present in Dubai, Singapore, or London for services. Allowing these firms to extend their services to India reduces transaction costs, increases convenience for clients and promotes India as an epicenter of International Commercial Arbitration. This is assertion is supported by BCI which explicitly stated that these reforms tend to posit India as “a hub of International Arbitration”.<sup>9</sup>

Liberalization is expected to drastically overhaul the efficiency of the Indian legal system with the entry of foreign law firms acting as a catalyst for prompting Indian law firms to improve their

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<sup>9</sup> Bar Council of India, **Rules Amended for Entry of Foreign Legal Firms**, *The Economic Times* (May 14, 2025) <https://economictimes.indiatimes.com/news/india/rules-amended-for-entry-of-foreign-legal-firms/articleshow/121169662.cms>.

standards in plethora of fields such as: legal research, client services, billing procedures and use of legal technologies. This ensures that the Indian legal profession continues to modernize itself in addition to professional development of young Indian lawyers who would be enriched by the experience gained while working with these foreign law firms. Many legal professionals see this as an excellent opportunity for cross cultural practices which would pave way for unique and modern sectors of law such as: private equity, fintech law and structured finance.<sup>10</sup>

Another important advantage which should be noted is potential for transfer of knowledge from these foreign law firms to Indian firms. Foreign law firms having sophisticated technology at their disposal can serve as a model for Indian law firms to work. Collaboration between Indian and foreign law firms would facilitate this exchange which otherwise remains locked in silos. From an economic paradigm a more integrated and efficient legal system assures foreign investors regarding investment decisions.<sup>11</sup> By giving green light to foreign lawyers in realm of arbitration, arbitration referrals are expected to increase in commercial and infrastructure related disputes.

In the arena of reciprocity Indian lawyers face a disadvantage in practicing abroad due to the protectionist stance undertaken by Indian government. Opening the market for international lawyers would result in a domino effect allowing other jurisdictions to increase mobility for Indian lawyers.<sup>12</sup> In toto, the controlled entry of international law firms is a boon for Indian economy and legal fraternity as a whole, but the caveat of “regulation” exists which must be carefully entertained.

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<sup>10</sup> Shrikrishna Upadhyaya, **The Entry of Foreign Firms Should Herald More Legal Sector Reforms**, Mint (Mar. 28, 2023), <https://www.livemint.com/opinion/columns/the-entry-of-foreign-firms-should-herald-more-legal-sector-reforms-11680020809858.html>.

<sup>11</sup> Joe Mathew, **India Opens Doors to Foreign Law Firms, but Experts Flag Lack of Clarity, Reciprocity Concerns**, Fortune India (June 15, 2025), <https://www.fortuneindia.com/business-news/india-opens-doors-to-foreign-law-firms-but-experts-flag-lack-of-clarity-reciprocity-concerns>.

<sup>12</sup> **Arrival of Foreign Law Firms: An Electric Storm Strikes the Indian Legal Fraternity Overnight**, Verdictum (June 2025), <https://www.verdictum.in/columns/arrival-of-foreign-law-firms-an-electric-storm-strikes-the-indian-legal-fraternity-overnight-1493958>.

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## ARGUMENTS AGAINST LIBERALIZATION

While a certain section of the legal hemisphere remains positive about the effects of liberalizing the legal profession, there are reservations and contentions have risen among legal luminaries. Debates about sovereignty, job security and preservation of legal ecosystem are discussed due to these measures taken by the Bar Council. One of the reasons cited by critics for opposing these guidelines is the fear that these would pave way for de facto practice rights in the long term which ultimately erodes the autonomy of Indian legal system.<sup>13</sup>

The primary concern relates to uneven competition which would be exhibited by these international firm as they are not prohibited to advertise or market their services. On the other hand Indian law firms are governed by the Indian Advocates Act which bars lawyers from advertising and entering into a profit-sharing model with external investors.<sup>14</sup> By sanctioning their entry even though highly regulated would impede the growth of domestic firms particularly mid-tier and low-level firms which are already in a subservient position. Despite assurances from the Bar Council in respect to allowing only advisory services the fear of dominance has not dissipated as they are difficult to monitor and enforce.<sup>15</sup>

A lack of recognition of reciprocity is another concern as no enforceable framework is in existence which mandates mutual recognition among different jurisdictions. Though reciprocity as a precondition for liberalizing is stressed by these critics it has not been supplemented by the Bar Council decisions.<sup>16</sup> Without recognition of reciprocity domestic firms and lawyers would be

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<sup>13</sup> Kluwer Arbitration Blog, **India at the Tipping Point to Welcoming Foreign Law Firms? How Do New Rules Affect Foreign Arbitration Lawyers?** (May 6, 2023), <https://arbitrationblog.kluwerarbitration.com/2023/05/06/india-at-the-tipping-point-to-welcoming-foreign-law-firms-how-do-new-rules-affect-foreign-arbitration-lawyers/>.

<sup>14</sup> Majmudar & Partners, **The Evolving State of Play for Entry of Foreign Law Firms in India**, Majmudar India (May 2025), <https://www.majmudarindia.com/entry-of-foreign-law-firms-in-india/>.

<sup>15</sup> Ibid.

<sup>16</sup> Joe Mathew, **India Opens Doors to Foreign Law Firms, but Experts Flag Lack of Clarity, Reciprocity Concerns**, *Fortune India* (June 15, 2025), <https://www.fortuneindia.com/business-news/india-opens-doors-to-foreign-law-firms-but-experts-flag-lack-of-clarity-reciprocity-concerns>.

pushed within domestic boundaries. This lack of recognition would disproportionately benefit international firms thereby making this entire process redundant.

Lastly, the precarious economic position of domestic legal market cannot be overlooked as law graduates struggle to find themselves employed and critics are apprehensive of the fact that liberalizing the legal sector would further deepen their position. Rural and semi-urban practitioners would be further pushed to the fringes as high value work would migrate towards cosmopolitan metro cities. This would create deeper economic woes in an already hierarchical legal ecosystem and would antithesis to justice delivery.

In conclusion, while the Bar Council maintains that these reforms are prepared and cautious the pessimism expressed by critics cannot be ignored and also not unfounded. Concerns regarding inequality, reciprocity and deepening of economic disparities should be addressed to ensure that the pillar which protects the democratic foundations of the country remains preserved.

## **STRIKING THE BALANCE: THE WAY FORWARD**

The measures taken by the BCI has created a position of economic and legal crossroads which precipitates both opportunities and challenges. The task ahead is to find an approach which merges benefits of global integration while insulating the constitutional and economic frameworks of the country. The first reform which must be the natural causation of these apprehensions is the creation of a regulatory framework which is robust and detailed in nature.

Rules and protocols to demarcate areas of practice for foreign law firms including enforcement mechanism for violations is necessary. A dedicated body for this oversight must be constituted and should be governed by the Bar Council of India which must showcase complete transparency in its operations. Operationalizing the principle of reciprocity should be enforced which ensures that Indian lawyers get their fair share of rights abroad. This would foster fairness and also open new legal avenues for lawyers who wish to expand their profession beyond the Indian legal market.

To mitigate the threat of market capture by the elite institutions offering legal services incentivizing tier-II and tier-III cities must be prioritized so that cities which are already acting as

hubs of legal centers do not get flooded. To ensure Indian lawyers are accustomed to the practice of transnational legal advisory new programs must be launched which can be integrated into the legal education for budding lawyers.

The conversation and debates surrounding regulations should not get confined within the contours of BCI and should be expanded to law students, bar associations, civil society organizations and legal academics. Public opinion would decrease the conception that liberalization as a process benefits only the elite tier of the society while remaining blind towards the less privileged.

In summation the decision to open the legal market to international entities is neither an absolute evil nor unconditionally beneficial. The vision, values and vigilance guiding this move matters the most which is possible only through careful regulation, equitable reciprocity and values guiding its implementation.

## CONCLUSION

The opening of the Indian legal market to the world marks a watershed moment but has its own caveats which must be duly addressed. This article traced the historical, constitutional, and historical foundations of India's regulatory approach and the diverse stakeholder reactions which were elicited. It is evident that this decision taken by the Bar Council is not a hasty one but a plan which was a byproduct of multiple judicial dictums, trade negotiations and calls for reforms from inside. At the center of this decision is the ethics, autonomy and access to legal system embedded in India's legal system. The 2023 guidelines introduced by the BCI, and the subsequent guidelines introduced in 2025 showcases an attempt to find middle ground. By allowing legal practitioners to practice non litigious work on a reciprocal basis India is experimenting a controlled form of globalization. However, for this model to succeed vigilant regulatory oversight, transparency and stakeholder engagement is a priority which must be fulfilled. Going forward, India must ensure that its legal ecosystem is robust, relevant and inclusive without paving way for corporate hegemony. The Indian Bar Council need not fear about globalization if it's guided by a regulatory compass backed by constitutional ethos. In this balancing act between tradition and transformation, India has the opportunity to lead and show to the world how a developing country

can lead in globalization while foundational commitments of justice, equity and federalism are protected.

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