

# New Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2022

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**In news**— Recently, the Bar Council of India (BCI) has allowed foreign lawyers and law firms to practise in India(notified in the official gazette the Rules).

## What is the BCI decision?

- For over a decade, BCI was opposed to allowing foreign law firms in India.
- Now, the BCI has reasoned that its **move will address concerns about the flow of Foreign Direct Investment in the country and making India a hub of International Commercial Arbitration.**
- The rules bring legal clarity to foreign law firms that currently operate in a very limited way in India.
- The BCI said that it resolves to implement these Rules enabling the foreign lawyers and Foreign Law Firms to practise foreign law and diverse international law and international arbitration matters in India on the principle of reciprocity in a well defined, regulated and controlled manner.

## What do the new rules allow?

- According to the Advocates Act, **advocates enrolled with the Bar Council alone are entitled to practise law in India.**
- **All others, such as a litigant, can appear only with the permission of the court,** authority or person before whom the proceedings are pending.
- The **notification essentially allows foreign lawyers and**

**law firms to register with BCI to practise in India** if they are entitled to practise law in their home countries. However, **they cannot practise Indian law.**

- The foreign lawyers or foreign Law Firms shall **not be permitted to appear before any courts, tribunals or other statutory or regulatory authorities.**
- They **shall be allowed to practise on transactional work /corporate work** such as joint ventures, mergers and acquisitions, intellectual property matters, drafting of contracts and other related matters on reciprocal basis.
- **They shall not be involved or permitted to do any work pertaining to conveyancing of property, Title investigation** or other similar works," the notification states.
- **Indian lawyers working with foreign law firms will also be subject to the same restriction** of engaging only in "non-litigious practice."

### **The Bar Council of India (BCI)-**

- BCI is a statutory body established under the section 4 of Advocates Act 1961 that regulates the legal practice and legal education in India. Its members are elected from amongst the lawyers in India and as such represents the Indian bar.
- In March 1953, the 'All India Bar Committee', headed by S. R. Das, submitted a report which proposed the creation of a bar council for each state and an all India bar council as an apex body.
- It prescribes standards of professional conduct, etiquettes and exercises disciplinary jurisdiction over the bar. It also sets standards for legal education and grants recognition to universities whose degree in law will serve as a qualification for students to enroll themselves as advocates upon graduation.
- It consists of members elected from each state bar council, and the Attorney General of India and the

Solicitor General of India who are ex officio members.

- The council elects its own chairman and vice-chairman for a period of two years from amongst its members.
- Assisted by the various committees of the council, the chairman acts as the chief executive and director of the council.
- Eligible persons having a recognised law degree are admitted as advocates on the rolls of the state bar Councils. The Advocates Act, 1961 empowers state bar councils to frame their own rules regarding enrollment of advocates.

### **How have foreign law firms operated so far?**

- The issue of foreign law firms entering the Indian market came to courts with a challenge before the Bombay High Court in 2009.
- In **Lawyers Collective v Union of India**, the Bombay High Court essentially held that only Indians holding Indian law degrees can practise law in India.
- The HC interpreted **Section 29 of the Advocates Act, which states that only advocates enrolled with BCI can practise law.**
- The HC also held that 'practice' would include both litigious and non-litigious practice, so foreign firms can neither advise their clients in India nor appear in court.
- In 2012, the issue came up before the Madras High Court in **AK Balaji v Union of India.**
- In **2015, the Supreme Court in a decision recognised practice of foreign law firms in a very narrow sense.**
- In **AK Balaji v Government of India**, the Madras High Court also held that foreign firms cannot practise either on the litigation or non-litigation side unless they meet the requirements and rules laid down by the Advocates Act and the BCI rules.
- Over 32 foreign law firms from UK, US, France and

Australia had been impleaded as respondents in the case.

- However, the **Madras High Court created an exception. It said that there would be no ban on temporary visits or advising clients on a “fly in and fly out” basis.**
- It had said that moreover, having regard to the **aim and object of the International Commercial Arbitration introduced in the Arbitration and Conciliation Act, 1996, foreign lawyers cannot be debarred to come to India and conduct arbitration proceedings** in respect of disputes arising out of a contract relating to international commercial arbitration.
- By 2012, Business Process Outsourcing (BPOs) had arrived in India on a big scale and did backend work for US-based companies.
- In the legal profession, these firms, Legal Process Outsourcing (LPOs), carried support operations for lawyers.
- They operated in uncertain legal frameworks and the Supreme Court had to intervene to settle the law on the issue.

### **What was the SC's decision?**

- Both the Madras and Bombay High Court judgments were challenged by the BCI and Lawyer's Collective respectively before the Apex Court.
- **In 2018, the Supreme Court upheld both the High Court judgments disallowing foreign law firms and lawyers,** with some modifications such as holding the expression **“fly in and fly out” to cover only “casual visit not amounting to practice.”**
- This meant that the “fly in and fly out” route could not mean regular visits. On the issue of LPOs, the SC did not decide on their fate.
- They argued that they were essentially BPOs that managed secretarial support, transcription services,

proofreading services, travel desk support services, etc. which technically do not come within the purview of the Advocates Act or the BCI Rules.