

BCI's Position on Foreign Lawyers and Law Firms Advising Only 'Foreign Clients' on 'Foreign/International Laws'

written by King Stubb & Kasiva | March 29, 2023



Section 24 of The Advocates Act, 1961 lays down the requirements to be fulfilled by a person in order to be admitted as an Advocate on a State roll. Upon fulfilment of the requirements, a person's name is added to the state roll as an advocate and he/she is given the right to practice in Indian Courts. As per the Advocates Act and the Bar Council Rules, Foreign Lawyers and Law Firms are not allowed to practice in India if they have not fulfilled the requirements needed to practice in India as an Advocate. A foreigner is not permitted to practise law in India under the Advocates Act due to the bar provided in Section 29 of the Act.

Through the landmark case of Bar Council of India vs. A.K. Balaji and Ors^[1], Honourable Supreme Court (SC) in the year 2018, decided in context to an important question - whether foreign lawyers and foreign law firms can practice in India *or not*, and held –

- Foreign law firms or foreign lawyers are not permitted to practise law in India, either on the litigation or non-litigation side, unless they are in compliance with Indian laws and their requirements.
- There is no prohibition against foreign law firms or foreign lawyers travelling to India temporarily to provide legal advice on international legal matters.
- A foreign lawyer does not have an absolute right to initiate arbitration proceedings. However foreign lawyers may not be prohibited from conducting arbitration proceedings arising out of international commercial arbitration.

Post this SC judgement, the Bar Council recently notified The Bar Council of India [Rules for Registration and Regulation of Foreign lawyers and Foreign Law Firms in India](#), 2022 which has clarified the extent to which foreign lawyers/law firms are allowed to practice in India and has set certain parameters to be followed by foreign lawyers when practicing in India.

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Requirements To Practice Law In India

Section 24 of the Advocates Act, 1961^[2] lays down the requirements to become an Advocate. A person who has fulfilled the requirements mentioned in this section gets the right (under Section 29 of the act) to practice law in India as an Advocate. The basic requirements to be admitted as an Advocate on a state roll are as follows: -

- The person is a citizen of India;
- The person should be twenty-one years or above;
- The person has obtained a degree of law recognised by the Bar Council of India;
- The person satisfies any additional requirements that may be specified in the rules made by the State Bar Council.

It is to be noted that this section mentions, that subject to other provisions of the act, a person of any other nationality can also be admitted as an advocate on state roll, if citizens of India, duly qualified, are permitted to practise law in that other country, to which the concerned person belongs to.

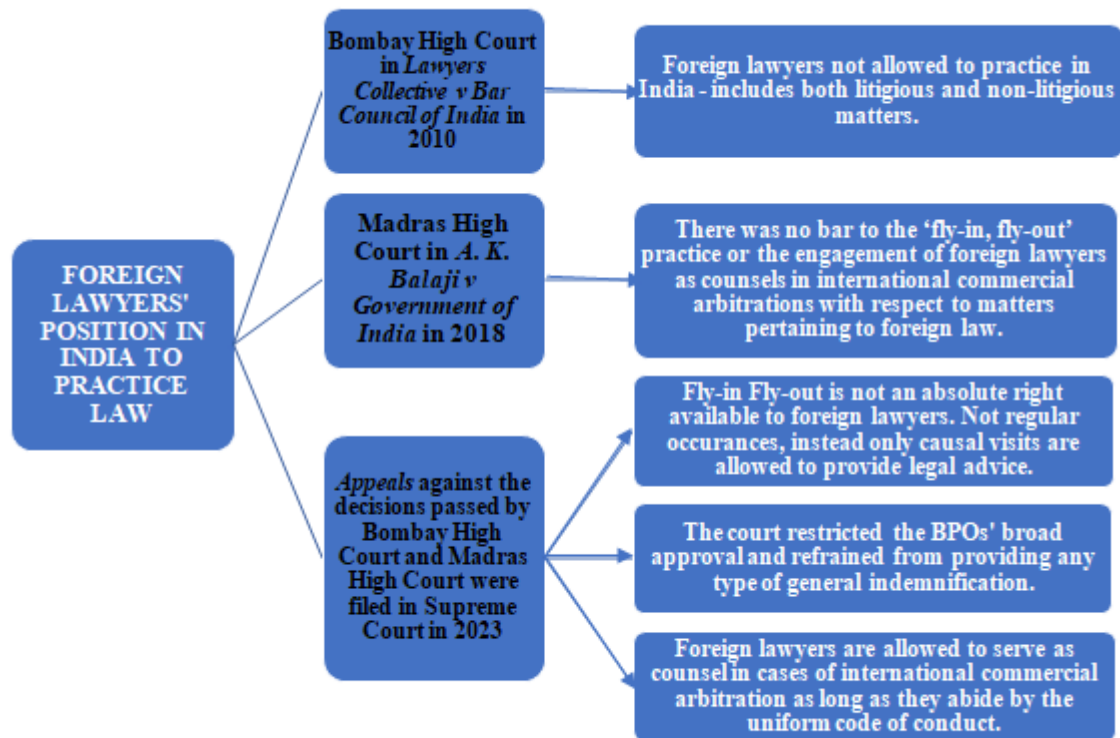
Who Is Entitled To Practice Law In India?

Section 29 of the Advocates Act, 1961, states that as of the designated day, only one class of individuals, namely advocates, will be permitted to practise law in India. It bars foreign lawyers and foreign law firms from practising law in India and allows only individuals fulfilling the requirements under Section 24 of the Act and following the Bar Council rules, to practice in India as an Advocate.

However, Section 32 and 33 of the Advocates Act, provide certain lee-way to foreign lawyers and foreign law firms and allows them to appear before a court/tribunal or authority for a temporary period.

- Section 32 of the Act states that despite other things mentioned in this chapter, any court, authority, or person may allow someone who is not registered as an advocate under this Act to appear before them in any specific case/matter.
- As per Section 33 of the Act, no individual shall, on or after the appointed day, be authorised to practise in any court or before any authority or person unless he is enrolled as an advocate under this Act unless otherwise stipulated in this Act or in any other laws currently in effect.

Foreign Lawyers Position In India Over The Years



The question regarding foreign lawyers practicing in India or not was first discussed in the case of *Lawyers Collective v Bar Council of India* in 2010^[3]. In this case, the Bombay high court interpreted the meaning of Section 29 of the Act, and stated that it was the lawmakers' intention to exclude foreign lawyers and legal firms from representing clients in both litigious and non-litigious issues. Foreign lawyers or firms were not "advocates" under the Act and so were not entitled to practice law in the country.

The discussion regarding foreign lawyers in India came to light again, when a writ petition was filed before the Madras High Court in 2018. In this case, named, *A. K. Balaji v Government of India*^[4], the court partially decided the case in favour of foreign lawyers. The court held that there were no restrictions on the "fly-in, fly-out" practise or the hiring of foreign lawyers as advisors in cases involving foreign law in international commercial arbitrations.

Furthermore, appeals^[5] were filed before the Supreme Court of India against the decisions given by Bombay and Madras High Court. The Supreme Court examined the problems and previous High Court decisions in this matter, in an effort to more clearly define the legal situation governing the representation of foreign law firms and lawyers in India, and held the following: -

1. It is made evident in the framework in Chapter-IV of the Advocates Act that, unless otherwise specified in another legislation, only advocates enrolled with the Bar Council are permitted to practise law. Only those

who have the court's, an authority's, or other party's (before whom proceedings are pending) permission, can appear in court. Any foreigner is undoubtedly subject to the same restrictions that apply to any Indian citizen who is not an advocate registered under the Advocates Act.

2. A foreign lawyer may not always necessarily have the right to institute arbitration. However, if the Rules of Institutional Arbitration apply or the matter is covered by the provisions of the Arbitration Act, 1996, foreign lawyers may not be prohibited from conducting arbitration proceedings arising out of international commercial arbitration, as per Sections 32 and 33 of the Advocates Act of 1961. However, they shall be governed by the rules and codes of conduct established by the Bar Council and Union of India.
3. A general indemnification will not be provided to BPO businesses. BPO companies offer a broad variety of tailored and integrated services and functions to their clients, including word processing, secretarial assistance, transcribing, proofreading, and travel desk support. If these services constitute "practice" in pith and in substance, the Advocates Act, 1961's rules will be in effect, and foreign law firms and attorneys will not be permitted to engage in such activities. the decision of the case may differ from case to case.
4. The Advocates Act applies to individuals as well as companies. As there was previously no such recognition of any entity other than an individual lawyer, the recognition of "firms" and other entities practising law in India appears to be a positive move.

International Commercial Arbitration And Foreign Lawyers In India

As per the judgement of the Supreme Court and the Bar Council guidelines for foreign lawyers, with regard to conflicts arising out of a contract pertaining to international commercial arbitration, a foreign lawyer does not have an absolute right to initiate arbitration proceedings. However, in accordance with Sections 32 and 33 of the Advocates Act of 1961, foreign lawyers may not be prohibited from conducting arbitration proceedings arising out of international commercial arbitration if the Rules of Institutional Arbitration apply or the matter is covered by the provisions of the Arbitration Act, 1996. They will, however, be subject to the uniform code of conduct.

The judgement of the Supreme Court in the case of *Bar Council v. A.K. Balaji & Ors.* is a great move towards welcoming foreign lawyers to conduct arbitration proceedings with India as the location, since it complies with the expanding international trade and interchange of foreign products and services in India, as well as the urgent necessity for foreign law firms and lawyers to undertake arbitration proceedings in India.

Bar Council Guidelines For Foreign Lawyers To Practice In India

Very recently, the Bar Council of India (BCI) decided to allow Foreign Lawyers to practice in India in specific fields. In compliance with Section 49 of the Advocates Act of 1961, the Bar Council of India published The Bar Council of India Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2022 ("Guidelines"), on March 10th, 2023.

The following terms are outlined in The Bar Council rules for registration and regulation of foreign lawyers and foreign law firms in India: -

- The registration of a foreign lawyer or firm must be done for a term of five years, on a renewable basis.
- The appearance of foreign lawyers/foreign law firms before any courts/tribunals or other statutory or regulatory bodies is prohibited.
- Once foreign attorneys and companies are admitted, they may represent the person granting the "power of attorney" in any Indian court by pleading and arguing on their behalf.
- With the authorization of the court, a foreigner who is personally involved in a matter in India may plead and argue there without hiring an Indian lawyer.
- Preliminary work in the pre-litigation stage such as sending notices, drafting complaints, etc. can be taken up by a foreign lawyer/foreign law firm.
- Only foreign and international laws are eligible to be the subject of legal advice from foreign lawyers and law firms to their clients.
- Only non-litigation areas will be accessible to foreign lawyers and law firms.
- It would be permissible for foreign lawyers to represent their clients in international commercial arbitration.
- Foreign lawyers would only be allowed entry on a reciprocal basis.
- Bar Council has outlined disciplinary actions and fines for foreign lawyers and legal firms that obtain registration through false representation/misrepresentation.

As per BCI, the guidelines will make it possible for India to be chosen as the location for these international arbitration proceedings, assisting India in its goal of becoming a centre for international commercial arbitration.

Bar Council Guidelines Governed By Principle Of Reciprocity

The principle of reciprocity indicates that only those international lawyers or law firms from other nations can represent clients in India when Indian lawyers may likewise represent clients there, in the other country.

Adding emphasis to the principle of reciprocity, Section 47 of the Advocates

Act states that, subject to other Act requirements, a person of any other nationality may be enrolled as an advocate on the State Roll provided Indian nationals who meet the necessary qualifications are allowed to practise law in the country to which the applicant belongs.

BCI's Vision Behind Allowing Foreign Lawyers To Practice

While issuing the Bar Council of India Rules for Registration and Regulation of Foreign lawyers and Foreign Law Firms in India, the Bar Council requested the advocate community to accept these guidelines wholeheartedly as it is beneficial for the country and to be assured that the Bar Council always is in the favour of protecting and safeguarding the interests of the advocates of the country. These guidelines are issued to aid India in becoming a hub for international commercial arbitration and to increase international opportunities for the country's advocates.

Conclusion

The 2018 Supreme Court judgement and the Bar Council guidelines framed post the judgement, have paved way for foreign lawyers and law firms to practice in India. Even with limited access, foreign lawyers can now practice in certain fields of law in India and advise their clients on international matters. Additionally, welcoming foreign lawyers to conduct arbitration proceedings with India as the location, will help India establish itself as a centre for international commercial arbitration.

Furthermore, through the Supreme Court judgement, it was clarified that the ambit of the Advocates Act is not limited to individuals, but instead, also includes entities/firms.

The Bar Council should support these guidelines with rigorous measures to prevent foreign lawyers from exploiting loopholes and engaging in unethical legal practices. Furthermore, the Bar Council should ensure that Indian advocates are given fair and equal opportunities to practice law and advance their careers in the countries where foreign lawyers originate, thereby upholding the principle of reciprocity.

FAQs

What are the Bar Council of India Rules for Registration and Regulation of Foreign lawyers and Foreign Law Firms in India?

1. Foreign Lawyers can only practice in non-litigious areas such as drafting notice, filing returns etc.
2. Foreign lawyers can advise clients on international law matters.
3. Foreign lawyers must be registered in India
4. Foreign lawyers can initiate arbitration proceedings in India and/or represent their clients.

5. Practicing in India for foreign lawyers is subject to the reciprocity principle.

Foreign lawyers can appear in court only with prior permission from court/tribunal or concerned authority.

What impact does the Bar Council guidelines have on International Commercial Arbitration?

Bar Council guidelines are issued to aid India in becoming a hub for international commercial arbitration and to increase international opportunities for the country's advocates.

What is the principle of reciprocity?

Principle of reciprocity indicates that only those international lawyers or law firms from other nations can represent clients in India when Indian lawyers may likewise represent clients there, in the other country.

[\[1\]](http://www.scconline.com.eu1.proxy.openathens.net/DocumentLink/D9HhZ2Ts) *Bar Council of India v. A.K. Balaji*, (2018) 5 SCC 379,
<http://www.scconline.com.eu1.proxy.openathens.net/DocumentLink/D9HhZ2Ts>

[\[2\]](https://legislative.gov.in/sites/default/files/A1961-25.pdf) <https://legislative.gov.in/sites/default/files/A1961-25.pdf>

[\[3\]](https://www.casemine.com/judgement/in/5608fc2fe4b014971114b938) <https://www.casemine.com/judgement/in/5608fc2fe4b014971114b938>

[\[4\]](https://main.sci.gov.in/supremecourt/2012/13890/13890_2012_Judgement_13-Mar-2018.pdf) https://main.sci.gov.in/supremecourt/2012/13890/13890_2012_Judgement_13-Mar-2018.pdf

[\[5\]](#) *Bar Council of India v. A.K. Balaji*, Civil Appeal Nos. 7875-7879, 7170 and 8028 of 2015; Decided on 13.03.2018

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