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FOREIGN LAW FIRMS IN INDIA VIS-À-VIS RBI CIRCULAR

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Introduction

The globalized era is perceived as an opportunity for the emergence of an amalgamation of domestic economies with that of the global economies, which in turn has made a remarkable impact on each and every economic sector around the globe. Nations are opening the doors of all the permissible sectors of their economy, to enhance the progress of the countries and Gross Domestic Product (GDP). This process has resulted in the fading of the old-fashioned practice of domestic trading, with people all across the globe seeking to expand their horizons by establishing their brand name or goodwill worldwide.

India is not unconscious to the developments taking place on the global level and has proved to be one of the most promising and fierce contenders in the battle for the achievement of optimum level of development. India has become a prime destination for the conduct of business by entities all across the globe. However, it is interesting to note that one of the most vital sectors of the Indian socio-economic structure, which is the legal sector, still stands apart from such developments and is by and large dominated by national players.

These services were globalized by the General Agreement on Trade in Services (GATS), which came into existence because of Uruguay Round of negotiations and entered into force on 1st January 1995, with the establishment of the WTO. Prior to 1995, only the General Agreement on Tariffs and Trade (GATT) was in existence that confined to trading of goods only. The addition of the term services in GATS of 1995 is a manifestation of growing share of services in national economics world over. The GATS prohibit discrimination of any kind, while enforcing '*National Treatment*' which is granting Foreign Service suppliers the same treatment, subsidies and concessions like their domestic counterparts. Further, it clearly obligates the member states to grant to all members, a certain minimum standard of market access and national treatment, though they may grant more favourable conditions to others, based on bilateral or multilateral treaties.

There are 12 sectors classified by GATS; for which commitments may be made. Foremost, is Business Services which is sub-divided into 6 types of services, which includes professional services. The Professional service sector is further divided into 11 services, which includes legal services. Thus, fortunate or unfortunate, India hasn't made any commitments with respect to legal services sector at present. The rationale behind the conservation and protection of legal sector from invasion by foreign players is not just that India has made no commitments in the legal services sector under the GATS, but also because of the existence of certain provisions in the national legislations and rules, which seeks to shield the legal service sector from foreign intrusion.

Indian Law Firms vs. Foreign Law Firms

However, the matter of liberalizing the Indian legal sector by allowing foreign firms to have an access to the Indian legal market is not a novel one and has never been free from controversy. The opening up of the Indian economy in the early 90's led to the entry of the foreign law firms in India. Foremost cases that came to the limelight were opening up of liaison offices by ***Ashurst*** of UK and ***White & Case and Chadbourne & Parke*** of the US. These firms were granted permission under the Foreign Exchange Regulation Act (FERA) to start liaison activities only and not active legal practices in the country.

From here, began the series of protests by the domestic lawyers and legal firms against the move of the Indian Government in allowing the foreign firms to set up liaisons offices in the country and eventually led to agitations thwarting any further relaxation.

In the year 1995, ***Lawyers Collective v. Bar Council of India*** Lawyer's Collective, a public interest trust set up by lawyers to provide legal aid, moved Bombay High Court under Section 29 of the Advocates Act, challenging the rights of foreign law firms to practice law in India. It was vehemently contended by the Petitioners

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India are entitled to practice the profession of law in India. It was further argued that the term "*practice the profession of law*" would include not only appearance before courts and giving legal advice as attorney, but also drafting legal documents, advising clients on international standards and customary practices and transactions.

To which, the Respondent in the said case argued that Advocates Act only prohibits foreign lawyers from appearing before a court and not from advising clients and drafting legal documents. The Bombay High Court in the said case, observed in an interim order, "*In our view, establishing a firm for rendering legal assistance and/or for executing documents, negotiations and settlements of documents would certainly amount to practice of law.*" Thus, the Hon'ble High Court aptly expanded the scope of the expression 'practice of law'; thereby, including within its scope the practice of rendering legal assistance, executing documents and negotiating and settling the same. Moreover, the Court further held that the Reserve Bank of India's (for short "**RBI**") license did not amount to a permission to practice law, but only to establish a liaison office to act as a communication channel between the head office and their parties in India. The High Court further ordered the government to conduct an inquiry into the issue and take appropriate action against the firms. This however, was overruled recently by the Bombay High Court which held that permissions granted by the Reserve Bank of India to the foreign law firms in the early nineties to set up liaison office in India, is not valid in law. The court further held that practice of law in India, both non-litigious and litigious, requires prior enrolment under the Indian Advocates Act, 1961.

However, notwithstanding the said sub - judice litigation and the resistance accorded by the domestic lawyers, many other foreign firms have established their presence in India by entering into best friend's agreements with the domestic law firms and are outsourcing their legal services to private as well as governmental organization.

The issue was again raised before the Madras High Court in ***A.K. Balaji v. The Government of India*** wherein, the court held that foreign law firms or foreign lawyers could not practice profession of law in India either on litigation or non-litigation side, unless they fulfill requirement of Advocates Act and Bar Council of India Rules, 1975. The court further held that the term "practice" would include both litigation and non-litigation work. However, there is no bar either in Advocate Act or BCI Rules for foreign law firms to visit India for a temporary period, for purpose of giving legal advice to their clients in India regarding foreign law, their own system of law and on diverse international legal issues. The case further referred to the precedent established by the Supreme Court in ***Vodafone International Holdings B.V. v. Union of India and another***, [(2012) 6 SCC 613] wherein Hon'ble Court has observed that every strategic foreign direct investment coming to India, as an investment destination should be seen in a holistic manner.

Finally, in case of ***Bar Council of India v. A.K. Balaji and Ors***., [(2018) 5 SCC 379] it was clarified that RBI would not grant any permission to foreign law firms to open liaison offices in India under Section 29 of the FERA. It was also clarified that expression "to practice profession of law" under Section 29 of Advocates Act covers persons practicing litigious matters as well as non-litigious matters other than contemplated in impugned order.

The Master Circular

The Master RBI Circular dated 23rd November, 2020 wherein, Reserve Bank of India asked the banks not to approve any proposal of foreign law firm to open office of any kind be it branch office or project office or liaison office in the country under FEMA for practicing legal profession.

The circular was issued by RBI in view of a Supreme Court Order in ***A.K. Balaji and Ors***. Further adding that, "*they shall bring to the notice of the Reserve Bank in case any such violation of the provisions of the Advocates Act comes to their notice*".

In October 2015 the RBI advised banks not to grant fresh permissions or renew permissions of foreign law firms present in India till the policy in this regard is reviewed by leaving the final disposal of the matter at the hands of the Apex Court.

Present Scenario

Foreign firms like the ***CMS Cameron*** has advised government of Orissa on privatization of the state electricity system- ***Linklaters*** (represented clients in their disputed with Maharashtra State Electricity Board). Further, foreign law firms like ***Baker and McKenzie*** are most active in India since last two decades. And, some firms have entered into agreements with Indian law firms as well to provide legal services in India.

The Pros and Cons of Entry

The points that can be vehemently advocated in allowing foreign law firms to operate and transact work in India is that the foreign firms will bring with them a new pool of professionalism, competence and expertise, which the legal profession here has relentlessly slogged to develop. It will certainly bring in competition and raise the standards of services in the legal sector, which most Indian law firms and lawyers are reluctant to face. Moreover, it would be pertinent to mention here that with the entry of the foreign law firms could bring credible surge in foreign investment and numerous benefits to the patrons of the legal services and to the aspiring lawyers.

In the era of consumerism and competition, consumer's right to free and fair competition is paramount and cannot be denied by any other consideration. Trade in legal services focuses on benefits ensuing to consumers from legal services sector, predominantly the quality of service available with respect to particular fields.

In terms of cons regarding the entry of foreign law firms in the country, it is noted that they are not many. Important being, the domestic law firms, in light of the existing unfavourable circumstances, being overshadowed in performance and revenue by its foreign counterparts. The law firms situated across continents have overwhelming lawyers force, operating on International level and functioning as business organizations designed to promote commercial interest of their giant client corporations. The power, influence and economical standards of these large international law firms would definitely affect the share of the domestic law firms.

Moreover, the domestic law firms are prohibited from raising capital and are also precluded from entering into any kind of co-operation with non-lawyers and statutorily precluded from advertising and indicating their area of expertise. Foreign firms, on the other hand, are not shackled by such limitations.

Conclusion

The need of liberalizing the Indian legal sector will be extremely favourable for our country, as, it will not only add up to our foreign reserves and in due course the GDP, but, will also beneficially result in surge in employment for the law graduates being debutants to the legal profession, in terms of better exposure and an handsome pay package;

will also prove advantageous for the law debutants, in terms of easy access to internship programs; and most importantly will be in the interest of the domestic patrons of legal services, in terms of availability of better professional services, being the direct upshot of the consequent boost in competition in the legal market.

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But, before proceeding further in establishing their base in our country, it is of utmost importance, that the Government should redesign the state of affairs, existing in the legal sector, with the view to do away with the unreasonable restrictions, which undisputedly impose shackles on the healthy development of our country's legal profession. The reason being that without the eradication of the unnecessary restrictions, which seek to hamper the growth rate of our domestic firms; the domestic firms will not be able to efficiently and productively meet up with the challenges which will be posed by their foreign legal counterparts.

Interestingly, the Fifteenth Law Commission in its working paper itself suggested certain safeguards which could be adopted. It has referred to Article XIX (2) of the GATS that permits the process of liberalisation to take place within the ambit of national policy objectives and level of development of individual members, both over-all and individual sectors.

Thus, the opening up of doors of the domestic legal market to competition from international legal market is rather inevitable.

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