



# INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

## GLOBALIZATION AND ITS IMPACT ON INDIAN LEGAL PROFESSION WITH REFERENCE TO AK BALAJI VS GOVERNMENT OF INDIA

Nipun Bansal

Law Student

Amity University, Noida

### Abstract

*“No generation has had the opportunity, as we now have, to build a global economy that leaves no-one behind. It is a wonderful opportunity, but also a profound responsibility.”*

-Mr. Bill Clinton

Globalization had an impact on almost all the prevailing professions in the country and its history with legal profession has been more or less of a dynamic and a positive one. The legal profession was regarded as a dynamic field of work even before the concept of globalization but after the forthcoming changes that globalization brought with itself the dynamics of the legal profession shifted towards a more connected and interlocked profession. This research paper might not be the Alpha to Omega of the impact of globalization on the Indian legal profession, but it will focus on the following questions- what was the impact of globalization on Indian legal professionals? What are the views of the Indian Judiciary on India lawyers working with foreign firms? This paper will also discuss the amount of liberty available to foreign legal firms to enter India.

Keywords- Globalization, Judiciary, Dynamic, Foreign Legal Firms

### Introduction

*“It has been said that arguing against globalization is like arguing against the laws of gravity”*

-KofiAnnan

The phenomenon that the level of global human cooperation increases so much that both its essential impacts and the response to it incites an opportunity to further develop. Globalization has further made it possible to ascend to new turns of events by bringing change in three central markets: Technological, Political, Economic. This impact of Globalization also impacted the noble profession of law by allowing professionals form the around the world to contact with each other and increase the horizon of their knowledge substantially.

It is known fact that India has the 2<sup>nd</sup> largest force in the world available to it when it comes to qualified lawyers. The legal framework within which the conduct or etiquette of a lawyer is assessed has all been documented in The Advocates Act, 1961. There are extreme nuances that a lawyer faces because of the provisions they must follow as per Bar Council of India one of them is being morally right when working with the big corporations.

Now India was very late to the party when it came to allowing foreigners to compete in their countries market, which is understandable as India was ruled by the British Empire for nearly 200 years, if India didn't pose a restriction on entry at that time there was a risk that this whole colonization fiasco might have happened again but this time on a consensual basis. In 1991, the Indian Government put these concerns aside to finally open its door to foreign manufacturers and in some cases to foreign professionals. The wave of globalization slowly but steadily took the Indian markets by a storm and entered different sectors of its market that were initially made available to the foreign investors in the country.

Now, Globalization has also increased the velocity and the complexity of the legal profession. Indian lawyers present at the time when the first wave of globalization hit India, they had no option but to adapt to the situation in front of them in a swift manner to take full advantage of this opportunity, any professionals who were unable to cope with the pressure or were unaware of the coming changes, unknowingly and slowly were left behind by the competition.

Presently Indian Senior lawyers and even new graduates have a great opportunity to work in foreign markets which are renowned to be world leaders when it comes to learning and growing in the legal world like US, UK etc. This wave of Globalization which went through India in 1990's brought forward a plethora of new work for the legal fraternity at the time as new economic policies and new regulations were needed to accommodate the differences that took place from the earlier module of a 'closed economy'<sup>1</sup>

The last decade can be best described as a 'mini revolution' for the corporate sector of the Indian legal fraternity as opportunities in patent protection, financing divisions, taxing divisions of corporate firms have seen an increase in work due to globalization.

### **IMPACT OF GLOBALIZATION ON INDIAN LAWYERS**

One of the best revolutions brought by globalization was that finally foreign inventors and companies were allowed to export their state-of-the-art technology to India. Advancement in technology made it possible for countries around the world to connect with each other in a swift manner which in turn let our legal professionals to communicate with professionals from outside India. Earlier it was telephones, telegraphs, fax, pager etc. that were used by our esteemed professionals to communicate with professionals from outside India but now the internet is used to communicate. This allowed domestic law firms to partner up with foreign firms on certain cases and also provided an opportunity to sole practitioners to connect and work with firms outside the domain of India.

Young law graduates also benefited from this as from the start of their career's they had the golden opportunity of training themselves to work both onshore and offshore projects with a clientele available to them from all around the world.<sup>2</sup> Changes brought forward by Globalization gradually changed the dynamic of the composition of

<sup>1</sup> David B. Wilkins, *The Indian Legal Profession in the Age of Globalization*, The Practice(2017), <https://thepractice.law.harvard.edu/article/indian-legal-profession-age-globalization/>

<sup>2</sup> Shruti Garg & Aviral Saxen, *Globalisation and Legal Profession*, Legal Service India <http://www.legalservicesindia.com/articles/globlp.htm#:~:text=The%20globalization%20has%20also%20far,and%20complexity%20of%20law%20practice.&text=Within%20India%20too%2C%20domestic%20lawyers.non%20litigation%20work%20or%20arbitration.>

graduates seeking jobs in the corporate sector more than entering the litigation field, due the vastly prevalent but some-what wrong belief that there is more of an opportunity to grow as a professional in cooperate sector as compared to a career in litigation due to the impact globalization had on that sector. Litigation is lagging behind in the race because still the Indian courts and the law makers are not allowing foreign litigators to work in Indian courts in full capacity.

## **FREEDOM OF ENTRY TO FOREIGN FIRMS**

The learned senior advocate C.U. Singh once said that “*the fly in and fly- out*” predicament is solved by The Advocates Act, 1961 which provides that there shall be only one class of persons who can practice law in India, i.e., advocates admitted on the state bar council rolls” If we go by this statement it leaves no option for foreign legal giants any option to join ranks with the Indian legal firms and compete with them on an Indian domestic standpoint.

In the case of AK Balaji vs Government of India (21 February 2012), which was first heard by the Madras High Court in 2012. In this case the plaintiff filled the case in High Court through Article 226 under the writ of mandamus stating that the Government Officials and Bar Council of India must look into some of the aforementioned foreign legal firms and foreign solo practitioners who are working in the Indian legal scenario even though they are not allowed to do so under The Advocates Act, 1961. The Madras High court held that the foreign legal firms can come to India on “a fly- in and fly- out” basis and in turn can provide advisory services to their clients based in India. Also, it was said that there is no provision which bars foreign firms to work in India regarding any international arbitration proceedings or negotiations<sup>3</sup>.

Now the review appeal was filled in the Supreme Court by the Bar Council of India against the judgment of the Madras High Court. In this landmark judgment given by the Supreme Court on 13<sup>th</sup> March 2018 gave a very definitive definition of the phrase “practice of profession” includes both litigation and non- litigation work (Legal opinions and advisory services). This definition expands the horizon of what is considered as practice under the act.

The Supreme Court further upheld the judgment of the Madras High Court stating that foreign legal professionals can visit India on a “fly- in and fly- out” basis which will allow them to visit temporarily or from casual standpoint. Now the responsibility of what should be considered as casual or temporary will be decided by the courts on seeing the facts of the case. Further the Supreme Court also ruled that the provisions that foreign professionals must abide by visiting India must be formulated by the Government of India and the Bar council of India. <sup>4</sup> The interpretation of the Advocates Act, 1961 was also widened by this landmark judgment as in a landmark moment in its own way, it was clarified for the very first time by the courts that the Advocates Act, 1961 is also applicable to corporate firms and individual firms in addition to an individual legal professional. By saying this Supreme Court has increased the scope of applicability of the Advocates Act, 1961 as now the rules of decorum which are expected form a legal professional will now be expected and levied on these body corporates as well. Foreign Firms were also granted relief to operate under matters related to international arbitration commission and the before mentioned matters shall be liable to be admitted under section 32 and section 34 of the act.

In the aftermath of this case The Society of Indian Law Firms (SILF) came forward in solidarity by offering support to their foreign compatriots to allow them to practice in India. In accordance to this statement they released an

<sup>3</sup>Sanjeev Kapoor, *Supreme Court Of India Clarifies Foreign Law Firms/Lawyers' Scope Of Services In India*, Mondaq(03.04.2018 <https://www.mondaq.com/india/trials-appeals-compensation/688390/supreme-court-of-india-clarifies-foreign-law-firmslawyers39-scope-of-services-in-india>

<sup>4</sup>Legally India, *Foreign firms as expected SC gives inch to foreign lawyers; Allows arbitration, fly-in-fly-out*, Legally India(13.03.2018), <https://www.legallyindia.com/ilawfirms/foreign-firms-as-expected-sc-upholdsmadras-hc-fly-in-fly-out-also-allows-arbitration-20180313-9156>

advice to the Government of India and the Bar Council of India, in unison to their view of allowing foreign law firms to practice in India.<sup>5</sup>

A four- phased plan was proposed by them which would allow foreign firms to make offices in India the primary stage of which will be to permit Indian firms to have brochures and websites, at second stage of that point foreign law offices ought to be permitted to prompt and help Indian clientele on foreign law. In the third stage, they should be permitted to give cooperative guidance to Indian Firms and finally in the last stage they should be allowed to practice law in the country, barring some exceptions of foreign big players like PWC, EY and Deloitte etc. In their opinion this will be beneficial for the Bar, as it will elevate the current state of competition in the bar. If the Government of India and Bar Council of India decide to allow foreign firms to practice in India then the parliament of India must amend the Advocates Act, 1961 and make the language of the act better suited to their entry.

## Conclusion

Lawyers as a professional must not criticize change of circumstances because being a professional is all about learning with new opportunities and changes that come their way as the legal profession is a '*dynamic profession*'. India might not be among the first countries to allow the globalization wave inwards, but when the time was right the Government of India allowed the globalization wave to hit India and I must say that most of the professionals working in our country benefited from the same. Now Indian legal professionals have the opportunity to grow to unimaginable heights which was seen as not possible before the 1990's.

Now still the question remains that whether inculcation of foreign firms in Indian legal system should be allowed or not, if yes, then they will have to be allowed to file 'vakalatnama' in courts which will allow them to appear before the Indian courts in full capacity. To achieve this the Courts and the Indian Government will have to change the language of the Advocates Act, 1961 like removing words like 'have to be an Indian Citizen' to be eligible to be a legal professional in India. We should positively all expect that the fundamental ideal of the legal profession, as one of devoted assistance past unadulterated monetary and not favoring self-interest. Be that as it may, whether this philosophy survives or not is not only up to the lawyers of today but also on the Courts and the Indian Government when they allow foreign firms to contest in the Indian Legal System. This step of inculcating foreign firms in our legal system must be taken with due diligence by the Indian Government keeping the state of our homegrown Indian lawyers in their mind.

---

<sup>5</sup> Sachin dave, Saloni Shukla, *Indian law firms agree to open doors for foreign peers*, Economic Times(19.07.2019), <https://economictimes.indiatimes.com/news/politics-and-nation/indian-law-firms-agree-to-open-doors-for-foreign-peers/articleshow/70285997.cms>