

Indian Legal Ground - Opened for Global Counsels

Mains: *GS II - Dispute Redressal Mechanisms and Institutions.*

Why in News?

The India Alternative Dispute Resolution Week, organised by the Mumbai Centre for International Arbitration in Bengaluru, Mumbai and Delhi last month, reflects a change unimaginable just a decade ago.

What are the episodes that took place?

- **Arrival of foreign counsels** - Top litigation and arbitration counsel from across the globe flocked to India in such a short span of time.
- They transacted the best practices with the Indian Bar and Bench, in a manner hitherto seen in New York, London, and Singapore.
- The idea of India as the place for resolution of international commercial disputes would have been considered impossible.
- **Measure of Supreme Court** - The Supreme Court of India threw its weight behind the idea of making India a destination for the resolution of high-value commercial disputes —
 - For adjudicating disputes related to domestic investments
 - For adjudicating disputes related to cross-border investments.

***The Supreme Court of India** known for decades for its exceptional judicial activism and for protecting the constitutional rights of India's citizenry.*

- **Interest in India** - The fact is that international interest in the Indian legal profession is not new.
- In fact, foreign lawyers were interested in tapping the Indian market as early as the 1990s, when the economy opened up.
- **Concerns** - Indian law firms were small, know-how was patchy, and the possibility of scaling up was limited by the fragmented manner in which firms were organised.
- There was also a brain drain from the five-year law schools.
- In short, the Indian legal industry, at that juncture, was simply not ready to jostle with foreign law firms.

What were the decisions of the court?

- **Bombay HC** - In its 2009 decision in *Lawyers Collective*, the Bombay High Court

disallowed foreign law firms from practising both corporate transactional work and litigation in India, even if they had on their rolls Indian qualified lawyers.

- **Madras HC** - The Madras High Court doubled down the position in *A.K. Balaji*, but fortunately left a small crack open by permitting temporary advice on foreign law to be provided by foreign lawyers.
- **Supreme Court** - In 2018, the Supreme Court harmonised the aspects
 - Fly-in, fly-out advice was fine, but permanent offices were not.
 - Foreign law firms that wanted to open offices in India were left standing at the wedge, which then gradually led to a waning of their interests.
- Many critics called the Indian approach narrow.
- In truth, it was really about timing.
- The worry was never that Indian lawyers lacked ability.
 - **For example**, Sir Benegal Rau, or Fali Nariman, or Soli Sorabjee's, advocacy travelled well beyond Indian courts.
- Rather, the concern was that domestic firms would be muscled out by foreign law firms.

How does the scenario changed?

- **Enlarged staff** - Indian law firms hitherto manned by 15-20 lawyers, have over 1,000 lawyers with significant global exposure.
- **Increased expertise** - The top-notch know-how, allows Indian law firms to grow even further.
- **Indigenous growth** - Commendable in this growth has also been the fact that unlike many other sectors in India which grew because of the introduction of foreign direct investment, the Indian legal profession grew organically, with little or no outside support.
- **Foreign presence** - Today, Indian law firms have offices abroad, and Indian lawyers are often dually or triply qualified, practising across jurisdictions and climbing to the very top of their fields.
- **A powerful push** - It is against this backdrop that the Bar Council of India's 2025 Rules for Registration and Regulation of Foreign Lawyers and Law Firms can be seen as the first formal step towards providing new impetus to the growth of the Indian legal profession.
- This comes on the heels of the Bar Council's first substantive acknowledgement in 2023, indicating that the Bar was open to allowing foreign lawyers to practise foreign and international law in India.
- The 2025 amendments give a framework.

What are the challenges?

- **Compliance burden** - The framework bristles with compliance obligations, be it registrations, ministry certifications, annual filings or the 60-day cap on unregistered "fly-in" work.
- While these may feel like red tape, they ensure foreign expertise complements rather than eclipses the domestic profession.
- Concerns about such requirements deterring entrants remain, and indeed, it is better

to air these now than after the floodgates open.

- **Legal limitations** – Foreign firms may only set up shop in India if Indian lawyers are given the same rights in the foreign jurisdiction.
- They are not permitted to practise Indian law or appear in Indian courts unless enrolled.
- Reciprocity remains the lodestar of the new framework.
- Foreign firms can advise on their home-country law, international law, and appear in international arbitrations seated in India.

What lies ahead?

- Far from a bland compromise, this is Aristotle's Golden Mean — neither reckless liberalisation nor defensive insularity.
- As Rabindranath Tagore once said, "everything comes to us that belongs to us if we create the capacity to receive it, India, slowly and deliberately, is creating that capacity.
- As that capacity builds, so will the consequences.
- As Abraham Lincoln put it, "I walk slowly, but I never walk backward."
- That has been India's legal journey: cautious, deliberate, but steadily moving forward.
- The Indian legal profession and domestic law firms are set to become a world players.

Reference

[The Hindu| Litigations Counsels Seek India](#)

