SC's Ruling on Foreign Law Firms

Why in news?

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The Supreme Court has ruled that foreign law firms or foreign lawyers cannot practise law in the country.

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What are the directives?

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- **Practice** - Foreign law firms or foreign lawyers cannot practise law in the country either on the litigation or non-litigation side.
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- This means overseas lawyers or firms -
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i. cannot open offices in the country
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ii. cannot appear in courts or before any authority
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iii. cannot render other legal services, such as giving opinions or drafting documents
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- **Temporary** - However, there is no bar on foreign law firms or foreign lawyers visiting India for a temporary period on a “fly in and fly out” basis.
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- This could be for giving legal advice to their clients on foreign law or their own system of law and on international legal issues.
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- The expression ‘fly in and fly out’ will only cover a casual visit not amounting to ‘practice’.

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- The Court added that any dispute in this issue would be decided by the Bar Council of India.
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- **International Commercial arbitration** - The SC also ruled on arbitration proceedings and disputes arising out of contracts relating to international commercial arbitration.
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- Accordingly, the foreign law firms and lawyers also do not have an “absolute right” in this regard.
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- However, they might not be debarred from conducting arbitration in India arising out of international commercial arbitration.
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- But they would be governed by the code of conduct applicable to the legal profession in India.
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- **BPO** - The court said Business Process Outsourcing (BPO) companies, providing a range of services, would not come under the Advocates Act.
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- The services include word processing, secretarial support, transcription and proof reading services, travel desk support services, etc.
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What is the need?

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- It comes as an effort to keeping India’s legal market exclusively for Indians.
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- The ruling settles a long-standing argument on whether foreign firms or attorneys should be allowed to enter the Indian legal market.
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- **Lawyers' Concern** - Sections of the legal fraternity have been opposing the entry of foreign firms for nearly two decades.
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- There were petitions seeking legal action against 30 foreign law firms that were “illegally practising” in the country.
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- The Commerce Ministry, setting up earlier in 2005 a committee to consider opening up legal services, was opposed by bar associations.
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- Lawyers were against the country succumbing to international pressure.

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- Their main objection was that Indian law firms would not be able to compete with foreign firms.
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- As, the latter had greater money power and may control the legal market.
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- **Other Countries** - Indian advocates were not allowed to practise in the U.K., the U.S., Australia and other nations.
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- They are allowed only on fulfilling onerous restrictions like qualifying tests, experience and work permit.
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- It was thus argued that foreign lawyers should not be allowed to practise in India without reciprocity.
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- **Non-litigious Practice** - Non-litigation market has seen an exponential increase after globalisation.
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- The services include drafting of documents, preparation for litigation, etc.
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- In particular, international commercial arbitration has taken off in a big way.
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- The foreign law firms had argued that there was no bar on a company carrying on consultancy or support services.
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- But the Bar Council of India contended that even non-litigious practice came under the term ‘practice of law’.
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- Thus even these could be done only by those enrolled under the Advocates Act in the country.
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What are the implications?

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- Successive governments were considering permitting foreign law firms to practise law in matters not involving litigation and on a reciprocal basis.
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- In 2011, the Union Law Ministry held consultations with the Bar Council of India to consider amending the Advocates’ Act for the purpose.
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- However, the SC's ruling has included both litigation and non-litigation

services in ‘practice of law’, laying down restrictions.
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- The Centre may thus be not able to throw open the legal services sector to overseas players.
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- Moreover, the court has recognised only limited access to foreign players in arbitration.
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- It should be limited to matters governed by an international commercial arbitration agreement, and code of conduct applicable to the legal profession in India has to be followed.
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- This could be a considerable hurdle in India’s ambition to be a global arbitration hub.
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Source: The Hindu

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