



Offshore India centers, 'Best Friend' partnerships and discreet secondments— foreign law firms have been beating different paths to a country that has its doors firmly shut against them. And now, even liaison offices have got the boot. Last week's Bombay High Court judgment has sharpened the divide between those Indian law firms that want to keep foreign law firms out and those that want to let them in.

Cyril Shroff, Managing Partner, Amarchand Mangaldas says, "The domestic law firms, which are not strong enough to face the competition and collapse, will be bought out for ridiculously low values."

Zia Mody, Managing Partner, AZB & Partners says, "I am not as opposed as my friend Cyril is!"

Lalit Bhasin, President, Society of Indian Law firms says, "It essentially appears to be the need of the government and international pressure that the sector must open up."

Suhas Tuljapurkar, Managing Partner, Legasis says, "We will improve our quality and improve accountability to clients."

To open or not to open India's doors to foreign lawyers!

That controversy has had the country's legal fraternity split right down the middle for 15 long years. Not only are foreign lawyers not allowed to practice in India, but as of last week even liaison offices are not welcome. That's because last week, a Bombay High Court judgment disallowed foreign firms from operating liaison offices in India.

It all started in 1995 when three foreign law firms- White & Case, Ashurst and Chadbourne & Parke got RBI permission to set up liaison offices in India.

Nishith Desai, Founder, Nishith Desai Associates says, "Reserve Bank of India permits foreign entities to come to India and set up liaison offices for the limited purpose of liaisoning activities. The question here was that the liaison office permission can be given for entities, which want to pursue business or commerce, whereas this issue also related to the practice of a profession. And that is where the problem arose."

RBI's permission was challenged by Lawyers Collective—a 30 year old Mumbai-based legal NGO that undertakes Public Interest Litigations.

Lawyers Collective argued that the foreign liaison offices were carrying on the 'practice of law' illegally, as foreigners are not allowed to practice in India. The foreign firms contended that all the liaison offices did was inter-office coordination, establish business contacts and provide secretarial and support services to visiting foreign lawyers. Since none of these are litigious activities they could not be accused of practicing law in India.

But the Bombay High Court overturned this argument. It held that the 1961 Advocates Act applies "not only to the persons practicing before the Courts but it is also intended to apply to persons who are practicing in non-litigious matters outside the Court". Hence even foreign liaison are not allowed.

Hitesh Jain, Partner, ALMT Legal says, "If you look at the Advocates Act and the scheme of the act, they have not made any distinction between litigation and non-litigation practice. So purely from that perspective and if you look at the scheme of the Act, according to me the interpretation of the High Court and the conclusion that has been arrived, that there is no classification between on litigation and litigation, is a correct interpretation. "

Liaison offices aside, the court's interpretation brings under the scanner a variety of activities involving foreign law firms.

The judgment says a person "practicing law," includes anyone who "can give his legal opinion whenever sought for, he can draft instruments, pleadings, affidavits or any other documents, he can participate in any conference involving legal discussions, he can work in any office or firm as a legal office, he can appear for clients before an arbitrator or arbitrators."

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It's a broad definition, says Ravi Nath, Managing Partner, at one of India's oldest law firms, Rajinder Narain & Co. Nath says this judgment could even impact secondments by foreign law firms and maybe even advisory services?

Ravi Nath, Managing Partner, Rajinder Narain & Co says, "If you're practicing law in as much as you're representing before a court or rendering an opinion or giving advice, you are an advocate or a lawyer and that activity is sought to be controlled. But if you were assisting a lawyer, we have court clerks or munshis, paralegals now, legal assistants, secretaries, those do not fall

under the purview of the Advocates Act.

It's a view shared by Mumbai based law firm Nishith Desai Associates. This 20 year old firm frequently hosts law students and even qualified lawyers from across the world as part of its "intern" program. The Bombay High Court judgment may now disallow those programs, but founder Nishith Desai isn't too worried.

Nishith Desai, Founder, Nishith Desai Associates says, "People may not object to some simple drafting and something done here and there in practice, really speaking. Not that it is not in violation of law- it is! But people may not claim damages. Injury caused to someone because a non-licensed lawyer drafts a document and sends to a client. Then something goes wrong, he would be liable. That's common practice in many foreign jurisdictions."

Jim Rosener, Partner, Pepper Hamilton says, "In New York for example, you need to make it clear to your client that you are not admitted to practice in that jurisdiction, that you're not rendering legal advice and that as far as you need to render legal advice, you'll need to do it in consultation with an admitted lawyer."

Guruprasad Pal, Partner, Little & Co says, "Where is the machinery for carrying out those scrutinies? For example, in a JV between an Indian entity and foreign entity, the foreign entity comes with his lawyers, goes around having discussions with Indian entity and their lawyers. They freeze a document and go back. Then parties sign documents and go back. So who is there to control, regulate and monitor each individual's activities in India? So how will you pinpoint somebody that you are carrying on this profession in violation of Advocates Act therefore you are guilty and punishable under the Act!

And finally— what happens now to the 'Best Friend' relationships that various Indian law firms have established with foreign ones?

For instance AZB & Partners is "Best Friends" with UK based Clifford Chance, Talwar Thakore & Associates with Linklaters and Trilegal with Allen & Overy.

Will the Bombay High Court judgment kill these friendships? While none of the best friends were willing to comment, other lawyers did not think so

Nishith Desai, Founder, Nishith Desai Associates says, "If the "Best Friends" relationship results in some people coming to India or pursuing Indian law, as I mentioned in great length as per what is practice of law, then it might cause some problem. But it should not tantamount to setting up a law in the name of best friends or otherwise.

Ravi Nath, Managing Partner, Rajinder Narain & Co says, "They've existed for years and years and worked happily. We ourselves have got relationships with a number of firms overseas and we constantly refer work to each other. This is not a breach of the advocates act by any stretch of the imagination. So when will this uncertainty and ambiguity be resolved? Well, the Bombay High Court judgment directs the Union Government to make "an appropriate decision in the matters as expeditiously as possible"

A move that puts added pressure on the government to resolve this long standing issue.

As a WTO member, India has been engaged in talks to open up its service sector under the General Agreement on Trade in Services since 2000. So far, while offers have been made to open up a number of service sectors, nothing concrete has been put forward as far as the legal services space goes. Union law minister Veerappa Moily has said on a number of occasions that India remains committed to opening up the sector to foreign lawyers but that he will ensure that the Bar Council is in full assent. And that's a buy-in that may take a while to get.