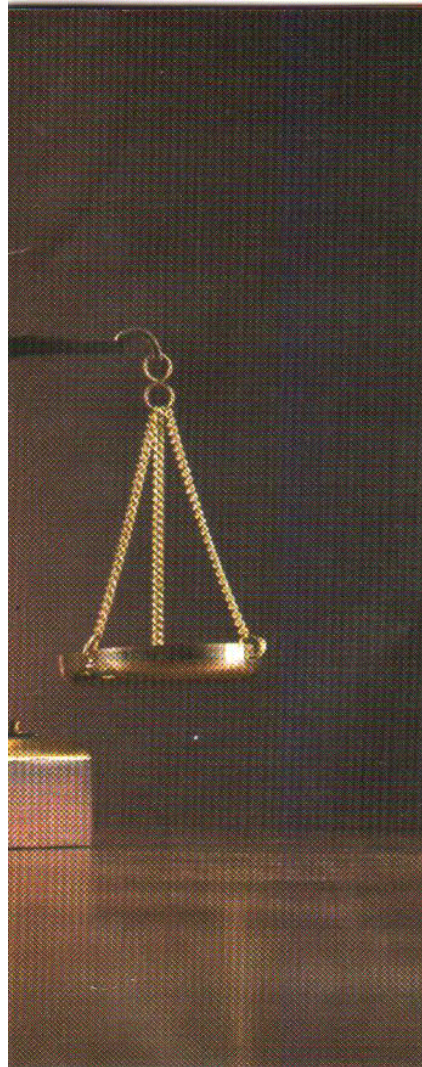


LIBERALIZING THE INDIAN LEGAL SECTOR



The legal system across the world is conventionally the most orthodox and regulated sector. India is not an exception. Access to foreign nationals in this sector is unreasonably restricted. Nevertheless, the never-ending processes of commercialization and globalization have resulted in the integration of the domestic economy of any country with that of the world economy. This in turn has intensified the demand for liberalizing the legal sector and thereby allowing foreign players to explore opportunities in these markets.

By Rakesh Kumar Singh



The 15th Law Commission of India headed by Justice BP Jeevan Reddy had taken up a study on the entry of foreign legal consultants and the liberalization of legal practices in India in keeping with the guidelines evolved by the International Bar Association (IBA) and the General Agreement of Trade in Services (GATS) which is an organ of the World Trade Organization (WTO). The Law Commission pointed out that India was a party to the GATS and is under obligation to enter into successive rounds of negotiations periodically with a view to achieving a progressively higher level of liberalisation which includes free trade and services without regard to national boundaries.

ANALYSIS OF THE ENTRY

The main work which foreign law firms will transact in India will be



SADANANDA GOWDA, Union Law Minister

that of advising/soliciting clients on an array of legal issues, of both international and domestic nature, and/or drafting legal documents. In other words, the foreign firms will chiefly concentrate on corporate and/or commercial transactional work.

Conversely, it can be asserted that foreign lawyers might not appear before Indian courts for the purpose of representing their clients in civil proceedings or criminal trials. The rationale for the said assertion stems from various factors, including the language and cultural problems, the dearth of knowledge of our legal system and also the dearth of trust of and support from domestic litigants and the absence of experience as regards litigating in Indian courts.

As Alison Hook, Head of the Law Society's International Division, states: "An English lawyer appearing in an Indian court is a complex matter. He would lose the case. He will have language and culture problems. All that we have ever asked for is to allow British law firms to complete transactions. This would be good for greater foreign investment in India". Similarly, Ritvik Lukose, Vice President of Rainmaker T&R, a leading legal recruitment and training firm, maintains that "foreign firms might not be interested

in litigation, as it is not lucrative enough and requires thorough study of the legal system of the land".

Thus, it can be safely deduced from the preceding paragraphs that since the majority of lawyers in India are involved in litigation, it is utmost unlikely that they will be adversely affected by the entry of foreign law firms.

THE ADVANTAGES OF ENTRY

The rationale that could be vehemently advocated in allowing foreign law firms to function and transact work in India is that foreign firms will bring with them a fresh pool of professionalism, competence and expertise, which the legal profession here has incessantly failed to develop. In other words, permitting the entry of foreign law firms into India will certainly bring in competition and raise the standards of service in the legal sector which most Indian law firms and lawyers are not ready to face.

The advantages of entry of foreign law firms could also be appreciated in the light of a credible surge in foreign investment and numerous benefits to the patrons of legal services and to the aspiring lawyers.

In this age the 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 accruing to consumers from the legal services sector, particularly the quality of service available with respect to particular fields. It is to be noted that with the advent of foreign law firms in India, the patrons of legal services will be highly benefited on account of more available options, the resultant competition and accessibility to a fresh pool of professionalism, competence and expertise which the legal profession here has incessantly failed to develop.

Also, with the arrival of foreign law firms there will be a tremendous surge in employment avenues for Indian lawyers. At the same time, the arrival will enable junior lawyers to grab a handsome pay package.

Law students will have easy access to internship programmes which is evidently not their catch in the present scenario.

Law schools and colleges in India have welcomed a proposal to allow foreign legal firms as they feel that the legal sector cannot be barred when India is opening up other sectors. In fact, law schools and colleges argue that the Government's move in this regard will boost competition in the legal sector. It would be worthwhile to note here what Dr A Jayagovind, Vice-Chancellor, National Law School of India University, Bangalore, opines, "It would be a welcome development. Anything that improves competition would be a welcome development".

DISADVANTAGES OF ENTRY

One of the main disadvantages of allowing foreign legal firms to operate in India is the possibility of domestic law firms being overpowered in performance and revenue by their foreign counterparts.

The law firms situated in countries like the United Kingdom, the United States and Australia have an overwhelming lawyer force. They operate on international scale and primarily function as business organizations designed to promote the commercial interests of their giant client corporations. The size, power, influence and economical standards of these large international law firms would definitely affect the share of domestic law firms. It can be said that in the present scenario Indian law firms cannot match, howsoever far they may stretch it, foreign law firms' size, power and most importantly economical standard.

It is also pertinent to note here that the non-capability of Indian law firms to compete with their foreign counterparts stems from various unnecessary and frivolous restrictions which domestic law firms are subjected to. Indian law firms are statutorily precluded from advertising and thus indicating their area of expertise. Moreover, domestic law firms are prohibited from raising capital and are also precluded

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from entering into any kind of co-operation with non-lawyers. Foreign firms, on the other hand, are not shackled by such limitations.

Liberalization without first putting Indian law firms on an equal footing will be unjust and will put them at a competitive disadvantage.

REVAMP LEGAL SECTOR

The need of liberalizing the Indian legal sector is unarguable and beyond doubt. It is extremely affirmative of the view that the advent of foreign law firms in our country will not just favourably add up to our foreign reserves and in due course the GDP, but will also beneficially result in a surge in employment for law graduates being debutants to the legal profession (both litigation and corporate) in terms of better exposure and a handsome pay package.

It will also be in the interests of the domestic patrons of legal services in terms of availability of better professional services and direct outcome of the consequent boost in competition in the legal market.

However, before foreign law firms are given the green signal for establishing their base in our country, it is of utmost importance that the Government should revamp the state of affairs existing in the Indian legal



sector, in order to do away with the unreasonable restrictions which undisputedly impose shackles on the healthy development of our country legal profession.

It is also important that the entry of foreign law firms into India should be coupled with the enactment of an impressive legal framework. Also a promising regulatory mechanism should be shaped which will ensure that the arrival of foreign law firms results only in healthy competition in the domestic legal market and not in the annihilation of our domestic law firms.

The opening up of the doors of the domestic legal market to competition from the international legal market is rather inevitable. Therefore, instead of offering resistance to the entry of foreign law firms, a sincere attempt should be made by all stakeholders to rework the situation in order to derive utmost benefit from it. However, it should be done on a reciprocal basis and other countries should also permit Indian lawyers to practise on their soil in a similar manner as their lawyers may be permitted here in India. ■

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