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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

CASE ANALYSIS OF BAR COUNCIL OF INDIA VS. A. K. BALAJI AND ORS., 2018

AUTHORED BY - KAVYA PRADEEP

ABSTRACT

The 2018 Supreme Court ruling in Bar Council of India vs. A. K. Balaji and Ors. reconciled contradictory jurisdictional interpretations concerning the entry and operation of foreign law firms and lawyers in India. The judgment clarified boundaries of the 'practice of law' which is inclusive of both courtroom litigation which is of litigious matters and transactional advisory services which is of a non-litigious matter. It determined that the statutory authority reserved for registered advocates under the Advocates Act, 1961 resolving conflicting interpretations given by the Madras and Bombay High Courts.

The Supreme Court executed a judicial balancing act that was recognizing both need to promote international commerce and established India as an International Commercial Arbitration hub. This was done by introducing conditional exceptions to the general prohibition such as the 'fly in and fly out' basis for foreign lawyers are allowed to advise clients exclusively on foreign law or diverse international legal issues provided that those visits amount to a casual visit and not that of a regular practice and that of participation is permitted subject to adhering to the strict code of professional conduct applicable to the Indian Bar.

The court's judgment delegated the details of the narrow exceptions and its operations to the Bar Council of India which resulted in the notification of the Bar Council of India Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms, 2022. Despite the framework the environment remains that to be volatile in nature due to ongoing institutional tension that questions the BCI's fundamental authority to permit non-litigious practice by foreign entities. The legacy of the case is defined by strict judicial protection of domestic legal profession held only by regulated concessions necessary for engaging in the global economy.

INTRODUCTION

The central problem addressed is that of the apex court's intervention in *Bar Council of India v. A. K. Balaji and Ors.*¹ addressed mounting regulatory uncertainty concerning overseas legal practitioners seeking to deliver professional services within Indian jurisdiction. The dispute revolved around whether foreign lawyers could legally engage in non-litigious like advisory work that are in relation to foreign law, international transactions and International Commercial Arbitration (hereafter, ICA) without mandatory enrollment under the Advocates Act, 1961.² The determination that was required to balance the Bar Council of India (hereafter, BCI) statutory mandate which was rooted into protecting the domestic bar and its professional ethics such as prohibitions on advertising and contingency fees against the necessity of liberalization. At first the government favored liberalization to establish the country as a 'hub for International Commercial Arbitration' that led to a direct clash of interests between the professional sovereignty and the global economic pragmatism. The Supreme Court's ruling prioritized statutory compliance and BCI oversight, establishing that the entry of foreign law firms and foreign lawyers must be regulated under the Advocates Act, 1961.

FACTUAL AND PROCEDURAL BACKGROUND OF THE CASE

PROCEEDINGS OF THE HIGH COURTS

The matter of the case first originated from two separate or individual proceedings that yielded conflicting judgments which necessitated a resolution that was to be delivered by the Supreme Court. The appeals addressed were that of CIVIL APPEALS NOS. 7875-7879 of 2015 that is filed by the BCI in opposition to the Madras High Court's judgment CIVIL APPEAL NO. 8028 of 2015 filed against the Bombay High Court's judgment.

The matter first arose from a writ petition filed with the Madras High Court by A. K. Balaji who was an Advocate wherein he requested action against 32 specified foreign law firms allegedly conducting illegal practice in India particularly concerning commercial transactions without complying with the mandatory enrollment requirements.

In *A. K. Balaji v. Government of India, 2012*³ the Madras High Court adopted a facilitative stance while affirming that foreign law firms and lawyers cannot practice in India whether in

¹ *Bar Council of India v. A.K. Balaji & Ors.*, (2018) 5 SCC 379.

² Advocates Act, 1961, No. 25, Acts of Parliament, 1961.

³ *A.K. Balaji vs. The Government of India*, AIR 2014 Mad 124.

litigious or non-litigious matters unless they comply with the Advocates Act and Bar Council of India Rules. However, the court recognized three exceptions: First, the foreign lawyers may make temporary visits to advise clients on foreign law or international legal issues. Second, they may conduct arbitration in international commercial disputes under the Arbitration and Conciliation Act, 1996.⁴ Lastly, BPO companies offering customized legal support services fall outside the scope of the Advocates Act.

The Bombay High Court Holding, *Lawyers Collective vs. Bar Council of India*, 2009⁵ in the tribunal reached more restrictive conclusions, determining the RBI lacked authority of Section 29 of the 1973 Foreign Exchange Regulation Act, 1973⁶ to permit international legal practices to establish liaison operations. The court additionally held that the expression 'to practice the profession of law' in Section 29 of the Advocates Act⁷ was interpreted broadly to encompass both litigious and non-litigious matters, thereby mandating foreign law firms engaged in non-litigious practices to comply with the Advocates Act.

SUPREME COURT INTERIM ORDER

The matter of the High court's ultimately reached the Supreme Court and on 4th July 2012 where an interim order was passed and remained in effect until the final judgment where immediate clarification was given on the regulatory landscape. The order clarified that the RBI lacked authority to grant permissions to foreign law firms for opening their liaison offices in India. It further established that the expression 'to practice the profession of law' encompassed both litigious and non-litigious activities in nature, and foreign law firms were required to comply with the provisions under the Advocates Act.

LEGAL ISSUES INVOLVED IN THE CASE

The Supreme Court case of *Bar Council of India vs. A. K Balaji and Ors.*, 2018 raised and framed five specific questions for determination:

- i. Does the expression 'practice the profession of law' encompass solely litigation practice, or does it extend to non-litigation practice as well?

⁴ Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996.

⁵ *Lawyers Collective vs. Bar Council of India*, 2010 (2) Mah LJ 726.

⁶ Foreign Exchange Regulation Act, 1973, § 29, No. 46, Acts of Parliament, 1973.

⁷ Advocates Act, 1961, § 29, No. 25, Acts of Parliament, 1961.

- ii. Can foreign law firms or foreign lawyers engage in such practice without satisfying the requirements stipulated under the Advocates Act and the Bar Council of India Rules?
- iii. If prohibited, are the said law firms or lawyers barred from visiting India on a 'fly in and fly out' basis to provide legal advice concerning foreign law on diverse international legal issues?
- iv. Do foreign law firms and lawyers face any bar from conducting arbitration proceeding and disputes arising out of contracts relating to international commercial arbitration?
- v. Are BPO companies providing integrated services exempt from coverage under the Advocates Act or the Bar Council of India Rules?

The relevant contexts with respect to the first issue is that Section 29 of the Advocates Act, 1961 and the second issue is regarding the same act but sections 24 (1) and 47 (1). The third and fourth issue is to do with the Madras High Court Para 63 (iii), the fourth issue also to do with Sections 32 and 33 under the Arbitration and Conciliation Act, 1996. The last issue is to do with the scope of 'practice of law' in the outsourcing domain.

ARGUMENTS ADVANCED BY PARTIES

APPELLANTS ARGUMENTS ADVANCED

The BCI represented by the appellant asserted the 1961 legislation created comprehensive exclusive authority. The counsel contended 'professional legal practice' possessed broad meaning and that encompasses both courtroom representation and office-based work which is inclusive of giving legal opinions, drafting instruments and participating in legal conferences. They contended that only advocates that were enrolled under the Sections 24 and 29 of the Act are qualified to practice in any 'court, authority or person' given under section 33 from the same act. The counsel emphasized that permitting unregulated foreign practice even on a temporary basis would not only meet ethical standards and disciplinary control vested in the BCI but would also undermine them. The Indian Code of Ethics was also cited which prohibits advertising under Rule 36, contingency fees under Rule 20 and 21⁸ and conflicts of interest along with making that these regulations differ fundamentally from that of used in the US and the UK.

⁸ Bar Council of India Rules, Part VI, Chapter II, Standards of Professional Conduct and Etiquette, rr. 20, 21 & 36.

RESPONDENTS ARGUMENT ADVANCED

Respondent overseas legal practices urged restrictive statutory interpretation applying exclusively to contentious matters or at minimum in Indian law practice. They argued that their activities were limited only to advising clients on foreign law, international law or commercial matters involving an “Indian Element” that comes from an international legal perspective where typically employing a ‘fly in and fly out’ model to employ casual consultations. It was also emphasized by them that restricting this advisory work would in return increase the transactional costs for Indian clients which also undermine international trade. With regards to the ICA the foreign law firms asserted that global arbitration rules permit parties to be represented by counsel of their choice which is irrespective of their local bar enrollment. The respondents also deny the allegations of them establishing law offices in India operating Legal Process Outsourcing (hereafter, LPO) or advising on Indian domestic laws.

UNION OF INDIA

The position of the Union of India (hereinafter, union) evolved materially during proceedings during the proceedings where Initially resisting total prohibition, the union contended that restricting the foreign law firms from negotiations and arbitration would undermine stated policy objectives of making India into a ‘hub of international arbitration’ and would be contradicting national interest from the aspect. However, in subsequent affidavits the union endorsed the BCI's position confirming that the Advocates Act applies with equal force to both litigious and non-litigious matters of practice and Section 24 reinforces that only those enrolled under the same could practice law in India. Before the Supreme Coury the union stated that it was awaiting certain BCI’s formulation of rules but reserved the rights to make regulations that fall under Section 49A at any point of time which is the power of the central government to make rules. Suggestions were given to that any future liberalization would have to proceed through the BCI rule making or explicit statutory amendment.

RESEARCH AND ANALYSIS

RE: Issue (i)

The tribunal endorsed the Bombay court's interpretation, relying on precedents including Pravin C. Shah vs. K. A. Mohd. Ali⁹ and Ex. Capt. Harish Uppal vs. Union of India¹⁰ where it

⁹ Pravin C. Shah v. K.A. Mohd. Ali, (2001) 8 SCC 650.

¹⁰ Ex-Capt. Harish Uppal v. Union of India, (2003) 2 SCC 45.

was held that ethics of legal profession doesn't only apply to those that appear before a court and is inclusive of practice outside the court. If non-litigious practice were exempted from the regulation a lawyer disciplined and suspended for misconduct could evade the punishment by just shifting to chamber practice. Thus, it was held that the 'practice of law' includes litigious as well as non-litigious matters.

RE: Issue (ii)

As already held under issue (i) the 'practice of law' includes both activities that are litigious and non-litigious in nature. Consequently, the tribunal confirmed the 1961 legislation regulates all professional legal service forms, with exclusively Council-enrolled advocates possessing authority to undertake such work. The prohibition also said to equally apply to individual lawyers and to groups or judicial persons inclusive of foreign law firms and lawyers.

RE: Issue (iii)

The apex court refined the Madras tribunal's permissible exception regarding brief territorial consultations. The judgment established that occasional visitation by overseas lawyers would not constitute professional practice. The court explicitly rejected the respondents' argument that the Advocates Act applies only to the practice of Indian law clarifying that a foreign lawyer cannot practice foreign law in the country without subjecting himself to the BCI rules and remaining bound by the same. This confirms that jurisdiction is determined by the geographical location of the practice rather than the subject matter of the advice. The determination of whether a visit is casual or amounts to practice is a question of fact to be decided on a case-by-case basis and it was further stated that the BCI or union are at liberty to formulate appropriate rules in this regard.

RE: Issue (iv)

While recognizing the 1996 arbitration framework permits party selection of representatives, the tribunal emphasized arbitral institutional rules must ultimately conform to territorial law. The Court refused to confer an unconditional entitlement upon foreign lawyers to conduct arbitration proceeding stipulating that participation remains permissible only when the matter is governed by institutional arbitration rules or falls within Sections 32 or 33 of the Advocates Act¹¹ which authorize appearance before a court, authority or person. When participation is

¹¹ Advocates Act, 1961, § 32 and 33, No. 25, Acts of Parliament, 1961.

permitted foreign lawyers must adhere to the Code of Conduct applicable to the legal profession in India.

RE: Issue (v)

The court addressed the regulatory loophole which was exploited by the BPO and LPO companies that were providing legal support services. The tribunal determined that outsourcing entities offering technical support services such as document processing or transcription may not violate the 1961 statutory framework. If the activity in its pith and substance does not constitute practice of law and the services neither directly nor indirectly amount to practice of law, the Act may not be applicable with such matters to be determined on a case-by-case basis depending on the factual circumstances.

JUDGMENT

RATION DECIDENDI

The core binding ratios that are established by the Supreme Court are:

1. Total Prohibition on General Practice where foreign law firms and lawyers cannot practice the law profession in the country either in the litigious or non-litigious area. Section 29 of the Advocates Act which is the right to practice law reserved exclusively for BCI enrolled advocates and that which includes all forms litigious and non-litigious works in nature.
2. Strict limitations on 'fly in and fly out' is the temporary visitation for foreign lawyers that is permissible only if it constitutes a casual visit doesn't amounting to practice, undertaken solely for the purpose of delivering advice on foreign law or diverse international law to their clients. Regular visits of advisory work constitute practice which is prohibited.
3. Conditional Arbitration Participation is where the foreign lawyers have no absolute right to conduct arbitration proceeding that arises from ICA disputes and their participation in the same is permitted only if it covered by specific rules such as the Institutional Arbitration or Sections 32 and 33 of the Advocates Act.
4. Regarding the BPO/LPO regulations they are covered by the Advocates Act and if in pith and substance of the activities will amount directly or indirectly to the 'practice of law'.

OBITER DICTA

The judgment provided forward looking directions and observances:

1. Council Determination Authority: For disputes regarding whether overseas lawyer activities constitute occasional consultations or prohibited professional practice with respect to activities of whether it constitutes casual advice or prohibited regulatory practice then the BCI is empowered to make the final determination.
2. The rule making mandate in which the BCI and the union are given the liberty to frame appropriate rules regarding the matters of extending the code of ethics to foreign lawyers in activities of 'fly in and fly out' and to develop provisions governing the conduct of them in international commercial and arbitration matters.
3. Mandatory adherence to Indian ethics is that even when participation in ICA is conditionally permissible the foreign lawyers involved will be regulated by the code of conduct applicable to the legal profession in the country which requires adherence to domestic standards.

CONCLUSION AND COMMENTS

Bar Council of India v. A.K. Balaji constitutes a watershed moment in Indian jurisprudence, resolving ambiguity surrounding professional status and practice scope for international lawyers. The judgment's most transformative impact emerged from judicial confirmation of the 1961 Act's primacy over international commerce considerations by confirming the expression 'practice of law' to cover all non-litigious activities and all the same under exclusive regulatory umbrella of the BCI done by the Supreme court.¹²

While the judgment was protectionist in principle it was pragmatic in execution with the creation of two conditional pathways that is the narrow casual visit doctrine, and the limited allowance of ICA participation showed the courts awareness of India in global commerce.¹³ The pathways ensured that the essential cross-border advisory services could continue but only under the sight of the BCI.

¹² *Supreme Court Interprets Scope of Work for Foreign Lawyers – India*, Law.asia (Oct. 9, 2025, 10:25 PM), <https://law.asia/supreme-court-interprets-scope-of-work-for-foreign-lawyers/>.

¹³ *Foreign Law Firms/Lawyers Can't "Practice" in India; "Casual Visit" on Fly-In and Fly Out Basis Permissible*: SC, SCC Online (Oct. 9, 2025, 10:45 PM), <https://www.sconline.com/blog/post/2018/03/13/foreign-lawyers-law-firms-cant-practice-india-casual-visit-fly-fly-basis-permissible-sc/>.

The Obiter Dicta granting the BCI and the union the liberty to frame rules regarding the ethics and future policy from judiciary regulation established a boundary. The court provided the legal certainty which was needed for the BCI to move towards a model of conditional and regulated entry to India. This directly catalyzed formulation and promulgation of the 2023 Bar Council framework for Registration of International Lawyers and Legal Practices¹⁴ now provide a formal and reciprocal pathway for foreign lawyers and firms to engage in non-litigious and international arbitration work in India solidifying the 2018 ruling as a foundation legal framework for the evolution.¹⁵



¹⁴ Bar Council of India Notification, Bar Council of India Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2022, Mar. 10, 2023.

¹⁵ Shushant Mahajan, *Entry to Foreign Lawyers & Law Firms in India & Its Impact on International Arbitration in India*, 5 J. Issue 2 Journal of the Institute For Transnational Arbitration 90, 90-94 (2023).