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In the News...

- Constitutional Validity of Same-Sex Marriages in India is being heard by the a 5 - Judge Constitutional Bench of the Supreme Court of India.
- Lawyers' strikes: Supreme Court directs formation of committees for all High Courts to redress lawyers' grievances following the attacks on lawyers including the death of the Advocate Virender Narwal who was shot dead in Delhi.
- Survivor of sexual offence should be heard but no obligation in law to make her a party to proceedings: Delhi High Court
- Parliament Watch: Only 468 of 6,055 Central government panel counsel are women; CBI conviction rate over 67% in last 5 years
- Central government notifies Regulations for Empanelment of Arbitrators to India International Arbitration Centre
- Parliament Watch: Crime against women in metropolitan cities; 152.8 police personnel per one lakh people in India
- Wild Life (Protection) Amendment Act, 2022 to come into force from April 1, 2023
- Parliament Watch: Government does not subscribe to World Press Freedom Index; 678 in prison merely due to non-payment of fine.
- Commercial Enterprises can raise consumer disputes in relation to the good or services unconnected to the profit generation.

.....see more



S.K. SINGHI

Founder & Managing Partner

Message from Managing Partner

We missed sharing with you the March issue of our Newsletter due to sheer work load at Law Firm, which found the Associates, the backbone of our Newsletter, working extra hours to close their assignments. This April issue is thus an integration of our March and April Newsletters. Moving forward, I have constituted a dedicated team of Associates from our Kolkata, Mumbai and New Delhi Offices to bring out the Newsletter by the first week of the Month, under a very hard working Senior Partner.

The world has become a global village. Our legal services must also become available globally, subject to the countries granting reciprocity.

India has now finally opened its doors to foreign lawyers and foreign law firms to practice law in India. Bar Council of India has issues Rules for permitting and regulating foreign lawyers and foreign law firms to practice law in India. I have analysed these Rule for the Newsletter. which I hope will be useful to the readers. I am excited at the opportunity this offers to our Law Firm to take our law practice globally, basis the reciprocity that these rules bring in as a prerequisite.

The next few months will test the waters of these Rules on the Indian shores.

With my best wishes.



*Man's capacity for justice makes democracy possible,
Man's inclination to injustice makes democracy necessary.*



FOREIGN LAWYERS PRACTICE IN INDIA

By Mr. S.K. Singhi, Managing Partner, S.K. Singhi & Partners LLP

Snapshot on Bar Council of India Foreign Law Firms Rules:

- Foreign lawyers and foreign law firms are now permitted to practice law in India.
- Foreign lawyers and foreign law firms can now apply to the bar council of India for registration with Bar Council of India to practice law in India.
- Foreign lawyers and foreign law firms can only practice corporate laws and advise their foreign clients.
- Foreign lawyers can practice International Commercial Arbitration.
- Foreign lawyers and foreign law firms cannot practice litigation in India.
- Foreign lawyers and foreign law firms cannot practice real estate laws or undertake title search work in India.
- Foreign lawyers and foreign law firms can enter into partnership with other foreign lawyers and foreign law firms.
- Foreign lawyers and foreign law firms can hire Indian lawyers
- Foreign lawyers and foreign law firms of only those countries can practice law in India which permits Indian lawyers to practice law in those countries (reciprocity).

Bar Council Of India Rules For Registration And Regulation Of Foreign Lawyers Or Law Firms In India

Broad Features Of The BCI Notification

A foreign lawyer registered under rules shall be entitled to practice law in India in non-litigious matters only subject to such exceptions, conditions and limitations as are laid down under these Rules and he/it shall be deemed to be an advocate within the meaning sections 29, 30 and 33 of the Act qua such acts and deeds as are envisaged to be performed by him under these Rules as a foreign lawyer. However, a foreign Lawyer or Foreign Law Firm shall not be proceeded under Chapter V of the Advocates Act; rather in case of any substantive misconduct, the Bar Council of India may cancel the registration of such Foreign Advocate or Foreign Law Firm as the case may be.

The areas of practice of law by a foreign lawyer or Foreign Law Firm shall be laid down by Bar Council of India And if need be, the Bar Council of India may consult the Govt. of India, Ministry of Law and Justice in this regard. The foreign lawyers or foreign Law Firms shall not be permitted to appear before any courts, tribunals or other statutory or regulatory authorities. They shall be allowed to practice on transactional work /corporate work such as joint ventures, mergers and acquisitions, intellectual property matters, drafting of contracts and other related matters on reciprocal basis. They shall not be involved or permitted to do any work pertaining to conveyancing of property, Title investigation or other similar works.

The Practice of Law by a Foreign Lawyer and/or Foreign Law Firm shall include the following arenas:-

(i) doing work, transacting business, giving advice and opinion concerning the laws of the country of the primary qualification;

(ii) providing legal expertise/advise and appearing as a lawyer for a person, firm, company, corporation, trust, society etc. who/which is having an address or principal office or head office in a foreign country in any international arbitration case which is conducted in India and in such arbitration case "foreign law may or may not be involved;

(iii) providing legal expertise/advise and appearing as a lawyer for a person, firm, company, corporation, trust, society etc. who/which is having an address or principal office or head office in the foreign country of the primary qualification in proceedings before bodies other than Courts, Tribunals, Boards, statutory authorities who are not legally entitled to take evidence on oath, in which knowledge of foreign law of the country of the primary qualification is essential;

•(iv) providing legal expertise/advise concerning the laws of the Country of primary qualification and on diverse international legal issues, provided that such legal expertise/advise, unless otherwise provided for in these Rules, shall not include representation or the preparation of documents regarding procedures before an Indian Court of Law, Tribunal or any other Authority competent to record evidence on oath or preparation of any documents, petitions etc. to be submitted to any such forum regarding such procedures.

(v) Provided that an Advocate enrolled with any State Bar Council in India and is a partner or Associate in any Foreign Law Firm registered in India under these rules and regulations, can take up only the non-litigious matters and can advise on issues relating to countries other than the Indian Laws only. Such Lawyer shall have no advantage / right of his being an Advocate enrolled in India.

Incidental matters as regards opening of law offices, entering into partnerships, procuring other legal expertise/advise etc. in connection with the practice of law in India:-

(i) The registered foreign lawyer or foreign Law Firm shall be entitled to do the following things in connection with the practice of law in India: -

(ii) to open law office or offices in India for carrying on law practice in India as mentioned in Rule 8 of these Rules and subject to the condition that Bar Council of India shall be kept informed of the particulars of such office/offices viz. postal address, name of the owner/lessee of the property in which the office/offices are located and the documents enabling and entitling him/it to occupy it. (ii) to engage and procure legal expertise/advise of one or more Indian Advocates Registered as foreign lawyers.

(iii) to procure the legal expertise/advise of any Advocate enrolled with any State Bar Council in India on any subject relating to Indian Laws. But such registered foreign lawyer or foreign Law Firm shall

not be entitled to appear before any Indian Court, Tribunal or any other statutory forum except for the matters mentioned under provision of Rule 8 of these Rules.

(iv) to enter into Partnership with one or more Foreign Lawyers or Foreign Law Firm registered in India under these rules.

ANALYSIS OF THE BCI RULES

Rule 1(iii) defines "Foreign Lawyer" to mean a person, including a Law Firm, Limited Liability Partnership, Company or a Corporation, by whatever name called or described, who/which is entitled to practice law in a Foreign Country.

Rule 1(v) defines "Country of Primary Qualification" as a Foreign Country in which Foreign Lawyer is entitled to Practice Law of the Country.

Rule 1 (x) defines "Foreign Client", as an individual/s who is/are Citizens of a Foreign Nation or a Firm/Corporation/business entity having its registered Office/head Office in a foreign country with a branch/registered office or manufacturing unit in India.

CHAPTER – II

REGISTRATION OF FOREIGN LAWYERS OR FOREIGN LAW FIRMS AND THE EXTENT AND CONDITIONS SUBJECT TO WHICH THEY CAN PRACTICE LAW IN INDIA:

Rule 3: Registration of Foreign Lawyers or Law Firm and eligibility criteria subject to which they can practice law in India.

(1) A foreign lawyer or foreign law firm shall not be entitled to practice law in India unless he/it is registered with the Bar Council of India under these Rules: Provided that this prohibition will not apply to law practice by a foreign lawyer or foreign law firm in case such practice is done on a 'fly in and fly out basis' for the purpose of giving legal advice to the client in India regarding foreign law and on diverse international legal issues and provided further that such expertise/advise of such a foreign lawyer or foreign law firm had been procured by the client in a foreign country and foreign lawyer or foreign law firm does not maintain an office in India for the purpose of such practice and lastly such practice in India for one or more periods does not, in aggregate, exceed 60 days in any period of 12 months.

(2) 'Right to practice law' in the concerned 'foreign country of the primary qualification' shall be the primary qualification for practicing law in India under these rules.

CHAPTER – III

APPLICATION FOR REGISTRATION, RENEWAL OF REGISTRATION AND MATTERS CONNECTED THE PRACTICE OF LAW IN INDIA

4. Application for Registration:

(1) A foreign lawyer or foreign law firm may apply for registration

under these rules in 'FORM A' appended to these Rules along with registration fee and guarantee amount either in person or through registered Post. This application and fee may also be submitted online. Such an application shall also be accompanied by non-refundable Process charges of such an amount as may be fixed by Bar Council of India from time to time. This application shall be addressed to the Secretary, Bar Council of India and shall be accompanied by the following documents:

(i) A certificate from the Government of India, (Ministry of Law & Justice and Ministry of External Affairs and Trade) or such other authority or officer as Union Government may authorize in this behalf that an effective legal system exists in concerned foreign country of the primary qualification and that it has no objection in case the applicant is registered under these Rules and practices law in India; (However the Bar Council of India may seek any information from any departments/Ministries of any foreign Countries, if it thinks necessary and/or it may contact any. Foreign Government/Department in case if any information required.)

(ii) A certificate from the Competent Authority of the concerned foreign country of primary qualification certifying that the applicant is entitled to practice law in that Country;

(iii) A certificate from the Government of the foreign country of primary qualification or from a competent Authority thereof certifying that advocates enrolled under the Advocates Act, 1961 are permitted to practice law in that country in the manner and to the extent which is comparable to the law practice permitted under these Rules along with copies of the relevant Laws and Rules;

(iv) A certificate from the Competent Authority of the concerned country of primary qualification or any other competent authority/ies, Courts, Bar Association, Bar Council etc. that the applicant has been in practice in that country;

(v) A certificate of the competent authority of the concerned foreign country of primary qualification that no proceedings of professional or other misconduct are pending either before it or before any other authority competent to entertain and decide such proceedings;

(vi) A certificate of the competent authority of the concerned foreign country of primary qualification giving details of the fee structure and other amounts chargeable from an advocate enrolled under the Act for enabling him to practice law in that country along with relevant Rules and Laws; (vii) 'No objection Certificate' of the competent authority of the concerned foreign country of primary qualification that it has no objection in case the applicant starts law practice in India and that the applicant enjoys a good standing in the Bar.

(viii) A declaration on affidavit that the applicant has not been convicted of any offence and has not suffered any adverse order in any disciplinary matter. (In case he has suffered relevant attested any conviction/adverse order, copies of the order of conviction/adverse order and other related documents about the matter like appeal and stay, if any, or sentence/fine suffered/paid etc. are to be annexed);

(ix) A declaration on affidavit that the applicant has no objection and consents to the making of enquiries and investigation by the Bar Council of India on its own or through such government or non-government investigating agency, as it may deem fit, to verify the veracity of the particulars disclosed by the applicant in the application and genuineness of the documents annexed therewith;

(x) An undertaking on oath that he/it shall not practice Indian law in any form or before any court of Law, Tribunal, Board or any other Authority legally entitled to record evidence on oath;

(xi) A declaration on oath that he/it shall not be entitled to and shall not claim any interest on the guarantee amount deposited by him/it with Bar Council of India at the time of registration under these Rules and that the Bar Council shall be entitled to adjust and apply this guarantee amount to the penalty and cost amounts that may be awarded by the Bar Council of India under the provisions of these Rules;

(xii) A declaration on oath that the applicant fully understands and appreciates the fact that on registration under rule 7 of these Rules, the Advocates Act, 1961 and Rules made there under, mutatis mutandis, apply to him/it in respect of law practice by him/it in India and that he/it is subject to the jurisdiction of Courts of Law in India and to the jurisdiction of Bar Council of India in relation to such practice.

VALIDITY OF REGISTRATION AND RENEWAL OF REGISTRATION:

Rule 5:

(1) The registration done under rule 7 shall be valid for a period of 5 (five) years only and the foreign lawyer and/or Law Firm would be required to renew it by filing an application for renewal in Form B within 6 months before the date on which such validity expires.

(2) A foreign lawyer or foreign Law Firm may apply for renewal of registration under these rules in 'FORM B' appended to these Rules along with renewal fee either in person or through registered Post.

CHAPTER – IV

LAW PRACTICE BY FOREIGN LAWYER: NATURE AND EXTENT THEREOF:

Section 8:

Law practice by a foreign lawyer: nature and extent thereof:-

SCHEDULE REGISTRATION FEES

(i) Registration fee in case of a foreign lawyer, if he is an individual: USD 25,000/- (USD Twenty Five Thousand Only);

(ii) Registration fee in case of a foreign lawyer, if it is a firm, private limited partnership, company, Limited Liability Partnership (LLP) etc.: USD 50, 000/- (USD Fifty Thousand Only);

(iii) Renewal fee in case of a foreign lawyer: USD 10,000/- (USD Ten Thousand Only);

(iv) Renewal fee in case of a foreign lawyer, if it is a firm, private limited partnership, company, Limited Liability Partnership (LLP) etc.: USD 20, 000/- (USD Twenty Thousand Only).

(E) The application for registration shall also be accompanied by Security Deposit as follows:

(i) Security Deposit in case of a foreign lawyer, if he is an individual: USD 15,000/- (USD Fifteen Thousand Only);

(ii) Guarantee amount in case of a foreign lawyer, if it is a firm, private limited partnership, company, limited liability partnership (LLP) etc.: USD 40,000/- (USD Forty Thousand Only).

BREAKING NEWS

Supreme Court of India's Constitution Bench begins live streaming of its Hearing on the issue of Same-Sex Marriage. Two Men Move Supreme Court Seeking Recognition of SAME-SEX MARRIAGE Under the Special Marriage Act.

Meet the Couple Leading the Push to Legalize Same-Sex Marriage in India

Supriya Chakraborty proposed to Abhay Dange in April 2021 during the middle of the COVID-19 pandemic in India. Chakraborty had been recovering from a high fever after testing positive for the virus, and having his partner of nearly 10 years by his side made one thing abundantly clear: "Abhay was the one," he tells TIME. So Chakraborty, 32, and Dange, 35, made an important and potentially risky life decision to wed in a big Indian ceremony outside Hyderabad in December 2021.

The two men are now the lead petitioners in a landmark case that will decide the fate of same-sex marriage in India. In April, the Indian Supreme Court began hearing a series of petitions from 18 LGBTQ+ couples, including three who are raising children together, asking for the legal recognition of same-sex marriage. Oral arguments conclude Thursday, with a verdict expected in the coming months.



MY THOUGHTS ON POSH*

- By Anika Bajpai, Senior Associate

India is known as the land of Kali, Saraswati, Durga etc. Both men and women worship these deities in our daily lives.

We as a Nation have been governed by a female prime minister for a period of almost 16 years but failed to frame any law for the protection and against the harassment of Women.

Unfortunately, the word women and harassment go hand in hand and every woman at some point in her life has faced some sort of harassment either from a stranger, a relative, in her workplace or even at home. Though harassment is multi-faceted, this article will confine to one of the facets i.e Sexual Harassment at Workplace.

A lot has been spoken about Sexual Harassment in the workplace, but it continues to be a burning issue. With the women coming into the mainstream workplace more and more, with the women actively becoming a part of the organisational structure of work and have broken the proverbial glass ceiling, the incidences of sexual harassment have relatively increased. It would not be just to say that there were fewer incidences before, but it would be safe to say that as there is an increase in literacy, an increase in awareness, there is an increase in the courage to report such incidences.

Sexual Harassment does not only affect the day-to-day productivity but also effects the career growth and all in all mental health of an individual. It has been widely reported that Sexual Harassment reduces career success and satisfaction in women and yet in more than 59 countries around the world, women are still not protected against the same. Resultantly, women who do not have laws to protect them tend to drop out and surrender their careers more.

***“Whatever is just is powerful,
Whatever is powerful may not be just..”***

Shedding some light on as to what comprises of harassment at workplace, harassment can take many forms which include unwanted advances, comments, or physical contact. The U.S Equal Employment Opportunity Commission (EEOC) defines sexual harassment as “unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.”

India, in 2013 enforced the Sexual Harassment of Women (Prevention, Prohibition and Redressal) Act 2013 after the passing of the landmark judgment in Vishaka vs State of Rajasthan.

.....see more

***Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.**

Can Justice Be Delivered Without Courts?

- Hargovind Sachdev, Banking Advisor



The legal profession is often considered a noble profession. Lawyers play a critical role in maintaining the stability and fairness of society. Legal professionals uphold justice, protect rights, advance society, and adhere to high ethical standards. Lawyers render noble and honorable services:

Upholding Justice: Lawyers play a vital role in upholding justice and the rule of law in society. They work to ensure that people are held accountable for their actions.

Protecting Rights: Legal professionals help to protect the rights of individuals, including the right to a fair trial, freedom of speech, and other fundamental human rights. They often work to defend those who cannot defend themselves.

Advancing Society: Lawyers play an essential role in shaping society by promoting positive change. They help draft laws that promote fairness and equality.

Ethical Standards: The legal profession has a high standard of ethical conduct, which is essential for maintaining the integrity of the legal system. Legal professionals adhere to a strict code of conduct that emphasizes honesty, integrity, and respect for the law.

Courts are an essential part of our society, and their important role play comprises:

Resolving Disputes: Courts provide a forum for resolving disputes between individuals, organizations, or governments. They ensure that justice is done by interpreting and applying the law in a fair and impartial manner.

***“Justice is doing for others,
What we want done to us.”***

Upholding the Law: The courts play a crucial role in upholding the law and enforcing legal rights. They hold people accountable for their actions and ensure that those who violate the law are punished appropriately.

Protecting Individual Rights: The courts are a critical defender of individual rights and freedoms. They protect citizens from abuses of power by the government or individuals, and ensure that everyone is treated equally before the law.

Promoting Fairness: The courts promote fairness and impartiality in the legal system. They provide a level playing field for all parties involved in a legal dispute, regardless of their status or resources.

Creating Precedent: Courts create precedent through their decisions, which can shape the future development of the law.

Overall, courts are crucial for society because they provide a forum for resolving disputes, uphold the law, protect individual rights, promote fairness, and create precedent. It is challenging to deliver justice without courts, as courts play a crucial role in upholding the law and ensuring that justice is done.

Alternative methods of dispute resolution, such as mediation and arbitration, can also be used to deliver justice outside of the traditional court system. While mediation and arbitration can be effective alternatives to the court system, they may not be suitable in many cases.

.....see more

The opposite of poverty is not wealth, the opposite of poverty is injustice.

Birthday Celebrations



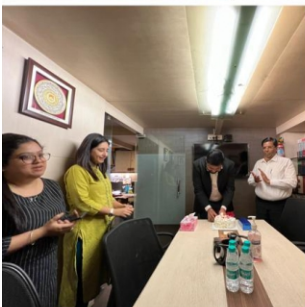
Senior Associate - Akshaya Pruthan
Dated: 04th Feb (Mumbai Office)



Senior Associate - Sneha Trivedi
Dated: 06th Feb (Mumbai Office)



Senior Associate - Sumon Roy
Dated: 12th Feb (Kolkata Office)



Senior Associate - Sumon Roy
Dated: 12th Feb (Kolkata Office)



Principal Associate - Ms. Riti Basu
Dated: 26th Feb (Kolkata Office)

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The firm is headquartered in Kolkata, with offices in New Delhi and Mumbai and practices in a number of other Indian cities and abroad. It enjoys an international presence through global alliances with leading law firms. The firm was setup as a sole proprietorship concern under the leadership of Managing Partner, Mr. S.K. Singhi and was subsequently converted into a Limited Liability Partnership (LLP) as it exists today.

Coming Soon...

Watch this space for the announcement of a path-breaking disruptive initiative of transforming the Indian Legal System...

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