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## ENTRY OF FOREIGN LAWERS IN INDIA

Dr. Surat Singh\*

One thing we should keep in mind at the outset is that the right to practise law is not a fundamental right in any country akin to the right to life and liberty. In fact, certain pre-conditions have to be satisfied before any society allows anybody to practise law. For example, in U.S.A. merely being a graduate of law is not sufficient entitlement to practise law. Even after graduating in law, Bar examination must be cleared in order to practise law. Unlike India, the mere possession of degree does not entitle a person to practise law in the U.S.A. In fact, the aspiring practitioner has to pass the examination of the Bar of a particular State, where the prospective lawyer wants to practise. For example, if one wants to practise in New York State, then one has to pass the New York Bar Examination. This does not automatically entitle a person to practise in California and it is to be noted that these Bar Examinations of various States of U.S.A. are quite rigorous and demanding. Therefore a certain level of minimum competence is required before a person is allowed to practise law. Hence, right to practise law is not a "free for all" proposition in America. What kind of restrictions or what level of competence would be required before a person is allowed to practise law under different jurisdictions would vary from country to country. Hence, it is simplistic to assume that if one has the right to practise in one jurisdiction, he gets the natural right to practise anywhere in the country or the entire world.

There are two extreme theories prevailing regarding the question whether the foreign lawyers/law firms should be allowed to practise in India or not and whether Indian lawyers should be given the reciprocal rights to practise abroad. The fashionable theory at the moment is the Free Market theory whereby all the barriers are to be demolished in the name of liberalisation and open competition. As examined at a later stage in this paper, it would be unwise to rush to embrace these free competition theories without realising the implications for India. In fact, I would recommend a much more cautious approach keeping in view the relevant factors of our conditions in relation to entry of foreign lawyers in our country.

Likewise, the other extreme theory is the theory of "Zealous protectionism" where tight controls are exercised before anybody is allowed to get in. At the moment, this theory is being discredited and is termed as anachronistic. But as

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per the reasons enunciated later, we have to be a bit careful against the fashionable “free market theory” and some insights from the old protectionist approach would be of great relevance even today. In fact, this theory can serve as an antidote against hasty liberalisation. But the specific application of the above theory will be made more clear once we look at the Indian context and work out the implications of both these theories for our Indian context.

### **LOOKING AT THE INDIAN CONTEXT**

Now, we have to appreciate the Indian context in which the foreign lawyers would be seeking entry. One thing to be kept in mind is that there are certain significant differences in the training of our lawyers in India. It is axiomatic to say that barring a few honourable exceptions, the law schools in India do not attract the best and brightest of our students and in fact the reasons for this low entry level to law schools is not far to see. In India, generally when the more promising career plans do not work out, then students turn to law. The quality of education imparted at law schools is of sub-standard levels; the method of teaching adopted is not very rigorous and intellectually stimulating; the pedagogical approach of teachers does not take into account the practical aspect of law and is based on empty and artificial abstractions; the career prospects after leaving law schools are not very attractive. Hence, there is a vicious cycle of substandard prospects emerging from law schools in India i.e. entry of sub standard students in law school, followed by sub-standard career opportunities again leading to the entry of sub-standard student, quality in legal education and the vicious cycle goes on. Fortunately, things are improving a little bit after introduction of certain reforms in the form of founding of National Law School of India University at Bangalore and trying of innovative methods at Delhi Law Faculty. But these examples are much more in the nature of exception than the general rule. The general quality of law graduates in India leaves much to be desired and the career opportunities available to graduates in India are far from satisfactory.

A clear contrast is the situation prevailing in other countries, especially example of USA. In U.S.A., most of the best students of the nation go to law schools and it is as difficult to get into top law schools like Harvard Law School as it is to go to business schools. Whereas in India, there is no comparison between the difficulty level of entry into LL.B. and M.B.A. or for that matter, LL.B. and M.B.B.S. So, the American Law Schools attract the best and brightest students to begin with.

Secondly, the method of teaching is very rigorous and demanding and much more practice oriented. For example, one has to study at least 100 pages to 150 pages of written material in U.S.A. In India, it is too much to expect from students to ask them to read even 10 pages per class. Not only this, in American Law Schools, you will find a rigorous and participative atmosphere where students

are challenged to think through law and are kept busy in drafting, arguing and simulating court room experience through various clinical programmes in the class rooms. By contrast, our legal education is based on rote memorisation and it does not encourage, let alone equip, the students to think on their own. Hence, the end product of our education system is bound to be far inferior than those of American Law Schools.

There are great career prospects for American students the moment they come out of law schools. In fact, at any prestigious law school, like Harvard and Yale, there are so many offers of job to graduating law students that it becomes a difficult decision to choose from these very attractive offers. For example, an average offer in top law firms in U.S.A. starts from US\$ 80,000 per annum which is lot of money even by American standards.

But unfortunately, Indian Law Graduates are not that lucky. It is not possible even to offer a job of Rs.80,000 (about US\$ 265) per annum to Indian Law Graduates, once they leave the law school. In fact, the exploitation of junior lawyers in India is too well-known to be detailed here. I was shocked to learn after my return from U.S.A. that an average law graduate in Delhi was getting less than Rs. 2000/- (about US\$ 60) per month.

Under such circumstances, where there is such a vast disparity between Indian lawyers and their counter-parts in other countries in terms of levels of competence, quality of job opportunities and rewards and working environment, it would be unrealistic to go for a 'free market approach' in area of legal profession.

The implications of the above statement are very clear that if we allow the foreign law firms to enter Indian market to practise without suitable ground work and preparation on our part, then we would be really exposing our ill-equipped profession to face these formidable opponents and we would not be a true match for them. But this does not mean advocating the approach of an ostrich by refusing to see the surrounding realities assuming that the unpleasant reality will go away. The reality of the world competition and opening of global market is there to stay and either we prepare ourselves for it by adopting various steps at various stages or we should be prepared for the eventual doom. My suggestion would be that in India, we have to streamline our legal education by making substantial improvements in the quality of our legal education by making it suitable to face modern challenges and by liberating it from the bookish approach to the practical life oriented approach and by subjecting our law students to rigorous pedagogical methods and by providing better career opportunities after they leave the law schools and enter the legal profession.

Coming to the other side of the equation, the foreign countries will have to open up their market also for Indian lawyers. It is true that at the moment not many of our lawyers might be able to compete in the open market abroad, but

there are certainly a group of Indian lawyers who can successfully compete anywhere in the world. Whether other countries would be able to embrace them in their fold after making sure that we satisfy their bare minimum level of competence is yet to be seen. In this area, more than mere goodwill is required and we have to ensure that certain methods, mechanism and well organised openings are there to take care of this aspect.

## **CONCLUSION**

To sum up, I would conclude that neither Indian lawyers nor their counterparts in other countries should rush to enter the foreign markets under the influence of hasty liberalisation without taking into account the legal context of the country of their desired destination. On our part in India, we need to streamline our legal education ensuring the better and competitive quality of our law graduates as opposed to the deplorable quality of law graduates we churn out due to several reasons mentioned above. Likewise, foreigners should study the context of legal profession in India carefully before they become over-eager to practise here. This will require a friendly, but rigorous round of sitting together by both Indian legal community and their foreign counterparts. Only a well meaning and yet well-thought out exchange of notes will provide us the essential background to plunge into the Indian ocean of law or plunging of Indian lawyers into foreign waters overseas.