



LAW CHAMBER OF  
**PAWAN**  
PRAKASH PATHAK

Date:- 15.05.2023

**TO,**  
**THE BAR COUNCIL OF INDIA.**  
**1, Rouse Avenue Institutional Area,**  
**Near Bal Bhawan, New Delhi - 110 002**  
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ALSO TO;

MINISTRY OF LAW & JUSTICE,  
THROUGH SECRETARY,  
4th Floor, A-Wing, Shastri Bhawan, New Delhi,  
Delhi 110001.

**Subject:- In reference to the BCI Rules for registration & regulation of Foreign Lawyers & Foreign Law firms in India.**

Dear Revenants,

1. This is Adv. Pawan Prakash Pathak, aged 30 years, enrolled with Delhi State Bar Council having Enrolment Number D/6911/2017 & also a Member of the Supreme Court Bar Association & Delhi High Court Bar Association.
2. Earlier I have written representation to the BCI in reference of the "Advocate Welfare Fund" and also approached Hon'ble



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Supreme Court in a Writ Petition vide Diary Number 10949/2020 titled as “Pawan Prakash Pathak vs UOI” where the Hon’ble Supreme Court was of opinion that the issue be best considered by the BCI.

3. Now this representation is in reference to the new Rule framed by the BCI in the advent of entry of foreign law firms & advocates on a reciprocity basis.
4. But there is a fundamental flaw with this policy and raises the following question which may be considered by this representation and then decision may be taken following due procedure as to amend the policy or scrap it or re-draft the policy with due representations & consultation from our fraternity.
5. Whether the Bar Council of India maintains any roll of Advocate who are directly registered with the BCI & not the State Bar’s?
6. Whether the Advocate’s roll preparation power vest with the BCI under the Advocates Act, 1961 or with the State Bar under section 6 of the Advocates Act, 1961 ?

7. Whether the said power to enrol foreign Advocate & law firms is outside the purview of power & function of BCI as per section 4 of the BCI Rules?

8. That as per Section of the Advocates Act:-

7. Functions of Bar Council of India.—5[(1)] The functions of the Bar Council of India shall be— 6[\*\*\*]

(b) **to lay down standards of professional conduct** and etiquette for advocates;

(c) **to lay down the procedure to be followed by its disciplinary committee** and the disciplinary committee of each State Bar Council;

(d) **to safeguard the rights, privileges and interests of advocates;** (e) **to promote and support law reform;**

(f) to deal with and dispose of any matter arising under this Act, which may be referred to it by a State Bar Council;

(g) to **exercise general supervision and control over State Bar Councils;**

(h) to **promote legal education** and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils;

(i) to **recognise Universities** whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect Universities 3[or cause the State Bar Councils to visit and inspect Universities in accordance with such directions as it may give in this behalf]; 1[(ia) to conduct seminars and organize talks on legal topics by eminent jurists and publish journals and papers of legal interest; (ib) to organise legal aid to the poor in the prescribed manner;

9. (ic) to **recognise on a reciprocal basis foreign qualifications** in law obtained outside India for the purpose of admission as an advocate under this Act;]

(j) to manage and invest the funds of the Bar Council;

(k) to provide for the election of its members;

(l) to perform all other functions conferred on it by or under this Act.

(m) to do all other things necessary for discharging the aforesaid functions; 2[(2) The Bar Council of India may constitute one or more funds in the prescribed manner for the purpose of— (a) giving financial assistance to organise

welfare schemes for indigent, disabled or other advocates; (b) giving legal aid or advice in accordance with the rules made in this behalf;] 1[(c) establishing law libraries.] 2[(3) The Bar Council of India may receive any grants, donations, gifts or benefactions for all or any of the purposes specified in subsection (2) which shall be credited to the appropriate fund or funds constituted under that sub-section.]

10. Whereas the Power to make Rules by BCI under Chapter II is limited to the disciplinary committee and allied powers but the qualification for enrolment of foreign advocates/ law firm, even the BCI vs AK Balaji judgement of the Hon'ble Supreme Court does not consent the same.

11. That the said rule by the BCI is arbitrary and creates a class within a class of Advocate's and hence violative of Article 14 of the COI. The power to recognize foreign degree qualification is not also within the purview of the BCI power and for this the legislatures are competent to enact a law on this issue in consultation with the BCI , but not BCI alone.

12. Therefore section 3(1) of the above-said Rule is arbitrary and non-est in law.
13. Also, in reference to the mode of registration of application under section 4(ix) of the rules (foreign law firm/ advocate registration) the BCI is not competent to confer upon itself the power to investigate the affidavit sworn in a foreign land and followed by investigating power to verify the veracity and hence this clause is also arbitrary.
14. Under section 5(4) the BCI has not provided any ratio to clarify as to what numbers or ratio of registration of foreign lawyers will outnumber the Indian Advocates/ lawyers in non-litigation practice.
15. Also in section 6 ( c) the senior designated advocate of the foreign country will be recognized in the same category of Advocate under the Advocate's Act, 1961, whereas this violates the Advocates Act & recent guideline of the Hon'ble Supreme Court in Indra Jai Singh vs Registrar General of Supreme Court.

16. Whereas Section 9( iii) allows indirect entry into litigious matters through the appointment of the Indian Advocates and hence this will entail the foreign law firms expanding there trade and practise in India vide Indian lawyers and therefore this will also be a threat to Indian Sovereignty because then there control will increase due to indirect channel entry in litigation.
17. Also, section 12 of the policy does not find mention of other bar associations of various states to consult upon and take decisions and also while forming this policy there was no consultation with the Advocates, Bar councils, Senior Advocates OR ex – officio members of the BCI.
18. Kindly consider this representation upon the following grounds and respond accordingly within 15 Days of receiving this notice. Failing which I will be forced to take an alternative course of action as per the rule of law.

Thanking You

Adv. Pawan Prakash Pathak.