INDIAN
NATIONAL
BAR
ASSOCIATION

सत्यमेव जयते

Government of India
Ministry of Commerce & Industry
Department of Commerce

BAR LEADERSHIP SUMMIT

ON

REFORMS IN THE INDIAN LEGAL SERVICES SECTOR

BACKGROUND PAPER

SATURDAY, NOVEMBER 11, 2017

Scope Convention Centre, CGO Complex, Lodhi Road, New Delhi – 110003

BACKGROUND PAPER

ON

THE REFORMS IN THE INDIAN LEGAL SERVICES SECTOR

CONTRIBUTORS:

JAMES J. NEDUMPARA, SATWIK SHEKHAR, ARCHANA SUBRAMANIAN,

ADITYA LADDHA & SANDEEP T. CHANDY

ACKNOWLEDGEMENT:

The authors would like to acknowledge Mr. Sudhanshu Pandey, Mr. Kaviraj Singh, Ms. Sangeeta Saxena, Ms. Sonia Pant, Mr. Sumes Dewan, Ms. Shailja Singh, Mr. Narinder Paul and Ms. Shiny Pradeep for their inputs and support.

DISCLAIMER:

The views expressed in the background paper represent the views of the contributors and is a product of professional research conducted at the Centre for Trade and Investment Law, Indian Institute of Foreign Trade. This views reflected in this paper cannot be attributed to the Government of India or any of its officials.

TABLE OF CONTENTS

INTRODUCTION

India's economic liberalization post-1991 ushered in significant cross-border flows in trade, investment and capital. The economic liberalization has led to the radical transformation in the way legal services have been rendered. However, the legal profession has, by and large, remained insulated from the changes brought about by globalization and the fast evolving technological improvements in facilitating cross-border delivery of legal services. In addition, several new practice areas have emerged. The rise of powerful corporations and the growing size and stature of in-house counsel demand a fresh thinking of the very definition of legal profession and legal services. The emergence of legal process outsourcing (LPOs) is another reality that the legal profession has to acknowledge. Furthermore, the recent developments in technology call for considering whether the archaic rules imposing constraints on advertising or other forms of publicity have any continuing relevance. The Bar Leadership Summit on reforms in the Indian legal services sector aspires to generate discussions and invite concrete suggestions for developing a roadmap for legal sector reforms in India.

One of the principal objectives of the Summit is to explore the reforms required in arbitration sector in order to transform India into a centre for international arbitration. India can achieve this goal only by ensuring effective functioning of institutional arbitration with greater participation of Indian and foreign arbitrators having a special expertise in the field of law and dispute resolution. Additionally, the domestic regulatory and enabling environment have not often kept pace with changes that have happened in other parts of the world. India could also consider liberalization of legal services to allow foreign lawyers and law firms to practice law in India in a phased and regulated manner. An open and well-regulated legal profession will not only boost foreign investment, but will also facilitate cross-border movement of professionals, businesses and service delivery.

In the aforesaid context, the background paper will discuss, *inter-alia*, the state of play of institutional arbitration in India and will provide a short evaluation of the factors generally considered to be responsible for the success of some of the globally renowned arbitral institutions. In addition, the paper will explore some emerging sectors or categories of legal services such as domestic corporate law firms, LPOs and in-house counsel. Finally, the paper will delve into the possibility of liberalization of legal services in India as a response to an increasing demand for niche services and the unprecedented avenues facilitated by transnational businesses and investment.

PART I: CONDUCT OF ARBITRATION – A JOURNEY AROUND THE WORLD

India is an important destination for foreign direct investment. As transnational firms continue to engage in business and investment, disputes involving businesses, corporations, investors and sovereign States have consequently risen. Calls for strong and efficient dispute settlement procedures have become prominent among the stakeholders in India's business and economic regime. Making the dispute settlement regime more efficient is a continuous process and could be the first among the many structural reforms needed in the Indian legal services sector today.

The utility of arbitration as an effective dispute resolution method is acknowledged globally.[1] Arbitration has evolved as a preferred dispute resolution mechanism because parties to the dispute enjoy greater flexibility in arbitral proceedings as compared to traditional dispute settlement mechanisms such as litigation.

In August, 2016, Prime Minister Narendra Modi, while addressing the valedictory function of 'National Initiative towards Strengthening Arbitration and Enforcement in India' shared his vision of making India an arbitration hub. He noted, "*...businesses seek assurance of the prevalence of rule of law in the Indian market. They need to be assured that the rules of the game will not change overnight, in an arbitrary fashion; and that commercial disputes will be resolved efficiently. A robust legal framework backed by a vibrant arbitration culture is essential.*"[2] It is axiomatic that India has to focus on strengthening the "institutional arbitration" mechanism in order to realise this goal.

Overview of Arbitration in India

Until 1996, the law governing arbitration in India consisted mainly of three legislations: (i) the Arbitration (Protocol and Convention) Act, 1937; (ii) the Indian Arbitration Act, 1940; and (iii) the Foreign Awards (Recognition and Enforcement) Act, 1961. In 1996, the Indian Parliament enacted the Arbitration and Conciliation Act, 1996 ("ACA"), which repealed all the three previous legislations. The ACA is modelled on the lines of the UNCITRAL Model Law on International Commercial Arbitration ("UNCITRAL Model Law"). Its main purpose was to encourage a cost-effective and swift arbitration procedure. ACA is divided into two parts. Part I

[1] *See* Pricewaterhouse Coopers, *Corporate choices in International Arbitration Industry Perspectives,* (2013) http://www.pwc.com/gx/en/arbitration-dispute-resolution/assets/pwc-international-arbitration-study.pdf (last visited Oct. 21, 2017).

[2] Dipak Mondal, *Making India an Arbitration hub,* BUSINESS TODAY (Oct. 25, 2016), http://www.businesstoday.in/current/corporate/making-india-an-arbitration-hub-a-long-haul/story/238932.html (last visited Oct. 31, 2017).

mainly deals with arbitration within the Indian territory, and Part II covers foreign arbitration conducted outside of India. In 2015, the ACA was amended in order to make arbitration expeditious, efficacious and cost-effective. The new amendments seek to curb the practices leading to wastage of time and making the arbitration process less expensive.[3]

Arbitration in India is still evolving. One of the objectives of the ACA is to achieve the twin goals of cheap and quick resolution of disputes, but the current realities indicate that these goals are yet to be achieved.

Status Quo of Institutional Arbitration in India

While various efforts have been made to strengthen institutional arbitration in India, it remains at a nascent stage. A survey conducted by PricewaterhouseCoopers (India) in 2013 showed that ad hoc arbitration continues to be preferred over institutional arbitration by Indian companies.[4]

Indian parties were consistently ranked amongst the top five foreign users of Singapore International Arbitration Centre (SIAC) in the last five years, and were the top foreign users of SIAC in 2013 and 2015.[5] In 2016, roughly 153 Indian parties submitted their disputes to SIAC.[6] Disputes involving Indian parties contributed to 4.4% of the LCIA's caseload.[7]

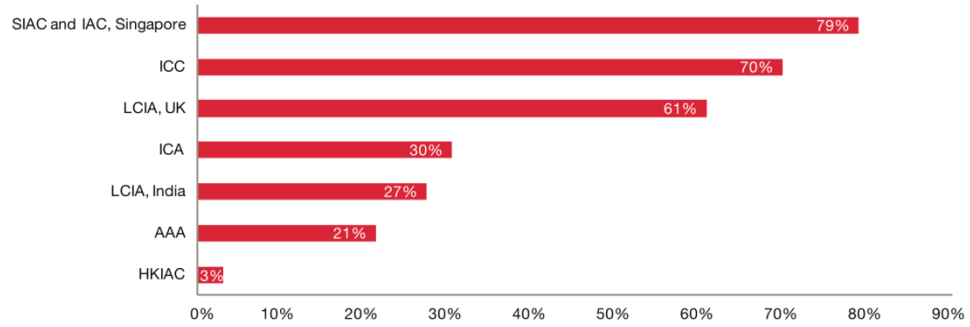
[3] Vikas Goel & RV Prabhat, *Highlights of Amendment To The Arbitration And Conciliation Act 1996 Via Arbitration Ordinance 2015*, p.5, http://www.manupatrafast.in/NewsletterArchives/listing/ILU%20RSP/2015/Dec/Highlights%20of%20Amendment%20to%20the%20Arbitration%20and%20Conciliation%20Act%201996%20via%20Arbitration%20Ordinance%202015.pdf (last visited Nov. 1, 2017).

[4] Pricewaterhouse Coopers, *Corporate Attitudes & Practices Towards Arbitration in India,* p.12 (2013), https://www.pwc.in/assets/pdfs/publications/2013/corporate-attributes-and-practices-towards- arbitration-in-india.pdf (last visited Oct. 28, 2017).

[5] SIAC Statistics, *SIAC Signs Memorandum of Agreement with GIFT,* http://siac.org.sg/2014-11-03-13-33-43/facts-figures/statistics/113-resources/press-releases/press-release-2016 (Jun. 3, 2016) (last visited Oct. 31, 2017).

[6] *See SIAC Annual Report 2016,* (2016) http://www.siac.org.sg/images/stories/articles/annual_report/SIAC_AR_2016_24pp_WEBversion_edited.pdf (last visited Oct. 31, 2017).

[7] *See* LCIA, *LCIA Facts and Figures—2016: A Robust Caseload* (Apr. 3, 2017), http://www.lcia.org/News/lcia-facts-and-figures-2016-a-robust-caseload.aspx (last visited Oct. 31, 2017).



Source: PwC, Corporate Attitudes & Practices Towards Arbitration in India (2013)

Fig A: Preferred arbitration institutions among Indian companies (2013)

In a recent report of the High-Level Committee to Review the Institutionalisation of Arbitration Mechanism in India by Justice BN Srikrishna ("Srikrishna Report"), several factors were attributed to parties' preference for ad-hoc arbitration. Lack of credible arbitral institutions, limited use of and support for institutional arbitration by State agencies, and judicial intervention were cited as some of the factors.[8] The Srikrishna Report also noted that various stakeholders considered institutional arbitration in India as costly;[9] it was also felt that it constrained party autonomy.

LACK OF CREDIBLE ARBITRAL INSTITUTIONS

In India, there are around 35 arbitral institutions (including international arbitral institutions), for example, the Indian Council of Arbitration ("ICA"), International Centre for Alternative Dispute Resolution and the Delhi International Arbitration Centre ("DAC"). Recently, the Mumbai Centre for International Arbitration ("MCIA") was established with the objective of offering highly competitive pricing structures involving payments in local currency and arbitration rules drafted to match international standards and best practices.[10]

Despite several attempts, arbitral institutions in India lack access to quality legal expertise and exposure to international best practices.[11] Furthermore, the review mechanism of existing rules and procedures is not periodic. Moreover, Indian arbitral institutions do not have arbitrators with sector-specific expertise. Therefore, current arbitral institutions are not enough to cater to

[8] JUSTICE BN SRIKRSHNA, REPORT OF THE HIGH-LEVEL COMMITTEE TO REVIEW THE INSTITUTIONALISATION OF ARBITRATION MECHANISM IN INDIA p.16 (2017) [hereinafter Justice BN Srikrishna Report].
[9] *Ibid*.
[10] Mayerbrown, *India looks to become new arbitration hub,* https://www.mayerbrown.com/files/News/61544b07-9a8c-4ebe-ba54-9817f78fdda2/Presentation/NewsAttachment/1444c64d-df80-49fb-a56b-998a0354c546/art_stefanini_sept17_petroleum-review.pdf (last visited Nov. 4, 2017).
[11] Justice BN Srikrishna Report, *supra* note 8, p.17.

the growing needs of Indian businesses and corporations.

LIMITED USE OF INSTITUTIONAL ARBITRATION BY THE GOVERNMENT

In India, the government is considered to be one of the biggest litigants[12] and, thus, is in a great position to encourage institutional arbitration. However, in various government contracts, arbitration clauses do not explicitly provide for institutional arbitration.[13] The provisions of ACA are also silent on institutional arbitration. On the contrary, Singapore's International Arbitration Act of 1994 grants Singapore International Arbitration Centre (SIAC) the authority to appoint arbitrators.[14] Similarly, authority is vested with Hong Kong International Arbitration Centre (HKIAC) under Arbitration Ordinance, 2011.[15]

Comparative study of working international arbitration centers globally

The International Chamber of Commerce (ICC) Court, the London Court of International Arbitration (LCIA), the HKIAC, the SIAC and the Arbitration Institute of the Stockholm Chambers of Commerce (SCC) are considered to be the five most preferred arbitral institutions worldwide.[16]

According to the Srikrishna Report, the successful arbitral institutions in the world have certain common features: (a) sufficient support from the government or the business community; (b) location in a seat of arbitration which has an arbitration-friendly legislative framework and judiciary; (c) advantages offered by the arbitral institution such as geographical positioning, party-friendly rules and an experienced and skilled cadre of arbitrators.[17]

SUPPORT FROM GOVERNMENTS AND BUSINESS COMMUNITY

The SIAC was established as part of the Singapore government's efforts to create an arbitration industry in Singapore.[18] It was set up by the government with two governmental agencies, namely, the Economic Development Board and the Trade Development Board, as its shareholders, and operated for many years under their aegis.[19] The government also played a role in providing infrastructure facilities and promoting the SIAC at the international level,

[12] *See* Ministry of Law and Justice, Government of India, *Status of National Litigation Policy* http://lawmin.nic.in/la/status%20note%20on%20nlp.pdf (last visited Nov. 5, 2017).
[13] Justice BN Srikrishna Report, *supra* note 8, p.18.
[14] S.9A (2) read with S.2(1) & 8(2), International Arbitration Act, 1994 (Act 23 of 1994) (SING.).
[15] S.24(3) and (4) read with S.13(2), Arbitration Ordinance, 2011 (Cap. 609) (H.K.).
[16] *See* Queen Mary University of London and White & Case LLP, *2010 International Arbitration Survey: Choices in International Arbitration* (2010), http://www.arbitration.qmul.ac.uk/docs/123290.pdf (last visited Oct. 31, 2017).
[17] Justice BN Srikrishna Report, *supra* note 8, p.37.
[18] *See* Ang Yong Tong, *SIAC: Arbitration in the New Millennium,* LAW GAZETTE (2000), http://www.lawgazette.com.sg/2000-1/Jan00-23.htm (last visited Nov. 4, 2017).
[19] *Ibid.*

ensuring that international arbitration practitioners are associated with the institution.[20]

The HKIAC was set up by the business and legal communities in Hong Kong in response to the growing need for dispute resolution services in Asia.[21] The local government also provided HKIAC with infrastructural facilities.[22] On the other hand, the ICC Court was set up to provide dispute resolution services under the aegis of the International Chamber of Commerce, a body created by and serving the business community. Similarly, the LCIA's establishment came at a time when commercial parties in England sought a private forum for adjudication of disputes by experts chosen by them.[23]

The business community in India has, to some extent, played a similar role with the Federation of Indian Chambers of Commerce and Industry (FICCI) and the Associated Chambers of Commerce and Industry of India (ASSOCAM) being involved in the establishment of two arbitral institutions, the ICA and the ASSOCHAM International Council of Alternate Dispute Resolution, respectively.

LOCATION IN AN ARBITRATION-FRIENDLY JURISDICTION

An arbitration-friendly jurisdiction offers neutrality of the legal system, provides a modern arbitration legislation which respects party autonomy and, more importantly, ensures a favourable record in enforcing arbitration agreements. The arbitration legislations in Singapore, United Kingdom and Hong Kong are modelled on UNCITRAL Model Law and gives effect to the Convention on the Enforcement and Recognition of Foreign Arbitral Awards, 1958 (New York Convention).[24]

GEOGRAPHIC LOCATION

Arbitral Institution	Benefits of geographical location
SIAC	SIAC is located at the crossroads of South East Asia, and in between the sea lanes of communication across China and India. Singapore's geography and trade links put it in

[20] *See* Opening Address by Singaporean Minister for Law, K. Shanmugam at SIAC Congress 2016, https://www.mlaw.gov.sg/content/minlaw/en/news/speeches/opening-address-by-minister-for-law--k-shanmugam--at-siac-congre.htm (last visited Nov. 4, 2017).
[21] *See* About HKIAC, http://www.hkiac.org/about-us (last visited Nov. 4, 2017).
[22] *Ibid.*
[23] *See* LCIA's History, http://www.lcia.org/LCIA/history.aspx (last visited Nov. 4, 2017).
[24] Justice BN Srikrishna Report, *supra* note 8, p.41.

Arbitral Institution	Benefits of geographical location
	a unique position to market itself as the arbitration hub for Asia.[25]
HKIAC	The HKIAC has benefited from Hong Kong's geographical and political proximity with China. The HKIAC is projected to have a prominent role as a dispute resolution hub in China's One Belt, One Road strategy. [26]
LCIA	The LCIA also benefits from its location in London as London is perceived as an unparalleled centre of financial and legal expertise and as a neutral venue for doing business.
SCC	The SCC gained importance on account of its status as a neutral centre for resolving 'East-West' disputes (i.e., disputes with the Union of Soviet Socialist Republics ("USSR") / Soviet Bloc / Chinese parties on one side and European / North American parties on the other side).[27]

PANEL OF ARBITRATORS

Most successful arbitral institutions maintain a panel of skilled and experienced arbitrators selected on the basis of fairness and professionalism.[28] For example, the SIAC's Code of Ethics requires arbitrators to submit an undertaking concerning their capacity to devote adequate time to the arbitration throughout the duration of the proceedings.[29] Additionally, a statement declaring their independence and impartiality has to be made by the arbitrators to these institutions.[30]

[25] JULIEN CHAISSE ET.AL., ASIA'S CHANGING INTERNATIONAL INVESTMENT REGIME 254 (Springer, Sing., 2017); Piyush Prasad, *Arbitration in Singapore and Hong Kong*, International Immersion Program Papers, p.3, http://chicagounbound.uchicago.edu/international_immersion_program_papers/57 (last visited Nov. 2, 2017).
[26] *HKIAC well-positioned as Belt & Road dispute resolution hub*, ASIA LAW PROFILES (Feb. 2, 2017), https://www.asialaw.com/articles/hkiac-well-positioned-as-belt-and-road-dispute-resolution-hub/ARSZQDOY (last visited Oct. 21, 2017).
[27] *See* Sverker Bonde, *Global Arbitration Review Chapter on Sweden* (Oct. 19, 2015), http://globalarbitrationreview.com/chapter/1036960/sweden (last visited Oct. 23, 2017).
[28] Justice BN Srikrishna Report, *supra* note 8, p.41 & 47.
[29] SIAC, *Code of Ethics for an Arbitrator*, ¶1, http://www.siac.org.sg/our-rules/code-of-ethics-for-an-arbitrator (last visited Nov. 1, 2017).
[30] *See* ICC Arbitration Rules, Art. 11; Stockholm Chamber of Commerce (SCC) Rules, Art. 18; London Court of International Arbitration (LCIA) Rules, Article 5.3. HKIAC, *Code of Ethical Conduct,* http://www.hkiac.org/arbitration/arbitrators/code-of- ethical-conduct (last visited Nov. 1, 2017).

PART II: INDIAN LEGAL REGULATORY REFORMS: WAY FORWARD

Defining 'Legal Services'

Before initiating any deliberation on regulatory reforms, including liberalization of legal services, it is essential to define the nature and scope of 'legal services'. In India, the rendering of legal services is governed by the Advocates Act, 1961. However, "legal services" as a term is not defined in the Advocates Act. Instead, the term is defined under Section 2(1) (c) of the Legal Service Act, 1987:

> *"Legal service includes rendering of any service in the conduct of any other proceedings before any court or other authority or tribunal and the giving of any advice of any legal matter."*

Internationally, legal services are defined under the United National Central Product Classification (1999) to include *legal advisory and representation services* such as defending a client before a court of law or drafting documentation,[31] representation and drafting before tribunals and other statutory bodies,[32] legal documentation and certification of documentation such as drawing up of wills, deeds, contracts;[33] and offering other legal advisory and information services.[34] However, the activities relating to the administration of justice (judges, court clerks, public prosecutors, state advocates, etc.) are excluded from the definition.[35]

In trade agreements, this definition of "legal services" is only meant for scheduling purposes and, therefore, is of limited value. For example, there is a doubt if briefing of cases to a Senior Advocate by a foreign counsel qualifies as a 'legal service'. Therefore, a definition reflective of market developments and trends needs to be formulated.

Landscape of the Legal Services Sector

In 2016, the United States of America was considered to be the biggest player in the legal services sector, accounting for about $290 billion or 45% of the global share. The United Kingdom was the second largest market, accounting for about $45 billion i.e., 7% of the global share. Germany, with about $25 billion or 4% of the global market, followed by France ($20

[31] *See* United Nations, Central Product Classification, 8611, http://unstats.un.org/unsd/cr/registry/regcs.asp?Cl=9&Lg=1&Co=861 (last visited Nov. 8, 2017) [hereinafter UNCPC].
[32] *Ibid.,* 8612.
[33] UNCPC, *supra* note 31, 8613.
[34] UNCPC, *supra* note 31, 8619.
[35] Background Note by the Secretariat, *Legal Services*, World Trade Organisation S/C/W/318, p. 8, (Jun. 14, 2010).

billion or 3.5%) and Japan (0.5% of the global legal services market) round up the top five global markets.[36]

The Asia-Pacific legal services sector had total revenues of $85.3 billion in 2015.[37] China has been a major driver of growth in the Asia-Pacific legal services sector. Since becoming a member of the WTO in 2001, the Chinese legal services sector has also seen a significant degree of liberalization; foreign firms are now able to open multiple representative offices in China.[38] The growing degree of integration between Chinese and international organizations is exemplified by the merger of Chinese law firms with foreign firms.[39] In a growing sector, purchasing patterns for legal services are changing. In-house teams are looking for tech-savvy and integrated service providers who offer more than traditional legal advice.[40]

Model for Tapping the Global Services Market Revenue

1. Follow your Client Approach

Law firms should expand into foreign market when their client companies are expanding. This approach although took place in during 1980s and 90s within developed country markets but has now spread to many developing countries where large corporations are functioning.

2. Creating Hubs

Law firms can create hubs in emerging markets like Hong Kong, China or Singapore from which they can access the regional markets.

3. Outsourcing

Outsourcing is phenomenon that has influenced the legal services landscape and has contributed to further internationalization. Much like other companies, law firms outsource parts of their administrative business processes to reduce their operating costs. Although there is no consolidated data on outsourcing destinations, but it is believed that India is the main destination for legal services outsourcing.

Source: Background Note by the Secretariat, *Legal Services*, World Trade Organisation S/C/W/318 (Jun. 14, 2010).

[36] *See* Global Legal Services Market Report 2017 – Research and Markets (May 4, 2016)http://www.businesswire.com/news/home/20170504005920/en/Global-Legal-Services-Market-Report-2017 (last visited Nov. 1, 2017)

[37] *See* MARKETLINE, LEGAL SERVICES IN ASIA PACIFIC (Jun. 13, 2016) [hereinafter Marketline Legal Services].

[38] *Ibid.*

[39] Marketline Legal Services, *supra* note 37.

[40] *Future Trends for Legal Studies: Global Research Study,* DELOITTE, p.2 (Jun. 2016), https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Legal/dttl-legal-future-trends-for-legal-services.pdf. [hereinafter Deloitte Report].

Regulatory Reforms in India in the light of Emerging Practice Areas

In India, the Advocates Act, 1961 (Advocates Act) recognizes only 'advocates' as a class of persons who are entitled to practice law.[41] An advocate is defined as a person '*entered in any roll under the provisions of the [Advocates Act]*.[42] 'Advocates' have been further categorized into 'senior advocates' and 'advocates'[43] and the Advocates Act sets out other disciplinary and professional requirements in respect of 'advocates'. In 2010, the Bombay High Court held that the term 'practice' in the Advocates Act would include both litigious and non-litigious practice.[44] A similar position was held by the Madras High Court in *A.K Balaji.*[45] The Madras High Court also held that business process outsourcing (BPO) firms and LPO firms can freely operate in India, provided that their roles are confined to back-office support services like administrative and secretarial support, word processing, proof-reading, etc. If such BPOs and LPOs engage in the 'practice' of the law, the BCI could initiate action against such firms for contravening the provisions of the Advocates Act.[46] The Hon'ble Court also noted the oversight of the BCI on non-litigation activities of law firms, which allowed several accountancy and management firms to render legal services in contravention of the Advocates Act.[47]

There is considerable ambiguity in the reach of the Advocates Act to deal with the evolving legal practices in the country. There is, therefore, a need to review the scope of the Advocates Act and allow it to reflect the modern-day realities of the profession. This has also been echoed by the Hon'ble Supreme Court, which noted that there is an "*urgent need to review the provisions of the Advocates Act dealing with regulatory mechanism for the legal profession and other incidental issues, in consultation with all* concerned."[48]

One of these issues relates to the restriction on legal advertising in India.[49] At present, the Advocates Act and the Bar Council of India Rules, 2008 (BCI Rules) impose certain statutory restrictions limiting the ability of Indian lawyers and law firms in advertising vis-à-vis the foreign counterparts. For example, Rule 36 of the BCI Rules prohibits an advocate from soliciting work or advertising through circulars, advertisements, personal communications,

[41] S.29, Indian Advocates Act, No. 25 of 1961 INDIA CODE (1961) [hereinafter Advocates Act].
[42] *Ibid*., s. 2(a).
[43] Advocates Act, *supra* note 41, s. 16(1).
[44] Lawyers Collective v. Bar Council of India & Ors., 2010 (112) Bombay Law Reporter 32 (India) [hereinafter Lawyers Collective].
[45] A.K Balaji v. Government of India, (2012) 35 KLR 290 (Mad) (India), ¶ 40. [hereinafter A.K. Balaji].
[46] *Ibid.,* ¶ 63.
[47] A.K. Balaji, *supra* note 45, ¶ 63.
[48] Mahipal Singh Rana v. State of Uttar Pradesh, AIR 2016 SC 3302 (India).
[49] Kian Ganz, *Can foreign law firms enter India now?* LIVE MINT (Mar. 3, 2015), http://www.livemint.com/Politics/Y1W6WftQGES2pGatn2SKaO/Can-foreign-law-firms-enter-India-now.html (last visited Nov. 8, 2017).

etc.[50] Pursuant to an amendment in 2008, lawyers are now allowed to furnish limited information such as their name, address, qualifications, areas of practice, contact information and bar enrollment details on their websites.[51] The restriction on advertising in India is based on the notion that the legal service is a 'noble profession' and that permitting legal advertising would be a degradation of the profession and could allow lawyers to mislead the public.[52] However, a survey by a consulting firm in 2016 showed that a majority of firms (more than 50% of the Indian firms surveyed) felt that permitting legal advertising would lead to an increase in name recognition beyond current clients and practice areas.[53] However, 48% of the respondents felt that allowing advertisement for legal services might lead to a displacement of smaller law firms, who may not have the resources to advertise.[54] An analysis of the responses showed that legal service providers in India perceive *ex-ante* benefits of relaxing legal advertising rules to be higher than the *ex-ante* costs. However, the characteristics of the responding firm (for e.g. firms engaging in outbound transactions and having considerable foreign clientele) played a critical role in determining the openness towards legal advertising.[55]

Foreign jurisdictions such as the United Kingdom and the United States have evolved their advertising laws for the legal sector in line with the changing times.[56] In the United Kingdom, the Solicitors Publicity Code, 1990, which governs legal advertising, was amended in 2016 to allow legal advertising to assist the clients in making a more informed decision, thereby addressing the right to information of clients.[57] In the United States, the right to legal advertising is a legal right flowing from the right to freedom of speech and expression.[58] According to the Model Rules of Professional Conduct, 1993, a lawyer in the United States is permitted to advertise his/her services through written, recorded or electronic media including public media,[59] but is not permitted to publish any misleading information[60] or solicit professional employment in person, live telephone or electronic contract when a significant

[50] Section IV, Chapter II, Part VI, Bar Council of India Rules, 2008, rule 36. [hereinafter BCI Rules]
[51] Bar Council of India, Amendment to Rule 36, in Section IV, Chapter II, Part VI of the Bar Council of India Rules regarding advertisement by Advocates (Apr. 30, 2008), http://www.legallyindia.com/images/stories/BCI%20rules%20on%20advertisement%20websites%20from%202008.pdf (last visited Nov. 8, 2017).
[52] M.L Sarin and Harpreet Giani, *Prohibition of Advertisement in the Legal Services Sector* (2008) INDIA LAW JOURNAL, http://indialawjournal.com/volume1/issue_1/legal_articles_sarin.html.
[53] *A Balancing Act: Cost – Benefit Analysis of Reforming India's Legal Services Market,* NATHAN ASSOCIATES 35 (May, 2016), https://www.nathaninc.com/sites/default/files/Legal%20Services%20in%20India.pdf [hereinafter Nathan Associates].
[54] *Ibid*., p. 36.
[55] Nathan Associates, *supra* note 53, p. 39.
[56] *See* Isha Kalwant Singh, *Advertising by Legal Professionals*, 2(5) BHARTI LAW REVIEW, 274.
[57] *Ibid*., p. 278.
[58] Bates v. State Bar of Arizona, 433 U.S. 350 (1970).
[59] MODEL RULES OF PROFESSIONAL CONDUCT, rule 7.2 (AMERICAN BAR ASSOCIATION, 1983) [hereinafter ABA Model Rules].
[60] *Ibid*., rule 7.1.

motive is the lawyer's pecuniary gain.[61] While there is a concern on permitting legal advertisements on the ground of nobility of the profession and also the fear of lawyers exploiting clients through misleading advertisements, there is also a need to balance these concerns with the public policy goal of allowing clients access to information.[62]

In a debate on the reforms to the Advocates Act, there is also a need to examine the inability of Indian law firms to engage in a multidisciplinary practice. According to a Deloitte Report which surveyed clients globally on the services desired but currently not offered by major law firms, more than 30% of the participants preferred industry, commercial or non-legal expertise to be made available to them by the legal service provider.[63] This trend holds true for the Indian scenario as well. Under the BCI Rules, an advocate cannot enter into a partnership or similar arrangement for sharing of remuneration with any person who is not an advocate. This rule prevents advocates from partnering with other professionals such as economists, chartered accountants or tax specialists for providing multi-disciplinary services.[64]

Regulation of Domestic Law Firms and In-house Counsel

As set out in the Deloitte Report, demand for legal services has been increasing in the areas of regulatory compliance (49%) and mergers and acquisitions sector (42%).[65] The in-house and law firm sectors are the major providers of such services and there is a need to re-evaluate the efficacy of the present regulatory system to govern in-house legal counsel and law firms. In India, the need for special market regulators for domestic law firms and in-house counsel arises from the pitfalls of the Advocates Act and the interpretation of Rule 49 of the BCI Rules. Rule 49 provides that an advocate cannot be a full-time salaried employee of any person, government, firm, corporation or concern and on taking up such employment, such advocate is required to intimate the Bar Council on whose roll his/her name appears and cease practicing as an advocate.[66]

In *Deepak Aggarwal* v. *Keshav Kaushik*,[67] the Hon'ble Supreme Court of India held that if a person has been engaged to not primarily act/plead in the court of law, but to do other kinds of legal work, the prohibition in Rule 49 would find application.[68] The scope of Rule 49 was considered by the Gujarat High Court in *Jalpa Pradeepbhai Desai* v. *Bar Council of India*[69] in

[61] ABA Model Rules, *supra* note 59, rule 7.3.
[62] Isha Singh, *supra* note 56, p. 280.
[63] Deloitte Report, *supra* note 40, p. 7.
[64] BCI Rules, *supra* note 50, Rule 2, Chapter III, Part VI.
[65] Deloitte Report, *supra* note 40, p. 3.
[66] BCI Rules, *supra* note 50, rule 49.
[67] Deepak Aggarwal v. Keshav Kaushik (2013) 5 SCC 277 (India).
[68] *Ibid*., ¶ 84.
[69] Jalpa Pradeepbhai Desai v. Bar Council of India, (2016) SCCOnline Guj 5080.

which the Court considered the plea of a full time consulting lawyer employed with a public sector undertaking (PSU) to enroll with the Gujarat Bar Council. The Court held that the petitioner could not be considered to be an 'advocate' under the Advocates Act since she was getting a monthly payment, was employed under a contract and had to be present in her office during office hours.[70] According to this decision, the petitioner was engaged in full time employment but in terms of Rule 49 of the BCI Rules, such an employee is not allowed to be enrolled as an advocate. The decision of the Gujarat High Court mandated that employees who are in salaried employment (including in-house counsel) would be required to surrender their licenses and enrolment cards when they join such full-time employment.[71] However, the decision raises an issue for persons who work with law firm on a retainership basis, rather than under contract where such retainers are paid professional fees and they declare and pay tax themselves. However, such persons working in law firms would still satisfy the conditions of working during office hours and receiving monthly professional fees.

These issues highlight the inability of the Advocates Act to address issues relating to in-house counsel and law firms. The existence of Rule 49 bars the ability of in-house legal counsels (who work with a company under an employment contract) to make court appearances or otherwise 'practice' law.[72] With more multi-national corporations establishing their presence in India, there is a need for legal professionals who can assist such corporations in the day-to-day running of their operations. In sectors such as financial services, insurance, telecom and pharmaceuticals, companies are realizing the importance of having different legal and compliance functions, thereby moving towards having an entire in-house legal team with specialized positions such as disputes counsel, transactions counsel and government affairs counsel.[73] While the usual protocol has been to delegate work to law firms in respect of high profile advisory and legal transaction work, there is a shift to get the work done in-house.[74] In-

[70] *Ibid*., ¶ 5.1-5.2.
[71] Kian Gunz, *HC rules: You're not an advocate if working anywhere full-time (including probably at law firms on retainer loophole)* LEGALLY INDIA (Jun. 19, 2017), https://www.legallyindia.com/home/hc-rules-not-an-advocate-if-working-anywhere-full-time-including-probably-at-law-firms-on-retainer-20170619-8592 (last visited Nov. 8, 2017).
[72] Vivek Vashi and Prakritee Yonzon, *The role of in-house counsel in India* THOMSON REUTERS: PRACTICAL LAW (Sep. 1, 2013), https://uk.practicallaw.thomsonreuters.com/6-541-7745?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1(last visited Nov. 8, 2017).
[73] Rishabh Chopra and Nakul Bhatnagar, *How much is legal talent worth? Corporate and firm pay, notice & demand across practice areas*, Legally India (Sep. 20, 2017), https://www.legallyindia.com/home/how-much-is-legal-talent-worth-corporate-and-firm-pay-notice-demand-across-practice-areas-20170920-8778 (last visited Nov. 8, 2017) [hereinafter Chopra & Bhatnagar]
[74] *Ibid*.

house work is also marked with more human resources (HR) related initiatives such as executive/fresher courses and soft skills training which helps attract and retain talent.[75]

The Law Commission of India has called for recognition of law firms within the Advocates Act and their subsequent registration and regulation.[76] In order to enable effective regulation of legal services through in-house professionals and law firms, there is a need for their recognition within the regulatory framework surrounding legal services in India.

[75] Chopra & Bhatnagar, *supra* note 73.
[76] LAW COMMISSION OF INDIA, REPORT NO. 266 – THE ADVOCATES ACT, 1961 (REGULATION OF LEGAL PROFESSION), p. 68 [hereinafter Law Commission Report].

PART III: LIBERALIZATION OF THE INDIAN LEGAL SECTOR

Foreign Legal Services in India: An Analysis

In considering the impact of globalisation on the legal services sector in India, the Indian corporate law firm segment deserves a special mention. At the forefront of the globalisation process, corporate lawyers in India have helped introduce new intellectual frameworks, new practices and revise existing legal structures to enable the Indian corporate sector to compete with the developed world.[77] As noted in the Law Commission Report No. 266, foreign lawyers usually visit a country to advice on their own systems of law and also with the objective of taking part in negotiations or related work.[78] This has also been the result of increased inbound and outbound investment from the country, where Indian clients often rely on foreign law firms for advice on third country law.[79]

Pursuant to the attempt of foreign law firms to establish liaison offices in India in the early 1990s,[80] the last two decades witnessed an increase in tie-ups between Indian and foreign law firms, with varying degrees of formality. Popularly referred to by the term 'best friend agreements', these arrangements have come to be understood primarily as exclusive referral relationships.[81] Under such 'best friends agreements', both firms exclusively refer work to each other when working on deals involving either jurisdiction.[82]

However, the discourse on these best friend agreements has been accompanied by skepticism that it is merely a back door entry strategy for foreign law firms, given that a formal entry is prohibited. These agreements have often been alleged as 'surrogate practices' of foreign law firms in India.[83] 'Best friendship agreements' have faced serious challenges in recent times.[84]

---

[77] Liu, Sida and Trubek, David M. and Wilkins, David B., *Mapping the Ecology of China's Corporate Legal Sector: Globalization and its Impact on Lawyers and Society* HLS CENTER ON THE LEGAL PROFESSION RESEARCH PAPER NO. 2016-1, p. 3 (July 1, 2016).

[78] Law Commission Report, *supra* note 76, ¶14.4.

[79] Law Commission Report, *supra* note 76, ¶14.6.

[80] *See* Lawyers Collective, *supra* note 44.

[81] The last decade has seen the birth of many of these agreements among elite law firms in India – Lovells and the Indian firm Phoenix Legal, Clyde & Co. and the Indian firm ALMT Legal. AZB & Partners is allied with Clifford Chance, Trilegal with Allen &vOvery, Talwar, Thakore & Associates with Linklaters, P&A Law Offices with Jones Day and Platinum Partners with Freshfields. Poovayya & Co., had an agreement with US firm Brown Rudnik that was later terminated.- George W Russel, *Going the distance,* INDIAN BUSINESS LAW JOURNAL, (Apr. 2009), http://www.indilaw.com/pdfs/Foreign_law_firms_face_new_hurdles_in_India_race.pdf (last visited Nov. 8, 2017).

[82] Aditya Singh, *Globalization of the Legal Profession and the Regulation of Legal Practice in India: The "Foreign Entry" Debate* in THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION 369 (David Wilkins eds., 2017).

[83] Tina Edwin, *Practice of law and its regulation* ECONOMIC TIMES (Mar. 26, 2009), http://economictimes.indiatimes.com/Opinion/Practice-of-law-and-its-regulation/articleshow/4316436.cms (last visited Nov. 8, 2017).

[84] Aditya Singh, *supra* note 82, 382.

Firms such as Trilegal[85] and AZB & Partners[86] have terminated their 'best friend agreements' in 2011-12 since it made better sense for Indian and foreign firms to not be bound with one firm but rather seek and provide referral work to a variety of firms.[87]

Currently, several top law firms have 'India desks' in cities such as New York, London and Singapore that advise offshore clients on investments in India. Lawyers in these 'India desks' work on international and foreign (Indian) elements of transactions.[88] The extent of their practice is clear from the fact that major law firm rankings, including MergerMarket and Bloomberg[89] include foreign law firms in their India rankings. According to the league table reports for 2016 released by MergerMarket, seven foreign law firms make the top 15 law firms, in terms of the deal value.[90] While foreign firms make a presence in Indian league tables, Indian law firms do not find mention in global league tables.[91] This raises the issue of the ability of Indian law firms to compete with their foreign counterparts considering the size, capital and specialized services offered by foreign law firms.

While entry of foreign law firms could encourage more specialised services like advising on third country law,[92] arbitration,[93] more employment option for India's legal graduates as well as introduction of new work culture norms.[94] However, non-regulated entry of foreign lawyers could have an adverse impact on domestic law firms who could find themselves helpless against experienced and more resourceful foreign competition. It is, therefore, important to equip the domestic legal sector to manage and compete against foreign competition.

---

[85] *Best friends Trilegal and Allen & Overy break up, citing lack of liberalisation progress* Legally India (Sep. 27, 2012), https://www.legallyindia.com/law-firms/breaking-best-friends-trilegal-and-allen-a-overy-break-up-citing-liberalisation-20120927-3146 (last visited Nov. 8, 2017).

[86] *Ibid*.

[87] Aditya Singh, *supra* note 82, 382.

[88] Aditya Singh, *supra* note 82, 381.

[89] *Bloomberg Global M&A Market Review: Legal Rankings* BLOOMBERG L.P. (2016), https://www.bbhub.io/professional/sites/4/Bloomberg-Global-MA-Legal-Rankings-1H-2016.pdf (last visited Nov. 8, 2017) [hereinafter 'Bloomberg Rankings'].

[90] This includes Freshfields Bruckhaus Deringer (4th), Slaughter and May (6th), Linklaters (8th), Herbert Smith Freehills (10th), Kirkland & Ellis (11th), Latham & Watkins (14th) and Davis, Polk and Wardwell (15th) – *See Global and regional M&A: Q1-Q4 2016* MERGERMARKET (2016), http://www.mergermarket.com/pdf/MergermarketLegalLeagueTableReport.Q42016.pdf (last visited Nov. 8, 2017).

[91] Bloomberg Rankings, *supra* note 89.

[92] Indian National Bar Association, Report of Draft Bar Council of India Rules for Registration and Regulation of Foreign Lawyers in India, 2016, 4, available at https://www.indianbarassociation.org/wp-content/uploads/2016/09/Report-on-BCI-Rules-2016-Final-copy.pdf (2016) [hereinafter 'INBA Report'].

[93] Law Commission Report, *supra* note 76, ¶ 14.9.

[94] Jayanth Krishnan, *Peel-Off Lawyers: Legal Professionals in India ' s Corporate Law Firm Sector*, 9(1) SOCIO LEGAL REVIEW 59 (2013).

In light of these concerns, it would be useful to look at the experience of economies such as Singapore and China, who have liberalised their legal sector in a manner that is not detrimental to the domestic legal sector. For example, Singapore adopted an incremental liberalization approach by providing a 'menu of options' to foreign law firms based on the scope of the legal practice of the firm.[95] Such options include foreign law practice, joint venture, representative office, qualifying foreign law practice, Singapore law practice, etc.[96] The regulatory framework in Singapore mandates separate qualification, registration and licensing requirements for each of these categories. The liberalization of the legal market in Singapore has led to the emergence of the country as an arbitration hub and has led to the legal service sector accounting to close to 40% of Singapore's service exports.[97]

India could considerably draw upon the experience of Singapore or other similar jurisdictions to shape its own regulatory model. However, it would also be necessary to equip the Indian legal sector with necessary tools to hold up to foreign competition. This would involve an analysis of the current regulatory hurdles such as the inability of Indian law firms to engage in a multidisciplinary practice[98] and the prohibition on advertising.[99] Furthermore, a comprehensive regulatory regime must be established, including qualification, registration, licensing requirements for foreign lawyers.[100]

Foreign Legal Consulting Regime

A 'foreign legal consultant' (FLC) is a person who is admitted to practice and is in a good standing as an attorney or equivalent in a foreign country and has been issued a certificate of registration as an FLC. FLCs may advise on international law, the law of their home country or law of any third country for which they are adequately qualified.[101] FLCs are not likely to be involved in the practice of domestic law and are limited to the field of international law and home//third country law i.e. the field for which they are already qualified.

Countries can use the FLC category to facilitate the practice of third country or international law in their jurisdiction. At present, several developed and developing economies have

[95] Pasha L. Hsieh, *ASEAN's Liberalization of Legal Services: The Singapore Case* 8(2) ASIAN JOURNAL OF WTO AND INTERNATIONAL HEALTH LAW AND POLICY 475, 482 (2013).
[96] Ministry of Law, Singapore, *Types of Licence or Registration*, available at https://www.mlaw.gov.sg/content/minlaw/en/legal-industry/licensing-or-registration-of-law-practice-entities0/types-of-licence-or-registration.html (last visited Nov. 6, 2017).
[97] Nathan Associates, *supra* note 53, p.11.
[98] BCI Rules, *supra* note 50, rule 47.
[99] BCI Rules, *supra* note 50, rule 36.
[100] *Liberalisation: SILF submits 52-page vision about how legal market should open in phases* LEGALLY INDIA (Aug. 24, 2016), https://www.legallyindia.com/law-firms/liberalisation-silf-submits-52-page-vision-about-how-legal-market-should-open-in-phases-20160824-7920 (last visited Nov. 8, 2017).
[101] KP Singh, *Foreign Legal Consultant Regime in India*, INDIAN NATIONAL BAR ASSOCIATION, 12 (2015).

developed an FLC regime. In the United States, about 31 states have adopted an FLC rule and other states are considering similar rules.[102] While those states have separate qualification and registration requirements,[103] they all include requirements such as the good standing of the legal profession in the foreign country, lawful engagement in the practice of law in the foreign country as well as good moral character.[104] However, FLCs in the United States are not allowed to represent or defend a client in court, to deal with real estate transactions or with the preparation of wills of a resident of the United States and to provide advice to their clients on the law of the host state or U.S. federal law.[105] Similarly, Singapore allows for limiting licenses for foreign lawyers entitling them to offer advisory services only in foreign and international law.[106] Such FLCs are not allowed to practice Singapore law and must limit themselves to the practice of international or third country law.

Considering that the practice of home country law in India has been characterised by entry barriers such as nationality requirements, there is a scope for development of the FLC sector since lower qualification barriers could be adopted for the practice of international law or third country law. Reflection on the FLC regime in India is necessary since it allows for the partial liberalization of the Indian legal sector while safeguarding the interests of domestic lawyers who can continue to practice domestic law. Establishment of a controlled FLC regime in India will also allow Indian clients to avail specialised legal advice on offshore jurisdictions and international law.

Reciprocity and Indian legal services

A reciprocal arrangement or relationship means a 'situation or relationship in which two people or groups agree to do something similar for each other, to allow each other to have the same rights or privileges, etc.'[107] The basis for reciprocal arrangement for Indian legal services is found within the Advocates Act. While Section 24 of the Advocates Act allows only citizens of

[102] STEPHEN GILLERS, ROY D. SIMON, ANDREW M. PERLMAN, DANA REMUS, REGULATION OF LAWYERS: STATUTES AND STANDARDS, 2017 SUPPLEMENT 189 (Wolters Kluwer, New York, 2017).

[103] *See* Center for Professional Responsibility, Policy Implementation Committee, *Comparison of ABA Foreign Legal Consultant Rule with State Versions* (Nov. 11, 2015), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/flc_chart.authcheckdam.pdf.

[104] *See* Office of Special Admissions & Specialization, Foreign Legal Consultant Program, State Bar of California, http://www.calbar.ca.gov/portals/0/documents/certification/FLC-Brochure.pdf (last visited Nov. 8, 2017)., State of New York: Rules of the Court of Appeals for the Licensing of Legal Consultants, § 521, http://www.nycourts.gov/ctapps/521rules10.htm (last visited Nov. 8, 2017).

[105] Tom Zwart, *The Reflection of Cross-Border Law Practice in the Organisation and Regulation of the Legal Profession* (Feb. 8, 2008), http://www.sciencespo.fr/chaire-madp/sites/sciencespo.fr.chaire-madp/files/tom_zwart.pdf.

[106] Asia-Pacific Economic Cooperation, *APEC Economy: Singapore; Jurisdiction: Singapore* (2010), http://www.legalservices.apec.org/inventory/singapore.html (last visited Nov. 8, 2017).

[107] *See* Merriam Webster Dictionary, https://www.merriam-webster.com/dictionary/reciprocity (last visited Nov. 9, 2017).

India to be enrolled as advocates in state Bar Council rolls, Section 47 recognises the principle of 'reciprocity'. As per Section 47, where any country, as specified by the Central Government, prevents Indian citizens from practising law or subjects them to unfair discrimination, a subject of such country is also barred from practising law in India. Furthermore, the Bar Council of India (BCI) has the powers to prescribe conditions, subject to any foreign qualifications in law obtained by persons other than Indian citizens, for the purpose of admission as an advocate. The rule of reciprocity is also ingrained in the BCI Rules, which states that a foreign lawyer shall not have a right of audience in a court of law in India unless there is reciprocal right to an Indian lawyer in his/her home country.[108] Further, a foreign national who has obtained a degree in law from any institution/university recognised by the BCI and who is otherwise duly qualified to practice in his own country would be allowed to be enrolled and/or practice law in India provided that an Indian citizen who is dual qualified, is permitted to practise law in that country.[109]

Reciprocity allows for the recognition of foreign degrees in another jurisdiction. For example, if an Indian citizen, who has all the qualifications required to be licensed to practice law in country X, then a citizen of X who has obtained the qualifications required under the Advocates Act, would be eligible for enrolment as an "advocate" by a state Bar Council. However, there is no sufficient availability of the details on reciprocal arrangements made by the BCI. India has also not signed any mutual recognition agreements (MRAs) in legal services and has not scheduled legal services in the GATS.[110] While the BCI has entered into a memorandum of understanding with the Law Council of Australia,[111] the BCI has been in talks with the American Bar Association and the Law Society of England and Wales on the opening up of the legal sector.[112]

Apart from reciprocal arrangements on paper, other technical hurdles, such as qualification requirements and immigration rules are also relevant. In the above context, the problems of

[108] *See* BCI Rules, Rule 5 of Res. No. 6/1997.
[109] Advocates Act, *supra* note 41, s. 47(2); *See* Bar Council of India, List of Foreign Universities whose Degrees in Law are Recognized by the Bar Council of India (May 18, 2012), http://www.barcouncilofindia.org/wp-content/uploads/2010/05/List-of-Foreign-Universities-May-2012.pdf (last visited Nov 8. 2017), Bar Council of India, Foreign Universities whose Degrees in Law are Recognized by the Bar Council of India, http://www.barcouncilofindia.org/about/legal-education/list-of-foreign-universities-whose-degrees-in-law-are-recognised-by-the-bar-council-of-india/ (last visited Nov 8. 2017).
[110] RUPA CHANDA, PRALOK GUPTA, GLOBALIZATION OF LEGAL SERVICES AND REGULATORY REFORMS: PERSPECTIVES AND DYNAMICS FROM INDIA 256 (Sage Publications, New Delhi, 2015).
[111] BCI inks MOU for cooperation with Law Council of Australia, signs Partnership Agreement, Bar Council of India (Jun. 21, 2010), http://www.barcouncilofindia.org/bci-inks-mou-for-cooperation-with-law-council-of-australia/ (last visited Nov. 8, 2017).
[112] Krishnadas Gopal, *Japan eager to invite our lawyers to practice there: Law Minister* The Hindu (March 4, 2015), http://www.thehindu.com/news/national/japan-eager-to-invite-our-lawyers-to-practice-there-law-minister/article6958341.ece (last visited Nov. 8, 2017).

Indian lawyers seeking to practice abroad must be considered and free movement of professionals across borders has to be considered to establish 'real and meaningful' reciprocity.

Legal Education in India and Liberalization of Legal Services

An important stakeholder in the debate on liberalization of legal services is the legal education sector in India. With more than 900 law schools in the country, it is noteworthy that foreign law firms recruit only from a few top Indian law schools. This raises the question of competency of Indian law students to be employed by foreign law firms. It is, therefore, necessary to reflect on the issues of the Indian legal education system and the scope for reform to better prepare the Indian legal community.

A fundamental issue with the Indian legal education system has been the lack of 'internationalization' of the curriculum.[113] Law schools in India continue to focus on Indian law and an international and comparative perspective of law appears to be missing. In order to compete at the international level and become more attractive to foreign law firms looking to recruit Indian legal professionals, it is necessary that the Indian law school curriculum includes topics of universal application and encourage studies of new areas of law such as international trade law, investment law, international finance and information technology law, to name a few.[114] This could help students not only understand the rules that underlie a changing global legal order but also help them imagine more creative solutions to legal issues affecting their own country.[115]

Apart from lacking an international curriculum, there is a dearth of experienced and competent faculty in Indian law schools. Equipping students with practical skills to help them better perform in the workplace is also an important consideration in framing the professional potential of a law student. Participation of law firms, legal practitioners and international institutions in legal education would help Indian law students better comprehend the application of law.

[113] Professor Dr. C. Raj Kumar, *Legal Education, Globalization and Institutional Excellence: Challenges for the Rule of Law and Access to Justice in India* 20(1) INDIANA LAW JOURNAL OF GLOBAL LEGAL STUDIES 221, 224 (2013).
[114] *Ibid.,* p. 224.
[115] R. Michael Cassidy, Beyond Practical Skills: Nine Steps for Improving Legal Education Now, 53 BOSTON COLLEGE LAW REVIEW 1515, 1522 (2012).

INDIAN
NATIONAL
BAR
ASSOCIATION

ABOUT THE INDIAN NATIONAL BAR ASSOCIATION

Indian National Bar Association (INBA) is India's fastest growing voluntary Bar Association. It serves the community through programs designed to educate and connect members, who are committed in improving the administration of justice, International Trade, and Human Rights around the world. INBA is a member driven organization; it has more than 10000 members from across the world.

INBA is focused on taking the Indian legal industry and its members to newer heights. Representing the entire Legal ecosystem in India, INBA is dedicated to expand its members' professional network and industry insight. INBA is the voice of legal fraternity. The association promotes members through programs that focus on access to justice, human rights, anti-corruption, judicial reform and more. INBA provides resources to help its members become better lawyers. Each year, the association hosts or participates in events around the world. Existing INBA members contribute valuable insights and knowledge through various modes and means of expressions facilitated by INBA. We help broaden our member's perspectives and help them exchange views through online forums and partnerships with the best organization globally.

For more information, please visit www.indianbarassociation.org.

ABOUT THE CENTRE FOR TRADE AND INVESTMENT LAW

The Centre for Trade and Investment Law (CTIL) was established in the year 2016 by the Ministry of Commerce and Industry, Government of India at the Indian Institute of Foreign Trade (IIFT). The Centre's primary objective is to provide sound and rigorous analysis of legal issues pertaining to international trade and investment law. The Centre aims to be a thought leader in the various domains of international economic law such as WTO law, international investment law and legal issues relating to economic integration. CTIL's mission is to identify, analyse and provide creative ideas and perspectives to influence the international discourse on wide ranging aspects of international economic law. The Centre aims to engage with different stakeholders including central and state governments, think tanks, research centres, national law schools and other institutions rendering legal education in international economic law, independent legal professionals, industry and the private sector. The Centre is also conceived as a ready repository of trade and investment related information including updates on ongoing trade negotiations and disputes.

For more information, please visit www.ctil.iift.ac.in.

NOTES

NOTES

NOTES

NOTES

NOTES

NOTES