Indian Legal Service Market overview

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FOREIGN LEGAL CONSULTANT REGIME IN INDIA

By

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SERVICE INDUSTRY OVERVIEW

India's services exports are $73 billion more than the imports in 2013-14. India had a trade surplus in services segment unlike in merchandise where India runs a huge trade deficit of $138 billion in 2013-14. It is important to boost services exports to finance the trade deficit or narrow down the current account deficit. The global legal market is USD 20 billion annually. According to some data available, the Indian commercial law practice is approximately in the order of Rs. 600 - 650 crore per annum. (as per ministry of Commerce)

Government of India which has constituted an Inter-Ministerial Group opening of Indian legal market headed by the Commerce Secretary Mr. Rajeev Kher.

OVERVIEW OF LAWYERS IN INDIA

In 2011 there were 1.3 million lawyers in India, revealed a right to information (RTI) response by the Bar Council of India (BCI) to Delhi-based advocate Kush Kalra, with an average annual growth rate between 2007 and 2011 of around 4 per cent.

The detailed statistics, broken down by enrolments in each area with a state bar council over the last five years – 20 in total – show that Uttar Pradesh (UP) is home to the largest number of advocates at 288,297 (2.9 lakh). Over five years until 2011, the number of advocates in UP has grown by an average of 3.7 per cent per year.

The next largest areas are Bihar and Maharashtra & Goa both with around 113,000 lawyers each. In Bihar, the annual average growth rate was only around 2.4 per cent, while in Maharashtra & Goa the profession grew by 5 per cent.
FASTEST GROWERS = LEAST COMPETITION?

The states with the largest growth rates are the states with smaller lawyer numbers, such as Jharkhand where the number of lawyers grew by 45 per cent to 9,789 in five years.

The second-fastest growing state was Jammu & Kashmir (J&K) where the number of lawyers increased by 35 per cent to 5,951 in five years.

Interestingly, both are also the most under-lawyered states out of the 20: when comparing the total number of lawyer per state to states’ populations and gross domestic product (GDP) Jharkhand and J&K emerge as the least competitive legal markets.

For every lawyer in Jharkhand and J&K, there are respectively 3,368 and 2,109 non-lawyers in the population. In GDP terms, each lawyer has a potential to tap into $2m of GDP on average.

STREETS PAVED WITH GOLD?

In GDP per lawyer terms, Maharashtra and Goa, despite being third-largest in terms of lawyer numbers, remains the most attractive large market in terms of GDP: $1.98m of economy exists for every lawyer in the states. Other lucrative states when comparing the GDP to lawyer numbers are Tamil Nadu, Uttarakhand and West Bengal ($1.7m each), followed by Gujarat, Punjab & Haryana and Andhra Pradesh ($1.6m each).

Bihar and Uttar Pradesh are the states with the least economic wealth available per lawyer – only around $420,000 of GDP per lawyer.

In Delhi, the figures suggest $1m of local GDP per lawyer, although that would not realistically reflect work that comes to the Delhi-based Supreme Court from all over India. The national average in the states with bar councils is around $1.1m of GDP per lawyer.

BUSIEST STREETS

Delhi is the most legally concentrated state in India, with every 300th person in the city being a lawyer, and the number of lawyers in Delhi has increased by 29 per cent in five years.
Punjab & Haryana (391 non-lawyers per lawyer), Madhya Pradesh (517) and Uttar Pradesh (692) and Kerala (770), are next in the list.

In Maharashtra, where the number of lawyers rose by 25 per cent in five years, there are around 1,000 non-lawyers per lawyer.

The national average is 886 non-lawyers per lawyer with 19 per cent growth in lawyer numbers over five years.

In terms of lawyer per capita, West Bengal and Assam and Nagaland, are the least densely populated after Jharkhand and Jammu & Kashmir (around 1,500 non-lawyers to every lawyer).

**DISCREPANCIES**

In November 2011, *Legally India* wrote in *Mint* that there were “approximately 1.2 million” lawyers in India, citing the number of the BCI website, while the BCI’s figures for 2011 supplied in the RTI and obtained from each state bar council show just under 1.3 million enrolled lawyers in India – although it is understood that some deceased advocates’ names may continue being rolls at times.

There are approximately 4-5 lakh law students across the country. Every year, approximately 60,000 – 70,000 law graduates join the legal profession in India. There are approximately 1350 law colleges in India. The practice of law has however changed drastically in the past few decades – and the major reason for the same has been the liberalization and growth of the Indian economy. Therefore, we now see a rapidly growing (and international quality) corporate legal sector in India as well as the beginning of an outsourced legal process services sector. Further, the growth of the Indian economy has inevitably led to complex laws and regulations and it is important that lawyers across India have access to necessary tools to keep up with the pace of change.

**STAKEHOLDERS IN LEGAL INDUSTRY**

As per rough estimates, there are approximately 3500 bar associations in India. They are specifically based in each court that is district courts, high
courts and other courts & judicial forums. Their memberships consist of local litigation lawyers of that particular court.

A Bar association is a professional body of lawyers. Some bar associations are responsible for the regulation of the legal profession in their jurisdiction; others are professional organizations dedicated to serving their members; in many cases, they are both. Membership in bar associations may be mandatory or optional for practicing attorneys, depending on jurisdiction. An organization of lawyers established to promote professional competence, enforce standards of ethical conduct, and encourage a spirit of public service among members of the legal profession.

There are a few voluntary bar associations that are not quite popular among the general lawyers in India. These include the Bar Association of India and Confederation of Indian Bar (both these bar associations are located at the Supreme Court of India) the others are the Mumbai Bar Association and the Society of Indian Law Firms (SILF) etc. SILF is promoted by a few large law firms in India. The memberships are offered only to law firms. The SILF is the voice of 10-15 managing partners of large law firms.

Quite interestingly there is an existing phenomenon in all the above mentioned voluntary bar associations, that the same founding person continues to be the president of the respective voluntary bar association.

Indian National Bar Association is registered as not-for-profit organization that serves the community through programs designed to educate and connect members of the community who are interested in promoting the International trade, rule of law and human rights around the world. INBA is a member driven organization divided into professional and regional sections. INBA was founded in recent years to provide thought leadership and to represent the entire Indian Legal ecosystem. Its members include law students, in-house counsels, commercial lawyers, litigating lawyers who are all located in each and every part of India. INBA also has members in 15 countries. In 3 years its membership strength has increased to approximately 6000 members. With the current rate of growth in
Bar associations accomplish these objectives by offering continuing education for lawyers in the form of publications and seminars. This education includes instruction on recent developments in the law and in managing a law practice successfully as a business. Bar associations encourage members to offer Pro Bono legal services (to provide legal services at no cost to members of society who cannot afford them). Bar associations develop guidelines and rules relating to ethics and Professional Responsibility and enforce sanctions for violation of rules by governing the conduct of lawyers. Bar associations also offer attorneys the opportunity to meet socially to discuss employment prospects and legal theories.

Law is vast and it touches all of us in some way or the other, law is not just about the intensity or the money or the status, it more than that. The Indian legal market is in a nascent stage in terms of growth. The growth of the legal industry has brought with it an increase in the number of stakeholders. In this age of globalization, Indian as well as international law firms, various governments, courts, lawyers, attorneys, advisors, clients, law universities, law students etc. are parties who have legitimate interest in law and the way the legal system functions. The private sector is also a major stakeholder in the legal market as it provides legal services to the public; and also are the users of legal services. Foreign investors, financial corporations, International corporations, small and large businesses, law magazines and newsletter agencies, are all various stakeholders.

Various industries, public relations offices, politicians, media houses, non-profit organizations, workmen and the public are also major stakeholders. Other stakeholders comprise of bodies and persons who have direct or indirect association with the legal community. They are an important part of the legal industry as they play key roles in shaping the legal system.

The service industry in India has the potential to generate higher revenues than what it currently generates. The foreign revenue earned by the service
industry brings about certain debate as to why the legal services industry is not kept at the same footing. There is negligible representation of the legal industry by the state. Without adequate promotion and representation by the government, there is considerable loss to the legal service industry as major portion of collaborated legal services are outsourced to other countries competing with India.

The government should consult experts and analysts of the legal industry so as to bring about regulations which work in the favour of the legal industry and does not inhibit interested foreign parties from partnering or collaborating with Indian legal offices. The process needs to be streamlined and fewer checks and balances ought to be introduced by doing away with all outdated laws and regulations that could pose a threat to the further development of the industry.

The efforts of independent bar associations and other bodies working in promotion of the legal sector could only bear fruit if the government itself would recognize the industry and ensure its growth. Law is still not recognized as a valuable industry, this is delaying the surplus revenue it could generate for the nation. If the legal industry is given the same foothold as other existing industries, there would be ample opportunities in the job market for legal professionals. As a common law country, with a vast English speaking workforce there is no doubt that the legal industry could become one of the most successful and flourishing sectors.

As stakeholders, businessmen face a lot, road blocks as they have to comply with complicated laws and regulations. The streamlining if the compliance and regulatory laws could prove to be an incentive for new businesses. Lax intellectual property laws are also having a negative effect as innovators and inventors suffer from the lack of motivation.

Most of arbitrations between corporate giants take place in international jurisdictions. We can imagine the loss in revenue because of this. If India focuses on operating arbitration courts and tribunals of international standards then there is an unimaginable potential for growth and further recognition. Foreign lawyers should be allowed to work on arbitrations in India to make domestic arbitration more attractive and to unburden the courts. The Bar Council has been vocal against the entry of foreign law
firms, while the Law Ministry has always claimed that the entry will only be after consulting all necessary stakeholders.

The legal process outsourcing industry is not placed at par with Litigation and other legal sector jobs. There is a need for change to change our view towards it. The LPO industry has the potential to become one of the top foreign revenue generating bodies. Lawyers working with LPOs have knowledge about laws and regulations of other countries. There is immediate need for better regulations to increase the capability of this field. Once this is done there would be no dearth in getting legal business to India which would definitely benefit the economy. There is urgent need to recognize the legal industry as an important sector in India.

ARBITRATION SCENARIO

Anand Dayal gave his valuable inputs on bringing international arbitration in India. He stated that 80% of the cases at Singapore International Arbitration Centre involve India. International Arbitration cannot be recommended in India due to delay in enforcement of arbitral award. Mr. Dayal further said that India has signed 80 bilateral treaties but still doesn’t have effective ADR mechanism. He added that no entry of foreign lawyers in India is another problem in conducting international arbitration in India.

Popularity of Arbitration Institutions like the Singapore International Arbitration Centre (SIAC) and Industrial Arbitration Court (IAC), Singapore, International Chamber of Commerce (ICC) and London Court of International Arbitration (LCIA), UK were widely opted to administer and resolve disputes.

While choosing an institution, the following reasons been rated most significant by companies having experience of institutional arbitration:

• Overall cost and fees,
• Reputation, and
• Neutrality and independence of the institution

**Why foreign locations?**

The Indian law does not make a distinction between pure domestic disputes, with seat in India, where the parties are Indian and the governing law is Indian. Further, it treats international disputes, with the seat in India, where the parties are from different nationalities and the governing law not necessarily Indian, the same way.

High level of legal intervention is regarded as another cause for lack of institutional arbitration in India. "Indian courts have historically been known to intervene in arbitrations. Previously, Indian courts have readily granted injunctions, preventing arbitrations from moving forward pending a complete hearing of the matter in India," says Lye Kah Cheong, partner, Norton Rose Fulbright, a global law firm.

"Some parties choose to arbitrate Indian disputes offshore to avoid delays often encountered with onshore arbitration," says Nicholas Peacock, partner, Herbert Smith Freehills LLP.

The preferred seats of foreign arbitration for Indian disputes are Singapore, followed by London and Paris. At Singapore International Arbitration Centre (SIAC), the number of cases from India rose from 36 to 85 between 2010 and 2013, a rise of nearly 136 per cent.

In 2011, India accounted for 1.5 per cent of total cases resolved through LCIA, which increased to 4.25 per cent in 2012. India accounted for sixth highest number of cases in LCIA in 2012.

"The number of cases filed at the SIAC, involving at least one Indian party, has grown by an astounding amount in the past three years since 2009," says Vivekananda N, deputy registrar & head (South Asia), SIAC. These cases have emerged in sectors such as trade, construction, joint ventures, corporate disputes, telecommunications, maritime, shipping and shipbuilding, amongst others.

**A silver lining**
What gave a fillip to foreign arbitration in India was the landmark judgment by Supreme Court in 2012, which said that the Indian courts have no jurisdiction over international commercial arbitration held outside India (Bharat Aluminium vs Kaiser Aluminium Technical Service, September 6, 2012). "The Balco case has been a game changer," says Ajay Thomas, director & registrar, LCIA India. Legal experts say that this decision by the Supreme Court will lead the way in reducing the intervention of Indian courts in arbitrations seated outside India. However, application of the decision is restricted to arbitration agreements entered after September 6, 2012.

Factors relevant to the choice of venue

The most complete empirical survey into choices made by parties in international arbitration (the “Queen Mary survey”) is that produced by the International School of Arbitration at Queen Mary, University of London in 2010. Although this was targeted at large international enterprises it is a useful starting point for assessing the choice of Indian parties.

The key influences in order of priority in the survey were:

- The formal legal infrastructure (including the local arbitration law, the track record in enforcing arbitration agreements and awards, neutrality and impartiality);
- The law governing the substance of the dispute;
- Convenience (location, industry specific usage, established contacts with lawyers in the jurisdiction, language/culture and efficiency of courts);
- Corporate policy;
- Location of people (employees, legal advisors);
- Location of arbitration institution;
- Choice of seat imposed by other party;
- Recommendation of external counsel.
Legal infrastructure was significantly the most important factor (62% of respondents) as compared with governing law (46%). The Queen Mary Survey also found that London was the most preferred seat of arbitration, with Paris in second place. New York, Geneva and Singapore were the next most highly rated. It is also worth noting that English law was the law most frequently chosen by corporations to govern their contracts (40% of corporations chose English law).

Revolution in the field of communication, coupled with rising of literacy level, is resulting in increased awareness of legal rights, thereby increasing the number of cases coming to the courts for adjudication. Sincere efforts are being made at all levels to increase the output being given by our system and there has been substantial increase in disposal of cases, despite full judge-strength not being available to us.

The Supreme Court of India disposed of 38842 cases in the year 2001, whereas it disposed of 61957 cases in the year 2007 without there being any increase in the sanctioned strength of judges. As many as 53976 cases were disposed of by Supreme Court of India in the first 9 months of the current calendar year. However, institution of fresh cases increased from 39419 cases in the year 2001 to 69103 cases in the year 2007. 56396 cases were instituted in Supreme Court of India in first 9 months of the calendar year 2008. 1093598 cases were disposed of by High Courts in the year 2001. The disposal was increased to 1505073 cases in the year 2007 without commensurate increase in the number of Judges. But the Institution of cases in the High Courts increased from 1215426 cases in the year 2001 to 1590816 cases in the year 2007. The High Courts disposed of 716853 cases in the first half of this calendar year. This, however, was accompanied by institution of 805350 cases during this period.

**LEGAL OUTSOURCING IN INDIA**

Legal outsourcing, also known as legal process outsourcing (LPO) refers to the practice of a law firm or corporation obtaining legal support services from an outside law firm or legal support services company (LPO provider). When the LPO provider is based in another country, the
practice is called off-shoring and involves the practice of outsourcing any activity except those where personal presence or contact is required, e.g. appearances in court and face-to-face negotiations. When the LPO provider is based in the same country, the practice of outsourcing includes agency work and other services requiring a physical presence, such as court appearances. This process is one of the incidents of the larger movement towards outsourcing. The most commonly offered services have been agency work, document review, legal research and writing, drafting of pleadings and briefs, and patent services.

LPO firms in India had predicted an annual growth of 200% due to recession related litigation and the increased need to save costs in the US. Their expectations have not been met. The major reason for this is that US lawyers themselves have started looking at alternative fee structures due to the recession and job losses. In spite of setbacks, the LPO industry has seen growth of about 40-60% in the last year. Although some areas of practice, such as real estate, have drastically collapsed due to the recession, some areas such as litigation, document review, and corporate compliance have gained ground, resulting in business directed to LPO firms in India.

One of the major concerns with outsourcing is the potential for breaches of client confidentiality. In legal process outsourcing the issue of client confidentiality assumes utmost importance. The attorney–client privilege is a doctrine that says anything conveyed between an attorney and his client shall be treated with utmost confidentiality and is exempted from disclosure even in a court of law. However, when either party discloses confidential information to a third party or the opposite party, the privilege is deemed to be waived. During the early years of legal process outsourcing, many law firms hesitated to outsource their work. Another criticism is that people performing legal work may not be bound to necessary ethical standards.

In the present era, globalization has become the norm and the exponential development of the Internet ensures that businesses either evolve to the next level or perish. The direction, supervision, and control of the overseas legal support system have become critical to legal outsourcing. In the contemporary context, the outsourcing of legal work to economically viable destinations such as India has become a practical necessity. If the
industry develops and overcomes the initial hiccups, LPOs could very well go on to become the backbone of India’s booming service industry, along with BPOs and other KPOs. There is a strong political opposition in the US against outsourcing as may affect the livelihood of US attorneys may also serve as a roadblock.

INTERNATIONAL PRACTICE

Indian lawyers and law firms are now prominent players in other countries. The quality of legal services provided by Indian lawyers is at par with their foreign counterparts as they are well versed with laws of other jurisdictions. Foreign firms are on a constant lookout for Indian lawyers with dual-qualifications i.e. qualification to work in India and abroad.

BENEFIT OF ALLOWING FOREIGN LEGAL CONSULTANT

A “foreign legal consultant” (FLC) is a person who is admitted to practice and is in good standing as an attorney or counselor at law or the equivalent in a foreign country or political subdivision of a foreign country, and has been issued a certificate of registration as a FLC. FLCs may provide advice in international law, the law of their home country or in the law of any third country for which they possess the required qualifications. Foreign lawyers are less likely to be involved in domestic law due to barriers such as qualification requirements, which are shaped along national lines. In the fields of international law and home/third country law, qualification requirements constitute lower barriers to trade than in the field of host country law.

FLCs usually seek access in fields of law for which they are already qualified. They are currently in the forefront of liberalization in the legal services sector. However, even in the absence of serious qualification requirement barriers, FLCs still face important regulatory obstacles with respect to licensing requirements.

In most cases, the practice of international law is permitted provided that the FLC is competent or to the extent allowed by the country where the lawyer is registered.
USA and Europe are the primary locations which engage foreign legal consultants followed by South America and Asia. India is currently involved in comprehensive multilateral negotiations regarding trade in services. Through the GATS negotiations, India hopes to secure better access to Foreign Service markets and higher levels of liberalization in service sectors. Professional services, including legal services, are an important part of GATS negotiations. To truly understand the situation of India’s trade potential in legal services sector, input from all stakeholders is necessary.

India has not undertaken any commitment in the legal services sector during the Uruguay Round of negotiations. It has neither offered for any commitments in legal services in its Initial Offer nor in its Revised Offer submitted at the WTO during the course of on-going Services negotiations under GATS. FDI is not permitted in this sector. International law firms are not allowed to establish offices in India. Moreover, Indian advocates are not permitted to enter into profit sharing arrangements with the persons other than Indian advocates. Foreign Law firms are not permitted to open offices in India as per the Advocates Act 1961 and they are also prohibited from giving any legal advice that could constitute practicing of Indian law.

There is a strong sentiment amongst various members of the profession that favours permitting foreign law firms even in a limited way would lead to the grow opportunities available to domestic lawyers. This has been the experience in every jurisdiction that has adopted a FLC regime. New York, which has had a FLC regime for more than half a century now, is a very good example. The opportunities for domestic lawyers has been greatest in those jurisdictions where the FLC regimes are the most liberal. It is important that we look into the immense trade potential of the Indian legal profession, but without compromising on the interests of Indian Advocates. At the same time, it is a reality that the Indian economy is fast integrating into the global economy. While a number of foreign companies are investing in India, Indian companies are also acquiring foreign companies on a regular basis. This requires capacity building of Indian lawyers and Indian law firms in areas such as international law, third country law, patents law etc. so that they can not only advise the foreign
companies in India, but also support Indian companies acquiring assets abroad. Lawyers have played a crucial role in helping formulate policy to enhance foreign investment and to create a favorable environment for foreign investors. Despite limiting circumstances, Indian law firms in particular over the last few years, have displayed a youthful dynamism by re-inventing themselves to provide cutting edge legal advice. Leading firms in different jurisdictions have worked with Indian lawyers/law firms, who have several cross-country transactions in the fields of international commercial and financial law to their credit.

Having functioned in such a limiting framework for the past fifty-years, the Indian legal profession is today ill-equipped to compete on par with international lawyers, who have grown their practices in liberalized regimes and have vast resources at their disposal.

Typical market access limitations in the legal sector include: restrictions on the movement of professional, managerial and technical personnel, and restrictions on the form of incorporation. Although lawyers engaging in advisory services in international and home/third country law (foreign legal consultants) are less likely to be subject to nationality requirements, general nationality requirements for all legal services may still restrict foreign legal consultants. Limitations on the form of incorporation are still very common in the legal services sector. Several countries prohibit incorporation, while others allow only selected forms of incorporation, but these restrictions are applied equally to foreign and domestic practitioners. Restrictions on foreign equity specific to legal services are not very common although general investment restrictions still apply to legal services.

Qualification requirements often represent an insurmountable barrier to trade in legal services, especially for the practice of host country law. Legal education differs from country to country and in some cases (like India) within the same country. In some instances, these differences are so significant that regulators require foreign qualified lawyers to re-qualify in order to be able to practice. Many member countries viz US, EC, Australia, Singapore, Japan, China, Switzerland, New Zealand and Brazil have requested India for taking commitment in Legal Services. These requests have also been reflected in the process of bilateral requests which are
mostly for FLC’s in only corporate and international law. There is no such request to practice domestic law in Indian courts. These requests are only for their engagement in a consultative capacity. There are requests for commercial association between foreign and local lawyers and firms on our terms and conditions.

CONCLUSION

There is a need for immediate recognition of the Legal industry. The government and other commercial bodies need to embark on a mission to tap all legal resources and manpower available in India, in order to bring forth best practices and open the Indian legal market to foreign investors.

This can be accomplished by:

- All stakeholders of the legal industry should be invited and they should be consulted as their contribution will be highly valuable to the growth and development of the legal market. This conjoined effort will ensure that the future brings with it huge opportunities and better job prospects.
- There is a need to hold open discussions and programs to address the relevant issues affecting the market.
- There is a need to open the market for Foreign Legal Consultants.
- Policies should be formulated for the development and growth of export services.
- There is a need for more economic growth via more foreign investment.
- There is a need to invest more in technology and expertise in India.