GLOBALIZATION AND LEGAL PROFESSION: A CRITIQUE

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Abstract:

Though the traditional mindset about legal profession still predominates in many countries, International trade in services currently amounts to well over two trillion US dollars, a sixth of total world trade. The service industries also account for a significant portion of the growth of the domestic economy and of job creation. In the past decades international trade in legal services has grown as a result of the internationalization of the economy. Increasingly, lawyers are faced with transactions involving multiple jurisdictions and are required to provide services and advice in more than one jurisdiction. The demand for lawyers to be involved in foreign jurisdictions often comes from their corporate clients, who do business across borders and choose to rely on the services of professionals who are already familiar with the firm’s business and can guarantee high quality services. Some countries also favour international trade in legal services, as the establishment of foreign lawyers is seen as a catalyst for foreign investment, contributing to the security and predictability of the local business environment. The author has expressed his ideas with regard to the issue raised above in detail in the complete article.

Key Words: trade, legal profession, WTO, GATS, indian perspective
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Introduction

Though the traditional mindset about legal profession still predominates in many countries, international trade in services currently amounts to well over two trillion US dollars, a sixth of total world trade. The service industries also account for a significant portion of the growth of the domestic economy and of job creation. In the past decades international trade in legal services has grown as a result of the internationalization of the economy. Increasingly, lawyers are faced with transactions involving multiple jurisdictions and are required to provide services and advice in more than one jurisdiction. The demand for lawyers to be involved in foreign jurisdictions often comes from their corporate clients, who do business across borders and choose to rely on the services of professionals who are already familiar with the firm’s business and can guarantee high quality services. Some countries also favour international trade in legal services, as the establishment of foreign lawyers is seen as a catalyst for foreign investment, contributing to the security and predictability of the local business environment.

The main obstacle to internationalization of trade in legal services is represented by the predominantly national character of the law and by the national character of legal education. The national and local character of the legal profession is a reflection of the national character of the law and of the territorial jurisdiction of the courts. The principle role of the lawyer was originally that of an advocate, and the legal profession was organized around the courts, with each bar associated to a specific local court. Lawyers were required to maintain physical establishment in the territory of the local court in order to be accessible to other members of the bar and to the court itself. The paradigm local court / local bar / local lawyer changed with the expansion of trade and with the emergence of new fields of the law such as business and trade law for which representation before a local court are relatively less important. In most
circumstances these subjects require legal counseling in matters involving transactions, relationships and disputes not necessarily entailing court proceedings.

We are in the third face of privatization India is a signatory to WTO and member country to the GATS and could be said to have an obligation to liberalise its services including legal services, and thus open them up to foreign competition. This is currently seen as the key to the future for foreign lawyers to be granted rights of practice as India will be required to honour this commitment and it offers a better route than through pursuit of litigation, though not an easy task, but thinking, analyzing of the present situation and finding the way for the future inevitable process, has become the responsibility of not only the legal professionals but also of all the legal fraternity.

In this paper I would like to share my deep concern on the situation arising after the India’s accession to the WTO/GATS Agreement4, particularly its implications on the image of Legal Services and profession. Heather to we were only dealing with the national issues, which came before the Various High Courts and Supreme Court of India. But hereafter we have to deal the conflicts, which have international dimensions.

**WTO/GATS and Globalization of Legal services: Opportunities and Challenges**

It is to examine the process of globalization before the advent of the World Trade Organization (WTO), in continuation; it traces the process of globalization in various trade theories, bilateral and multilateral agreements and the contribution of the global Financial institutions, including the IMF and IBRD. Then I would like to analyze the contribution made by the GATT and WTO. To that end the paper examines the contribution made by various GATT rounds of negotiation before the Uruguay Round, Negotiations in the Uruguay Round and the establishment of the WTO and various Annexes to the WTO. However, main focus will be on the General Agreement on Trade in Services (GATS), and its impact on various service sectors including the legal services. Next, let us explore developments that have occurred since the signing of the GATS, including the possible implications to the Advocates Act 1961. In this context, we have to think whether lawyers be allowed to practice law in all WTO member states? Will national authorities yield to the WTO’s directions in determining the rules of practice for lawyers? Should lawyers have international standards and regulation by an international body instead of local authorities?
Now let us examine a few aspects of globalization which have impact on legal profession. Globalization is the term used to characterize the processes of growing interconnection and interdependence among the different nations of the world. Globalization of markets was one of the most fascinating developments of the 20th Century. It involves the growing interdependence among the economies of the world. Globalization has been catalyzed by developments in technology, communications and international trade, which have also changed the traditional understanding of trade and commerce.

In this age of globalization and interdependence, principles of international law affect all states, small and large, rich and poor, weak and powerful alike. Many of the structural changes that have taken place in the world economy since the early 1980s resulted liberalizing of capital markets and the capital remains no longer domestic; it moved freely across borders. Manufacturing was also no longer a domestic process. This lead to the loss of control on local markets, goods, finances by the National governments.

Globalization has both positive and negative aspects. On the positive side, it generated by growing international economic, cultural, and political cooperation and solved many global problems. On the negative side, globalization also has profound implications for states such as the autonomy and policy-making capability of states is being undermined by economic and cultural internationalization. Many governments see their role as not to regulate markets but to facilitate their expansion. Globalization and regional interactions are wiping out national borders and weakening national policies.

To understand the globalization better let us also know the Uruguay Round which paved the path for the establishment of WTO. By 1980s, world-trading system changed, the factors, which are responsible for these changes, which include; the liberalization, globalization and the privatization process. Added to this, the service sector contributed to more than 40 - 60% but it was out of the GATT system. As a consequence, investments required guarantees, the IPRs required better guarantees and the proper dispute settlement mechanism was required. As GATT could not address all the above-mentioned areas the Uruguay round of negotiations attracted lot of importance.
(a) The Goals and Achievements of the Uruguay Round

1. To further liberalization of trade by reducing tariffs and other barriers to trade.

2. To properly reflect the modern developments in the world trade by including in the GATT negotiations for the first time TRIMS, GATS, and IPRs.

3. To bring an end to exemptions of the GATT rules such as those granted to the agriculture, clothing and textiles sectors and resubmit them to GATT

4. To improve and strengthen the GATT dispute settlement procedure for effective implementation of international trade regulations

Uruguay Round—Problems and Prospects

No other international treaty has been as little understood and yet has raised as much concern and hostility in our country. Wide range apprehensions have been expressed in many developing countries including India, where; our sovereignty was compromised; our agriculture would be ruined; farmers would have to buy their seed every year from multinational corporations; genetic wealth would lost; drug prices would shoot up; and our market would become heaven for foreigners. Main contentious issues were the agricultural subsidies, public distribution system, patenting of seeds and life forms, and textiles and clothing. The Uruguay Round established the WTO and annexed a wide range of multilateral trade agreements to the WTO, which will have impact on all aspects of the international trading system.

Uruguay Round Negotiations and Legal Services

Legal services were included in the GATS negotiations at the insistence of the United States. Given the substantial differences among national regulatory systems, U.S. negotiators initially envisioned a special annex on legal services, similar to the Annex on Financial Services, to specifically address the regulatory barriers facing lawyers. Under the terms of the GATS, obligations of such an annex would be binding on all GATS members and would have required all GATS members to allow foreign lawyers some minimum level of access to their legal markets.
Overview of the GATS

The GATS, which was also negotiated during the Uruguay Round, sets out a comprehensive framework of rules governing trade in services. It sets out a set of basic rules, a clear set of obligations for each member country and a dispute-settlement mechanism to ensure that the rules are enforced. The GATS applies to all service sectors and all forms of trade in services, though with adjustments and exceptions tailored to the type of service. The types of services covered include telecommunications, insurance and financial services, research and development services, computer and information services and professional services. Professional services include legal services, as well as accounting services, engineering services, architectural services and so on.

The forms (or "modes") of trade in services are:

- Cross-border trade in services: a firm deals with a client in another country (e.g. electronically) without crossing the border;

- Consumption abroad: a client travels to a firm's country of operation to consume a service;

- Commercial presence: a firm establishes an operation in the market of another country; and

- Temporary movement of a natural person: a firm travels to the client's country of operation to provide the service.

The GATS has two basic components.

a. **Most Favoured Nation Obligation**: The unconditional Most Favoured Nation (MFN) obligation is a core general obligation of the GATS: each service supplier from a Member country must receive from other Members treatment no less favorable than is accorded to other foreign service suppliers.

b. **Specific Commitments**: In addition to creating general obligations, the GATS also provides a legal basis for negotiating the multilateral elimination of barriers to trade in services. The GATS negotiations are designed to improve market access and to reduce discrimination against service suppliers based on nationality. (i) **Market Access**: Market Access is a negotiated right and obligation under the GATS. A Member is obliged to provide market access to services suppliers from other Members only in those sectors which the Member has included in its schedule. (ii) **National Treatment**: National Treatment is a second negotiated right and obligation under the
GATS. If a Member includes a service sector in its schedule of National Treatment obligations, that Member must "accord to services and services suppliers of any other Member . . . treatment no less favourable than that it accords to its own like services and services suppliers." This obligation essentially prohibits discrimination against foreign providers of services.

**The GATS and the Legal Services**

The GATS was signed in December 1993 and is one of several agreements signed in conjunction with the agreement creating the WTO. To date, 148 countries have signed the GATS. The GATS applies to legal services. This means that once a country signs the GATS; its regulation of legal services is automatically subject to certain provisions of GATS. For example, all GATS signatories are subject to a transparency requirement, which specifies that all relevant measures be published or otherwise publicly available.

In addition to these general requirements, most countries have included legal services on their Schedule of Specific Commitments, which means that legal services are subject to many additional provisions of GATS. For example, if a country lists legal services on its Schedule, then its regulation of legal services not only must be transparent, but must also be administered in a reasonable, objective and impartial manner. The globalization of legal services is a serious issue, which needs the attention of all the stakeholders. While dealing with this issue different aspects need to be considered. At present, the legal services industry is experiencing a fundamental transformation as a result of the expansion of trade and development of new fields of law, which include corporate restructuring, privatization of government departments, cross-border mergers and acquisitions, issues dealing with intellectual property rights and competition law have generated increasing demand for more sophisticated legal services. This also led to the emergence of a new type of lawyers mainly involved in advisory services—as opposed to the traditional local court advocate—expected to provide advice to clients in respect of transactions and investments covering countries around the world.

The regulation of lawyers has historically been a domestic policy issue. In order to uphold the integrity of their laws and the judicial systems, countries have enacted elaborate regulatory schemes to control who would provide legal services and how they are provided. During the last two decades, globalization of the legal services industry has increased the general awareness of the effects of national regulations, particularly as they affect foreign lawyers. The globalization
of markets and the internationalization of trade in services have increased scope for lawyers, while reducing traditional protective barriers. Globalization of legal services will lead, increasingly, to issues of regulation.

To mention a few international regulations, regarding the legal profession such as, the GATS, which was adopted as an annex to the agreement creating the World Trade Organization (WTO), the North American Free Trade Agreement (NAFTA); the European Union (EU) directive on the establishment of lawyers from one EU country in another EU country; the agreements between various American Bar Associations (ABA) in USA, Organisation of Economic Cooperation and Development (OECD) Convention on Bribery.

**Out Sourcing Industry in 21st Century**

International trade in services has recorded a rapid growth in the recent past. The services sector also accounts for an increasing share of the investment flows in the world. While in the early 1970s, services constituted only a quarter of the global Foreign Direct Investment flows, in the recent past this share went up to two third of the total FDI. Technological developments, demographics, the growing internationalization of production processes, and economic liberalization are among the key driving forces behind the increasing globalization of services. The sea-change in India’s approach towards trade and investment liberalization in services may be attributed partly to the growing importance of the services sector in India’s economy and its trade and investment flows in the recent years. India’s services sector recorded an average annual growth rate of 9 per cent in the 1990s; while India’s GDP grew at an average annual rate of 7.5 per cent during the same period. The average growth rate of services attained a still higher mark during the last five years i.e., 8.6 per cent. According to the latest **RBI Annual Report**, in 2005-06, the services sector has recorded a growth rate of 10.3 per cent, contributing almost three-fourths of the overall real GDP growth of India.

The business of outsourcing can be categorized in various categories. Though the sector is in budding stage and is more evolving and increasing its domain, but still some of the prominent ones are hereby mentioned:

(i) Business Process Outsourcing (BPO).

(ii) Knowledge Process Outsourcing (KPO).
(iii) Media Process Outsourcing (MPO).

(iv) Human Resource Outsourcing (HRO).

(v) Legal Process Outsourcing (LPO)

Due to a large knowledge pool and a significant cost arbitrage, few countries like India, Philippines and China are front runners in providing outsourced services. After achieving great success in BPO, India is now looking for a big leap in LPO. India automatically becomes a natural choice if we analyse the comparative costs of various aspects of LPO for different countries. Basis of the Comparison of following factors in countries like Philippines, Russia, China, Canada, Ireland and Mexico, makes India the better choice,

✓ Labour Pool
✓ Cost
✓ Quality of work
✓ Government Polices
✓ Infrastructure
✓ Knowledge full / Expertise
✓ Huge pool of English speaking people.

Concept of Legal Process Outsourcing

Legal outsourcing refers to the practice of a law firm obtaining legal support services from an outside law firm or legal support services company. When the outsourced entity is based in another country the practice is sometimes called offshoring.

Legal Outsourcing has gained tremendous ground in the past few years in the United States. Legal Outsourcing companies, primarily from India, have had success by providing services such as document review, legal research and writing, drafting of pleadings and briefs and providing patent services.

Although the off shoring of IT services, software code and call centres and other low-end business processes to lower-wage countries has now been underway for the last 15 years, the
Offshoring of legal services is still in its nascent stage. In fact, research conducted by Evalueserve shows that only 1,300 professionals are currently providing legal services to the US from India, however, this number is expected to grow to 5,200 by 2010 and to 16,000 by 2015. Evalueserve contends that the Indian companies providing such services will generate approximately $56 million in revenue in 2005, $300 million in 2010, and $960 million in 2015. However, it is worth noting that during the same period, the legal services industry in the US is likely to expand from 975,000 professionals (legal and paralegal) in 2005 to 1.125 million professionals in 2010 and finally to 1.3 million in 2015. Correspondingly, the revenue generated by this industry is likely to grow from $270 billion in 2005 to $360 billion by 2010 and to $480 billion by 2015. So, despite the seemingly large growth in offshoring of legal services, in actuality, only 1.2% of the legal and paralegal jobs would be offshored to India by 2015 and constitute only 0.2% of the total revenue!

The services that will be offshore within the broad area of legal and paralegal services include, (1) Electronic Document Management Services, (2) Research Services (3) Due diligence Services (4) Contract Drafting and Proof Reading of Contracts (5) Document Discovery in Litigation (6) Intellectual Property Services.

With respect to the offshoring of legal services, the following models seem to be emerging:

1. Captive Centres formed by US Law Firms and their Subsidiaries: Currently, Indian law does not allow ‘foreign’ (i.e., non-Indian) law-firms to practise in India. Hence, some law firms in the US and India are setting up subsidiaries, so that they do not practise law in India, but provide legal and paralegal services only for export purposes.

2. Joint Ventures by US-based Firms: Rather than opening their own captive centres, several US-based firms have joint ventures with firms in India. A good example is Cantor-Colbourn Esq., who has joined hands with Lall and Sethi, however, since statistically most joint ventures fail especially in India – one needs to be cautious while treading this path.

3. Third Party Vendors Providing Services to Law-Firms and In-house Corporate Attorneys: Evalueserve is a prime example of a third-party provider and currently has over 100 professionals providing legal support services. Evalueserve hires Indian engineers and lawyers and trains them to become proficient in US law and various USPTO, PCT and WIPO rules and regulations.
Advantages and Impediments of LPOs

Of course, the reduced labour costs, and therefore, the increased profit margins for the end-clients, are the most compelling reasons for these clients to offshore legal services to low-wage countries such as India. Besides the reduced labour costs, there are some other important reasons why many organisations-large, medium and small – offshore some of the work:

1. Improving Quality: Due to the substantially lower labour costs in India, Indian legal professionals can take substantially more time in doing a unit of work, thereby, making the additional end deliverable more robust and complete. Since this deliverable is then reviewed by a US attorney, such a deliverable is likely to have a better quality than a similar one produced in the US because of the extra attention it has received.

2. Reducing Response Time: Offshoring also enables organisations to take advantages of multiple shifts and time zone advantages, which is especially important for contracts, legal research, electronic document management, document discovery, and in situations with strict deadlines.

3. US Lawyers and Paralegals can Move Up the Value Chain: Since the work done by Indian legal professionals is the same as that provided by a US associate with 2-3 years experience, US lawyers can move up the value-chain and provide a broader array of services to their clients. For example, if Indian lawyers complete most of the drafting, the US lawyers can provide more litigation services and spend more ‘face time’ with their clients.

Impediments in Outsourcing Legal and Paralegal Services

The following are the main impediments associated with the offshoring of legal services:

1. The legal services industry has long had an aversion to risk. This is particularly true within the corporate legal area, where stakes are very high. Here the general counsel and other in-house lawyers are more comfortable outsourcing work to known US based law-firms. Hence, this industry will be slow to embrace offshoring as a means of reducing cost and improving efficiency.

2. Since the cost of client acquisition in the legal services industry is rather large, many law-firms and solo practitioners try to maximise the number of billing hours from each client. However, when they have to outsource or offshore some of the work, they need to reveal this
to the client. Hence, sending work offshore clearly reduces the number of billing hours, and some times, the law firms can make up for the lost hours by being more profitable, but at other times, not!

3. Sending work offshore also raises the risk of losing confidentiality; although more and more research and development work is being done offshore, sending confidential material offshore still creates apprehensions in the minds of US lawyers.

4. Conflict of Interest issues are very important for law-firms, solo practitioners and in-house attorneys. And, most legal services providers in the US are bound by ethics and guidelines that incorporate such issues.

Let us examine the influence of GATS on Indian Legal Profession

India as a founder member of the WTO and GATS has the imperative that the restructuring of the regulatory regime, keeping in mind the GATS and the consequent imminent changes, should be done after thorough study and analysis, in a very careful and detailed manner. In India, in particular, e.g., it is felt that the following points should be kept in mind while restructuring a proper regulatory regime:

1) There is a distinction between those foreign lawyers who want to practice in Indian courts and those who want to work primarily as Foreign Legal Consultants.

2) Most foreign firms are interested in non-litigation legal consulting business.

3) Any regulatory regime must be decided after consulting the Bar as well as the various Bar Associations, Bar Councils, Law Officers and leading law firms, and must address the following issues. a) Reciprocity rights of the Indian lawyer in the foreign country’s jurisdiction. b) Discipline control and maintenance of ethical standards as prevailing in India. c) Undertakings that the FLCs will not practice Indian law or employ.

The law governing and regulating the legal profession in India is the Advocates Act, 1961. Provisions relevant to the present discussion are -

The enactment governing the practice of the profession of law by persons in India is the Advocates Act, 1961. Section 29 of the Act states that: "Advocates to be the only recognised class of persons entitled to practise law - Subject to the provisions of this Act and any rules made there under, there shall, as from the appointed day, be only one class of persons entitled to
practise the profession of law, namely, advocates." “Advocate” is defined in S.2 (1) (a) of the Act as “an advocate entered in any roll under the provisions of this Act”. The general view had always been that the practise of law referred to under the Act meant the practice of law in courts i.e. litigation and it was in respect of that aspect of the practice of law that the Act afforded Indian advocates a monopoly in India. The perceived wisdom was that the Act was enacted only to consolidate the classes of legal practitioners who would be entitled as a matter of right to an audience before a court, to regulate such practice by establishing an all-India Bar and Bar Councils with whom such persons were required to be registered etc.

It was not intended to cover other forms of legal activity such as consultancy, advice, drafting of documents, negotiating etc. - work of a kind undertaken by only a handful of lawyers at the time and mainly in Mumbai, the overwhelming majority of Indian lawyers then as indeed still only concerning themselves with litigation.

This view was challenged in 1995 when the Lawyers’ Collective, a Mumbai based forum of lawyers, commenced proceedings in the Mumbai High Court against a number of Indian institutions including the Reserve Bank of India (“RBI”), the Government of India, the Bar Council of India and a number of other Bar Councils and the only three foreign firms holding licences for liaison offices from the RBI - the US firms of White & Case, Chadbourne & Parke Associates and the English solicitors, Ashurst Morris Crisp. The litigation in essence challenged the right of non-India and lawyers to do any legal work in India including in relation to UK and US law.

**Dominance of Draconian Law: Do We Need To Pamper It Still?**

Development of legal profession in India has been restricted in India on account of the number of impediments in the current regulatory system which hinders Indian law firms from competing effectively against foreign firms. Some of the current restrictions, which severely limit the scope of growth in the legal profession, are:

- In India there is an absolute bar on advocates advertising and soliciting for any purpose, and indicating any area of specialization. Restrictions on advertising by lawyers in India have resulted in a situation where consumers cannot make an informed choice from the competitive market since the information relating to service is not available to them.
Moreover restriction on professional firms on the informing potential users on range of their services and potential causes further injury to the competition.

➢ The Bar Council of India Rules, 1975 in Chapter III, Rule II, prohibits advocates from entering into partnership or any other arrangement for sharing remuneration with any person or legal practitioner who is not an advocate. Lawyers cannot enter in cooperation with non-lawyers. Prima facie there seems to be no pro competitive justification for such a regulation. Such a measure as hampered the delivery of services to the consumer and anticompetitive. This absolute bar has been lifted to some extent with the institute of Chartered Accountants permitting tie-ups between lawyers and Chartered Accountants.

➢ The regulatory and legal system in India has the effect of limiting the size of legal establishment. Section 11 of the Companies Act, 1956 stipulates that a partnership or any form of association with more than 20 members if not registered as a company shall be an unlawful assembly.

➢ In India only natural persons can practice law, as is evidenced by combined reading of Sections 24, 29 and 33 of Advocates Act and artificial body cannot act as a lawyer. The justification for such restriction is on public policy grounds and in particular to ensure professional responsibilities and liabilities. Thus a legal service provider cannot be incorporated as a company and still continue in practice the profession of Law in India, as per the provisions of Advocates Act 1961.

➢ The requirement that Advocates enter into partnerships only with other Advocates has the effect of prohibiting partnerships with foreign firms. The effect of this provision is that partnerships cannot be entered into between Indian Lawyers and those of other countries. These restrictions on incorporation and size of partnerships, prohibition on entering into partnerships with foreign Law firms and lawyers, has limited the size and growth of the profession as well as professionals and prevents them from being globally competitive.

➢ The lack of restrictions on partnerships across the world has given rise to firms with a number of partners. Big law firms having wide controlling, regulating and functioning power nationally and internationally. In sharp contrast Indian firms are small and incapable of associating with legal experts from other countries. This way Indian law firms are at disadvantage to law firms of U.S. and E.U.
Having functioned in such a limiting framework for the past forty-four 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. It is further to be noted that there are only a few firms in India having the expertise to handle commercial work for multinationals.

**Challenges and Opportunities for Indian Lawyers**

The legal profession which was highly regarded during the independence struggle and also post independent India has to reorient itself to face and actively participate in the challenges posed by WTO/GATS agreements. Even if reciprocity were allowed, no Indian firm would go abroad to conduct legal business not because it has no talent, competency or efficiency but economically it would not be a viable proposition. The Indian lawyers have no resources to set up an establishment in a foreign country nor will the Indian Government render any assistance to them to promote their business in a foreign country. The legal service by calling Indian experts would be very expensive for the non-resident Indians and they may not get full effective service since the Indian legal consultants may not be very conversant with the laws applicable there. It is only if any Indian party is concerned in a dispute and the question relates also to Indian law that Indian legal Consultant would be invited to a foreign country and not otherwise. Such occasions will be rare. The picture is different in case of foreign firms who do business across national borders, due to globalization. If the foreign firms carrying on business in India require advice here on home country law that can be made available to them by the Indian law firms or the Indian legal consultants. They can also prepare the legal documentation or provide the advisory service for corporate restructuring, mergers, acquisitions, intellectual property rights or financial instruments required by the foreign firms. These aspects will have to be seriously considered while considering the principle of reciprocity. Reciprocity should therefore be clearly defined and must be effective. It should be ensured that the rules and/or regulations laid down should be strictly complied with otherwise as is the experience, the rules remain on paper and what is practised is totally different. The authorities either do not pay any heed to the violations or they overlook or ignore it as in the case of the Foreign law firms in India in the Enron deal, the permissions for such law firms to set up liaison offices came from the RBI which reports directly to the Finance Ministry. When these law firms violated the very conditions of being liaison offices the RBI overlooked or ignored it.
Benefits to India

There are several good and valid reasons, for the Indian government and indeed, the Indian lawyers' community to consider in this regard. As India opens up its economy and enters the global trade and commerce mainstream, any form of prohibition on the use of legal and/or financial advisers will be adversely viewed by overseas investors. Lawyers are perceived as an integral part of the investment process and foreign companies want their preferred lawyers with them as much as their own bankers. Foreign lawyers will bring modern know-how and practices which would be of great benefit to Indian law firms. Indian law firms are, relative to their Western counterparts, are less organised less well structured. They tend to be dynastic in their management practices rather than performance oriented. This will change for the better, including improvement of career prospects for Indian lawyers in India and abroad, greater confidence among Indian law firms to pitch for business in foreign markets, etc. Indian business itself stands to benefit greatly from the adoption of quality contractual documentation, which will come in with foreign law firms. Already, significant changes in contractual documentation have occurred despite minimal contacts and these have begun to be apparent in the nature of commercial deals. The process will get accelerated greatly, when foreign law firms start practising in India.

The Future of Indian Legal Profession

India is a signatory to WTO and could be said to have an obligation to liberalise its services including legal services, and thus open them up to foreign competition. This is currently seen as the key to the future for foreign lawyers to be granted rights of practice as India will be required to honour this commitment and it offers a better route than through pursuit of litigation. In response to a Government of India requirement, The Law Commission, headed by Justice Jeevan Reddy, published a “Working Paper on the Review of the Advocates Act 1961” in autumn 1999. Section 4 is entitled “Entry of Foreign Legal Consultants and Liberalisation of Legal Practice”. The Paper has suggested that Section 29 of the Act be amended to include all services such as advising, research, documentation etc. besides representation in courts, tribunals and other statutory bodies. It has further stated that the Act should be amended to recognise qualifications in law obtained outside India for the purpose of admission of a foreign legal consultant as advocate.
It added that the Council should immediately proceed to frame rules necessary to standardize conditions for entry of foreign legal consultants and building up a fair and transparent regulatory system, as required under GATS. Additionally, the Council should choose a model of liberalization that suits the country as well as a regulatory regime to be adopted to regulate the entry and function of the foreign lawyers.

The Working Paper suggested that India could adopt both “full” and “limited” Licensing approaches as recommended by the International Bar Association for the regulatory system. Under full licensing, foreign lawyers are integrated as full members of local profession with no restriction on the scope of practice, provided they fulfil certain basic conditions.

In contrast, under limited licensing approach, the scope of practice is limited to advice on home country law, excluding all court work, host country law and law of any other jurisdiction where the foreign lawyer is not qualified and licensed. The debate is going on in the subject. There is still fairly strong opposition from the Indian legal profession to the idea of permitting the entry of foreign lawyers to practice in India, though many lawyers in India are showing a willingness to come to terms with foreign law firms provided the ground rules are properly framed. It can be expected therefore that the Indian legal profession will not wish to surrender its monopoly lightly.

In the meantime, the liberalisation of the legal practice in India is of relevance in the context of the WTO. India is a founding member of the WTO and an original signatory to the General Agreement on Trade in Services (GATS). Legal services fall within the provisions of GATS under the references to business services which include professional services such as legal services.

At Doha, India made the point that utmost priority should be attached to the completion of the outstanding agenda represented by the Implementation Issues arising out of the original Agreements adopted at the conclusion of the URN, and with the signing of the Marrakech Agreement leading to the setting up of WTO in 1995. India had specially mentioned the Agreement on Agriculture and GATS and has included legal services as an area where it has an interest. However, in the nature of the approaches that GATS has followed what would now be expected is for all the members to put forward demands, rather than there being discussions and negotiations. This was scheduled to be concluded by June 30th, 2002. Thereafter the process of
offers shall commence and the consequent bargaining for the finalisation of commitments and bindings under each of the professional services areas.

The Advocates who become experts in legal matters arising out of WTO/GATS agreements will have bright futures

**Conclusion**

Any attempt to liberalize trade in legal services must strike a balance between the concerns of national regulators regarding the practice of foreign attorneys and the benefits of increased international competition in the global legal market. Some of the restrictions imposed on foreign lawyers by national regulators are objectively justifiable and facilitate the effective and reliable provision of legal services in the domestic market. Such restrictions should not be sacrificed in an attempt to increase international competition. However, many of the restrictions on foreign lawyers are unreasonably discriminatory and should be eliminated.

Since India is also a signatory to the General Agreement on Trade in Services (GATS), it will have to enter into negotiations regarding opening up of service sectors to the Foreign Service suppliers. This involves the opening up of legal services to foreign lawyers and FLCs and foreign law firms. However it is hoped that before entering into any commitment that may affect the interests of legal profession in the country, the Government will have to consult the legal profession.

Last but not least, it was considered that ignorance of law is no excuse but now we can tell ignorance of WTO is no excuse in the interest of our nation.

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