

**INTERNATIONAL JOURNAL OF LAW**  
**MANAGEMENT & HUMANITIES**

**[ISSN 2581-5369]**

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**Volume 4 | Issue 4**

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**2021**

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# Influence of Globalization on Indian Legal Profession

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## ABSTRACT

*Before the independence, the objective of the law was only limited to the maintenance of peace by punishing the wrongdoers and resolving litigations. But after the independence with the establishment of constitutional supremacy in India, the state is now obligated to provide social, economic, and political justice for all sections of the community with Equality of status and opportunity. Therefore, the legal profession became the issue of national debate, and globalization led this debate at the international level. As a signatory to the General Agreement on Trade and Services (GATS), India is obligated to liberalize its legal sector. However, it has not been able to make much progress on this behalf due to stiff opposition from Indian lawyers' representative bodies. In this backdrop, this article explores the possibility of the liberalization of legal services in India.*

## I. INTRODUCTION

*“International trade, migration and globalized finance are the ingredients of a cocktail named globalization, the recipe of which we haven't yet mastered and the taste of which we may, if we're not careful, find bitter”.*

-----PASCAL LE MERRER<sup>2</sup>

“Globalization” is a very popular word these days. It is hard to read a newspaper, peruse the business section of a magazine, or watch the nightly news on television without encountering the term as a shorthand expression for the synergistic entwinement of complex economic, cultural, and political phenomena.<sup>3</sup> The term globalization is generally used to describe an increasing internationalization of markets for goods and services, the means of production, financial systems, competition, corporations, technology, and industries.<sup>4</sup> Now, numerous new actors from every market in the world are simultaneously in competition on every market<sup>5</sup>, and

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<sup>2</sup> Pascal Le Merrer, *The Economics of Globalisation: Opportunities and Fractures*, de Boeck, Brussels, (2007).

<sup>3</sup> Mary C. Daly, *The Ethical Implications Of The Globalization Of The Legal Profession: A Challenge To The Teaching Of Professional Responsibility In The Twenty-First Century*, 21 Fordham Int'l L.J. 1240 (1997-1998).

<sup>4</sup> OECD Glossary of Statistical Term, available at <https://stats.oecd.org/glossary/detail.asp?ID=112>. (Last Visited on July 15, 2016).

<sup>5</sup> T. Hatzichronoglou, *Globalisation and Competitiveness: Relevant Indicators*, OECD Science, Technology and

Legal Sector is not an exception.

With the advent of globalization, various trends permeated the legal profession, one of which is legal process outsourcing.<sup>6</sup> Over the past several years, there has been a vigorous debate in the United States over the benefits of outsourcing.<sup>7</sup> Clearly, in conventional discourse, outsourcing has come to signify the transfer of services to markets where costs are lower to employers.<sup>8</sup> There is no shortage of stories that discuss how American companies have been increasingly turning to cheaper workers in places like India, China, and Brazil to perform lower-skilled, labor-intensive jobs, such as staffing those now-famous call centers.<sup>9</sup>

In this scenario, countries are forced to liberalize their legal sector and to open up their market for foreign law firms. However, many of the countries have their own strict regulation for the legal profession; therefore, it is not very easy to practice law in other jurisdictions, i.e., In India, the practice of law is governed by the Advocates Act of 1961 under which foreign law firms are not allowed to engage in the practice of law in India. The inflexible attitude of the regulating authorities to open the legal sector for foreign players is ironic because the legal services sector is one of the most growing sectors in India.

## II. GLOBALIZATION AND THE LEGAL SERVICES SECTOR

### A. THE CONCEPT OF GLOBALIZATION

Economic globalization is highly controversial as most of this planet's inhabitants experience some of the considerable benefits and also the tragic downside of globalization in their lives.<sup>10</sup> Economist Joseph Stiglitz in his book *Globalization and its Discontents* defines economic globalization as:

*“...the closer integration of the countries and peoples of the world which has been brought about by the enormous reduction of costs of transportation and communication, and the breaking down of artificial barriers to the flows of goods, services, capital, knowledge, and (to a lesser extent) people across borders”.*

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Industry Working Papers, No. 1996/05, OECD Publishing, Paris 3 (1996).

<sup>6</sup> Neil B. Nocup, *From nobility to novelty: The legal profession at a crossroad An appraisal of legal process outsourcing And its 'Corporatizing' effect on the practice of law*, 85 Phil. L.J. 190 (2010-2011).

<sup>7</sup> Jayanth K. Krishnan, *Outsourcing And The Globalizing Legal Profession*, 48 Wm. & Mary L. Rev. 2192 (2006-2007).

<sup>8</sup> Id.

<sup>9</sup> Jagdish Bhagwati, Op-Ed., *Why Your Job Isn't Moving to Bangalore*, N.Y. TIMES, Feb. 15, 2004, § 4, at 11.

<sup>10</sup> Jean-Yves Huwart & Loïc Verdier, *Economic Globalisation Origins and Consequences*, OECD Insights, OECD Publishing, 10 (2013).

OECD also explained this concept in 1996 in the terms as: “An Economic phenomenon, globalization is manifested in a shift from a world of distinct national economies to a global economy in which production is internationalized, and financial capital flows freely between countries”.<sup>11</sup>

Over the last four decades, the world has witnessed great economic integration. During the 1970s and 1980s, the spread of economic activity beyond the national boundaries was termed as ‘Internationalization’. According to the OECD (Organization for Economic Co-operation and Development), the term internationalization has proved too limited, which can be replaced with a new phenomenon, Globalization which is a more advanced and complex form of internationalization that implies a degree of functional integration between internationally dispersed economic activities.

## **B. IMPACT OF GLOBALIZATION ON LEGAL PROFESSION**

The term ‘globalization’ in the context of legal service refers to opening up the legal market in a country to foreign nationals for setting up law firms and consultancy services and to practice in the court of law.<sup>12</sup> Legal services do not exist in a vacuum.<sup>13</sup> Legal services constitute a critical catalyst for facilitating cross-border transactions and foreign direct investments (“FDIs”) that underpin the multilateral business network.<sup>14</sup> For example, three of the five largest (based on revenues) law firms in the world are headquartered in the United Kingdom (i.e., Clifford Chance, Freshfields, and Linklaters), and each of these firms has over half of its lawyers located in various foreign countries.<sup>15</sup> Most of the ten largest global law firms now have more lawyers located outside their home country office than in their home country.<sup>16</sup> One study estimates that America will lose almost 75,000 legal jobs to poorer countries by 2015.<sup>17</sup> Outsourcing is the result of those with capital seeking lower-cost services within more affordable markets.<sup>18</sup> In order to compete for trade and investments on the global platform,

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<sup>11</sup> See, OECD, *Globalization: What Opportunity and Challenges for Governments* (OECD, Paris, 1996).

<sup>12</sup> Faisal Fasih, *Liberalization of Legal Profession and Its Implication on Legal Education: Indian Perspective*, in GLOBALIZATION AND DEVELOPMENT CURRENT TRENDS 156 (Shantanu Chakrabarti & Kingshuk Chatterjee ed., 2012).

<sup>13</sup> Chew Seng Kok & Yeap Suan Hong, *Liberalization Of Legal Services Embracing A World of Opportunities In The ASEAN Region*, 10 US-China L. Rev. 142 (2013).

<sup>14</sup> Pasha L. Hsieh, *ASEAN'S Liberalization Of Legal Services: The Singapore Case*, 8 Asian J. WTO & Int'l Health L & Pol'y 485 (2013).

<sup>15</sup> See Michael A. Hitt, Leonard Bierman & Jamie D. Collins, *The Strategic Evolution of Large U.S. Law Firms*, 50 Bus. HORIZONS (forthcoming Jan.-Feb. 2007) (manuscript at 5 tbl. 2, on file with authors).

<sup>16</sup> Laurel S. Terry, *U.S. Legal Ethics: The Coming of Age of Global and Comparative Perspectives*, 4 WASH. U. GLOBAL STUD. L. REV. 463, 495 tbl. 4 (2005) (citing *The Global 100*, AM. LAWYER, 2004.).

<sup>17</sup> Darya V. Pollak, *I'm Calling My Lawyer... In India! Ethical Issues in International Legal Outsourcing*, 11 UCLA J. Int'l L. & Foreign Aff. 99 (2006).

<sup>18</sup> Krishnan, *supra* note 7 at 2197.

there is a need for Asia to embrace liberalization as liberalization is the key factor in attracting foreign direct investments.<sup>19</sup>

### C. THE INTERNATIONAL LEGAL MARKET

Globalization has increased the size of the legal market at the international level. According to the 2012 Economic Census (the census of U.S. business that takes place once every five years), the market for U.S. legal services totals roughly \$289 billion.<sup>20</sup> The UK Legal Services Market Report 2015 from IRN Research reported that the UK legal services market is valued at an estimated £29.3bn and, in 2013, annual growth was the highest recorded for many years.<sup>21</sup> In 2014, revenue growth in the UK legal services market overall was likely to be around 6%, and growth of around 5-6% per year can be expected in 2015 and 2016. In 1991, India opened its borders to allow multinational corporations into the country through a number of financial and economic reforms.<sup>22</sup>

According to Economic Survey 2013-14, the Indian legal sector also grew by an average of 8.2% annually from 2005 to 2012. This is a good enough reason to think about the liberalization of the legal profession in India in the form of further reforms in the legal sector. The survey further mentioned that “*India has benefited from opening up to the foreign competition in many other areas; India should explore allowing foreign law firms greater access to the Indian market*”.<sup>23</sup> Over the next half-century, the balance of economic power is expected to shift dramatically, with Asia transforming into a fast-growing region.<sup>24</sup> Particularly with regard to India, everyone seems to be in India. All but one of the top ten 2011 U.S. Fortune 500 companies have a presence in the Indian market.<sup>25</sup> In this regard, India is also planning to liberalize its legal profession, and in the near future foreign law firms may get the right to practice Indian law.

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<sup>19</sup> Kok, *supra* note 13.

<sup>20</sup> William Henderson and Evan Parker, *The American Lawyer* (December 3, 2015).

<sup>21</sup> See UK Legal Services Market Report 2015, IRN Research Report (5th edition 2015), available at <http://www.irn-research.com/sector-specific-services/legal-services/>. (Last Visited on October 16, 2016).

<sup>22</sup> Surendra K. Kaushik, *India's Evolving Economic Model A Perspective on Economic and Financial Reform*, 56 AM. J. ECON. & Soc. 69,78 (1997), Shardul Shroff, *An Overview of the Legal Regime Governing Capital/Markets in India and Current Developments*, in *DOING BUSINESS IN INDIA* 55 (PLI Corp. Law and Practice, Course Handbook Se. No.18730, Feb.-Mar. 2009).

<sup>23</sup> Economic Survey: 2012-13, available at <http://indiabudget.nic.in/survey.asp>. (Last Visited on September 27, 2016)

<sup>24</sup> Kok, *supra* note 13.

<sup>25</sup> See About Us, BERKSHIRE HATHAWAY, <http://www.berkshireinsurance.com/about-us/> (last visited Dec. 20, 2011) (Berkshire India is a majority-owned non-direct subsidiary of Berkshire Hathaway Inc. incorporated in India); About Us: India, WALMART STORES, <http://walmartstores.com/AboutUs/276.aspx> (last visited Dec. 20, 2016) (Walmart India has seven stores as of August 31, 2011, and a joint venture with Bharti Enterprises operating as Bharti Walmart Pvt. Ltd.); CONOCOPHILLIPS, <http://www.conocophillipslubricants.com/marketers-distributors/Default.aspx> (last visited Dec. 20, 2016).

### III. LIBERALIZATION OF THE LEGAL PROFESSION: INDIAN SCENARIO

Like other Asian countries, India is also benefited from globalization. India once had a completely closed economy. In 1991, India opened its borders to allow multinational corporations into the country through a number of financial and economic reforms.<sup>26</sup> Globalization in India is now two-decade-old since the commencement of WTO in 1995. After these reforms, scores of Fortune 500 companies opened offices in India<sup>27</sup> and were, in fact, encouraged to do so by the Indian Government.<sup>28</sup> We can consider this period as India's time of economic liberalization. The globalization of trade and business has led to a globalization of legal services<sup>29</sup> and a growing demand for legal advice that transcends the borders of one jurisdiction.<sup>30</sup>

Amongst the industries that have grown exponentially since the reforms were initiated is the service sector, which now constitutes a cornerstone of India's GDP; in the wake of these developments, it is interesting to note that the legal services market in India remains extremely reluctant to adapt to the changing world.<sup>31</sup> The service industries already play an important role in the Indian economy and are growing faster than other components of India's Gross Domestic Product (GDP). Services accounted for 59.9 percent of the GDP of India in 2013-14, are a sector of critical interest in India. India's imports in commercial services have grown to US\$ 127 billion in 2013, which is 2.9 percent of the total imports of world trade (US\$4340 billion) in commercial services. In 2013 India ranked 7th in services imports of the world trade in commercial services.

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<sup>26</sup> Kaushik, *supra* note 22.

<sup>27</sup> About Us: India, WALMART STORES, <http://walmartstores.com/AboutUs/276.aspx> (last visited Dec. 20, 2016) (Walmart India has seven stores as of August 31, 2011, and a joint venture with Bharti Enterprises operating as Bharti Walmart Pvt. Ltd.); FORD MOTOR COMPANY, <http://www.india.ford.com/servlet/Satellite?pagename=DFY/IN> (last visited Dec. 20, 2016) (Ford operates in India via Ford India Private Limited); *GE in India*, GENERAL ELECTRIC, <http://www.ge.com/in/company/factsheet.in.html> (last visited Dec. 20, 2016) (GE has over 13,000 employees in India); *General Motors India Strengthens Its Network in Tamil Nadu*, GENERAL MOTORS, [http://media.gm.com/content/media/in/en/news.detail.html/content/Pages/news/in/en/2011/0721GM\\_India\\_strengthensNetwork.inTamil-Nadu](http://media.gm.com/content/media/in/en/news.detail.html/content/Pages/news/in/en/2011/0721GM_India_strengthensNetwork.inTamil-Nadu) (last visited Dec. 20, 2016) (General Motors operates in India as General Motors India).

<sup>28</sup> Shishir Sharma, *Issues Relevant for Foreign Companies Doing Business in India*, in *DOING BUSINESS IN INDIA* 275 (PLI Corp. Law and Practice, Course Handbook Ser. No. 11926, Feb.-Mar. 2007).

<sup>29</sup> Krishnendu Sen & Ritankar Sahu, *Need for FLCs in India with Respect to Honoring GATS*, 6 *J. INT'L TRADE L. & POL'Y* 25, 27 (2007).

<sup>30</sup> Arno L. Eisen, *LEGAL Services In India: Is There An Obligation Under The Gats Or Are There Policy Reasons For India To Open Its Legal Services Market To Foreign Legal Consultants?*, 11 *Rich. J. Global L. & Bus.* 273 (2011-2012)

<sup>31</sup> MANOJ KUMAR, *Liberalisation of legal services in India*, *Governance Now*, JULY 27, 2015, available at <http://www.governancenow.com/news/blogs/liberalisation-of-legal-service>. (Last Visited on November 14, 2016).

## A. LEGAL FRAMEWORK FOR THE LEGAL PROFESSION IN INDIA

The legal profession in India is one of the most lucrative and growing professions, with approximately more than 1.3 million lawyers in India as reported by the Bar Council of India in 2011, with an average annual growth rate between 2007 and 2011 of around 4 percent. After the globalization wave in India, the legal sector was also developed profoundly. Foreign legal consultants 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.<sup>32</sup> But foreign law firms are banned from the practice of law in India. Domestic law still plays a marginal role in the legal services trade due to barriers such as qualification requirements, which are shaped along national lines.<sup>33</sup>

The Advocates Act, 1961 and the Bar Council of India Rules, 1975 are the rules which regulate the legal services sector in India, and the Bar Council constituted under Advocates Act acts as the final regulating body.<sup>34</sup> Under the present regime, a foreigner can be enrolled as an advocate after obtaining a degree from a university recognized by the Bar Council of India and must belong to a country where Indian citizens have a reciprocal right to practice.<sup>35</sup> The term “Practice” is not defined in the Act. However, the combined reading of Sections 29<sup>36</sup>, 30<sup>37</sup>, and 33<sup>38</sup> of the Advocates Act, 1961 restricts the term practice to appearance before any court, tribunal or authority; but few paralegal practices like legal advisory, documentation, and Alternative Dispute Resolution (ADR) mechanism are beyond its scope.

Section 49 (ah) of the Advocates Act, 1961 provides general power of the Bar Council of India to make Rules regarding the conditions subject to which an advocate shall have the right to practice and the circumstances under which a person shall be deemed to practice as an advocate

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<sup>32</sup> See Trade Policy Division, DEPT. OF COM., Govt. OF INDIA, A CONSULTATION PAPER ON THE LEGAL SERVICES UNDER GATS, available at <http://commerce.nic.in/trade/consultation-paper-legal-services-GATS.pdf> (Last Visited on December 6, 2016).

<sup>33</sup> *Id.*

<sup>34</sup> See WTO Council for Trade in Services, Legal Services, Background Note by the Secretariat, S/C/W/318, (June 14 2010), available at <https://docs.wto.org/dol2fe/Pages/SS/DirectDoc.aspx?filename>. (Last visited on December 16, 2016).

<sup>35</sup> See Section 24 & 47 of the ADVOCATES ACT, 1961. See also Faisal Fasih, *Liberalization of Legal Profession and Its Implication on Legal Education: Indian Perspective*, in GLOBALIZATION AND DEVELOPMENT CURRENT TRENDS 156 (Shantanu Chakrabarti & Kingshuk Chatterjee ed., 2012).

<sup>36</sup> “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 practice the profession of law, namely, advocates”.

<sup>37</sup> “Subject to the provisions of this Act, every advocate whose name is entered in the State roll shall be entitled as of right to practice throughout the territories to which this Act extends,—(i) in all courts including the Supreme Court; (ii) before any tribunal or person legally authorized to take evidence; and (iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practice”.

<sup>38</sup> “Except as otherwise provided in this Act or in any other law for the time being in force, no person shall, on or after the appointed day, be entitled to practice in any court or before any authority or person unless he is enrolled as an advocate under this Act”.

in a court. According to BCI Rule 2, 1973 of Chapter - III (Conditions for the right to practice) (under Section 49 (1) (ah) of the Act), an Advocate cannot enter into a partnership or any other arrangements for sharing remuneration with non-Advocates. In this regard of regulating the legal profession, BCI Rule 36 is also very important, which prohibits advocates in India to solicit work or advertise, either directly or indirectly, for any purpose and even indicating the area of their specialization. Therefore, the legal profession in India is highly regulated by the Advocates Act, 1961 and the Bar Council of India Rules, 1975, whereas, of now, there is no scope for the establishment of foreign law firms to practice Indian law.

## **B. THE CONTROVERSY REGARDING LIBERALIZATION OF LEGAL PROFESSION**

The issue of liberalizing the Indian legal services sector for foreign lawyers is being debated for over 20 years, when in 1993 when three foreign law firms, i.e., Ashurst Morris of the UK and White & Case and Chadbourne & Parke of the US, applied to the Foreign Investment Promotion Board (FIPB) for starting branches in India but their applications were rejected. Under Section 29 of the Foreign Exchange Regulation Act 1973 (FERA), they were allowed for a license to open a liaison office for “carrying on any activity of a trading, commercial or industrial nature.” They surprisingly did not apply under Section 30 “to practice a profession or occupation”.<sup>39</sup> The petitioner, ‘*Lawyers Collective*’, a group of advocates formed to promote social causes, filed public interest litigation (PIL) in the Bombay High Court and opposed the licences, arguing that the practice of law even for non-litigious work was governed by the Advocates Act of 1961.<sup>40</sup> The Bombay High Court held that:

*“The Reserve Bank of India was not justified in granting permission to foreign law firms to open liaison office in India under Section 29 of the Act” and that practicing the profession of law under the Advocates Act covered both litigation practice as well as “persons practicing in non-litigious matter”.*

Until 2012, India barred foreign lawyers from formally practicing law in the country. On February 21, 2012, however, the Madras High Court, in *A.K. Balaji v. Gov’t of India*<sup>41</sup>, handed a victory to international law firms keen on entering the Indian market alongside their globalizing clients. A PIL was filed before the Madras High Court by A.K. Balaji (a practicing lawyer) against 31 foreign law firms indulged in practicing the profession of law in India. The government contended that “the Bar Council of India regulates the advocates who are on the

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<sup>39</sup> Anil Divan, *Restrict foreign access to the Bar*, The Hindu (March 21, 2013), available at <http://www.thehindu.com/opinion/lead/restrict-foreign-access-to-the-bar>. (Last Visited on December 16, 2016).

<sup>40</sup> Ajay Shamdasani, *What now for foreign law firms?*, India Business Law Journal, 29 (Feb. 2010), available at [www.nishithdesai.com/.../user.../What\\_now\\_for\\_foreign\\_law\\_firms-.pdf](http://www.nishithdesai.com/.../user.../What_now_for_foreign_law_firms-.pdf). (Last Visited on October 25, 2016)

<sup>41</sup> W.P. No. 5614 of 2010 (Madras H.C. Feb. 21, 2012).



rolls, but law firms as such are not required to register themselves before any statutory authority nor do they require any permission to engage in non-litigation practice”.<sup>42</sup>

The Madras High Court, while following the Bombay judgment, surprisingly deviated from it and made several concessions to the benefit of foreign lawyers, and the Court has only permitted foreign lawyers to visit India for a temporary period on a “fly-in and fly-out” basis for the purposes of giving legal advice to their clients in India regarding foreign laws<sup>43</sup> Now both the cases are before the Supreme Court of India and the Indian judiciary has been grappling with the question of whether to permit foreign lawyers to practice in India, but it doesn’t look like any end is in sight at least without parliamentary intervention.<sup>44</sup>

### C. INDIAN LEGAL SERVICE MARKET AND GATS

Within the global economy, the significance of trade in services is hard to ignore.<sup>45</sup> In 2013, world commercial services exports were \$4.6 trillion, which grew at the rate of 6%. The principal international treaty addressing multi-jurisdictional practice (and thus, legal services) is the 1994 General Agreement on Trade in Services (GATS), signed “as part of the set of agreements creating the World Trade Organization”.<sup>46</sup> Cross-border trade and the temporary movement of natural persons are the two most important modes of supply of legal services under GATS.<sup>47</sup>

GATS classifies 12 sectors for which commitments may be made by the member countries. In the WTO’s “Services Sectoral Classification List”<sup>48</sup>, “legal services” are listed as a sub-sector of “business services” together with other “professional services”. India as a signatory to the General Agreement on Trade and Services (GATS), is under obligation to liberalize its legal sector but has not been able to make much progress on this behalf due to stiff opposition in India.

## IV. PROPOSED INITIATIVE TO LIBERALIZE INDIAN LEGAL PROFESSION

Section 45 of the Advocates Act makes it clear that the Act aims at prohibiting “practicing in

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<sup>42</sup> Divan, *supra* note 39.

<sup>43</sup> *Id.*

<sup>44</sup> Report, S., 2021. SCOI Report: Uncertainty ahead for foreign lawyers case in SC: Lawyers Collective make appearance with Datar, BCI. [online] LegallyIndia. Available at: <<http://www.legallyindia.com/supreme-court/scoi-report-uncertainty-ahead-for-foreign-lawyers-case-in-sc-lawyers-collective-make-appearance-with-datar-bci-20150915-6598>> [Accessed 2 August 2021].

<sup>45</sup> A Consultation Paper on Legal Services Under GATS, *supra* note 32.

<sup>46</sup> Laurel S. Terry, *GATS' Applicability to Transnational Lawyering and its Potential Impact on U.S. State Regulation of Lawyers*, 34 VAND. J. TRANSNAT'L L. 989, 998 (2001).

<sup>47</sup> A CONSULTATION PAPER ON THE LEGAL SERVICES UNDER GATS, *supra* note 32.

<sup>48</sup> Services Sectoral Classification List - MTN/GNS/W/120, available on [https://www.wto.org/english/tratop\\_e/serv\\_e/sanally\\_e.htm](https://www.wto.org/english/tratop_e/serv_e/sanally_e.htm).

any Court or before other Authority” and has nothing to do with rendering legal advice outside the Courts, etc.<sup>49</sup> If one reads Section 33 with Section 45 of the Advocates Act, ‘practicing in any Court or before any authority’ is only confined as the professional right to the advocates but ‘counseling’ or ‘advise’ as a professional activity has not been made the monopoly of the professional right kept with only advocates.<sup>50</sup> In 2014 the Ministry of Commerce began working on a cabinet paper through a 15-20 member inter-ministerial group with limited representation from non-government experts.<sup>51</sup> In January 2015, then Commerce Secretary Mr. Rajeev Kher said that the government had started discussions with the Bar Council of India and other stakeholders to open up the legal services sector to foreigners in a calibrated manner.<sup>52</sup> The Department of Industrial Policy and Promotion (DIPP) is working on a proposal that would permit foreign legal firms to operate in India through a proprietary concern and only for non-litigious and arbitration services.<sup>53</sup> President of the Society for Indian Law Firms (SILF), a representative body of corporate law firms, also suggested that the foreign law firms should be allowed in phased manners, which would take 5 to 7 years. Adopting a cautious approach, India has also informed World Trade Organization (WTO) members that it is looking at opening up its legal services sector to foreign lawyers and law firms but would do so only after consultations with all stakeholders, including the Bar Council of India (BCI).<sup>54</sup> On January 3, 2017, the Ministry of Commerce and Industry had taken a positive move to liberalize the legal market by issuing a notification in the Gazette of India amending the Special Economic Rules governing Special Economic Zones (SEZs). Economic Times reported that foreign law and accountancy firms now have a chance to operate in India on their own.

## V. CONCLUSION

My discussions in this paper itself raise a critical policy question: whether the time has come to take deregulation of the Indian legal profession seriously. Jack Guttenberg likewise asserts

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<sup>49</sup> Sec. 45 Penalty for persons illegally practicing in courts and before other authorities - Any person who practices in any court or before any authority or person, in or before whom he is not entitled to practice under the provisions of this Act, shall be punishable with imprisonment for a term which may extend to six months.

<sup>50</sup> See Report on TRADE IN LEGAL SERVICES, Project Study Sponsored by Ministry of Commerce Government of India, “TRADE IN SERVICES: OPPORTUNITIES AND CONSTRAINTS”, 13 (1999).

<sup>51</sup> See The Liberalization Buzz in the Indian Legal Sector, Legal League Consulting, available at [www.legalleague.co.in](http://www.legalleague.co.in). (Last Visited on December 16, 2016).

<sup>52</sup> PTI, Government discussing opening up of legal sector to foreign firms, The Economic Times, Jun 29, 2015, available at [http://articles.economictimes.indiatimes.com/2015-06-29/news/63937872\\_1\\_indian-law-firms-advocates-act-commerce](http://articles.economictimes.indiatimes.com/2015-06-29/news/63937872_1_indian-law-firms-advocates-act-commerce), (Last Visited on June 8, 2016).

<sup>53</sup> Mandhani, A., 2021. DIPP proposal: Foreign Law firms to operate in India through Proprietary Concerns, only for Non-litigious services. [online] Available at: <<http://www.livelaw.in/dipp-proposal-foreign-legal-firms-to-operate-in-india-through-proprietary-concerns-only-for-non-litigious-services/>> [Accessed 2 August 2021].

<sup>54</sup> Amiti Sen, *Opening up of legal sector only after consultations with all: India to WTO*, The Hindu Business Line, August 16, 2015, available at <http://www.thehindubusinessline.com/news/opening-up-of-legal-sector-only-after-consultations-with-all-india-to-wto>, last visited on September 16 2016.

that the current system of lawyer regulation is based upon outdated assumptions about the nature of the profession and the practice.<sup>55</sup> In my opinion, we have always suffered from Xenophobia or the fear of the unknown. This fear is responsible for our protectionist approach in the legal profession in India, but when this protectionism gets beyond a point, it puts us in a smaller silo where the levels of ambition also get limited. It is really three things that matter - professional ethics, competence, and cost.<sup>56</sup> I really do not understand why we cannot beat the world in these three things. I strongly believe that time has come for a massive change to liberalize the legal profession in India, if not to beat the rest of the world but at least compete and capture the global space for us.

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<sup>55</sup> Jack A. Guttenberg, *Practicing Law in the Twenty-First Century in a Twentieth (Nineteenth) Century Straightjacket: Something Has to Give*, 2012 MICH. ST. L. REV. 415.

<sup>56</sup> Finance Minister Mr. Arun Jaitley, Global market turmoil an opportunity to grow in The Financial Express dated August 25, 2015.