



STRATEGY PAPER
FOR
REFORM AND OPENING UP
OF
INDIAN LEGAL SERVICE MARKET
FOR
THE US LAW FIRMS

By

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Background:

Though India's legal sector is estimated to be more than \$640m in 2010 by Value Notes Database, it has an increase of 438% since 2006. With an average AGR of around 7-9%, India is amongst the fastest growing economies in the world¹. India has companies with world-class capabilities in sectors such as automotive, information technology, telecommunication, pharmaceuticals, bio-tech, and manufacturing. With more and more international companies investing in India and Indian companies going global, there has been a significant increase in cross-border deals and transactions. According to RSG's India Report, foreign acquisitions by Indian companies tripled to \$13.9 billion in 2008 from \$4.5 billion in 2005. Information technology, telecom and manufacturing companies engage in regular deal making – Bharti's acquisition of Zain at 10.7 billion and Tata Steel's Corus at \$ 12.4 billion. Indian companies in software, auto, bio-tech, and pharmaceutical are becoming active in IP space. MNCs in India and Indian globalizing companies represent a huge market for the foreign law firms.

However, the rules of the Bar Council of India, the Indian Advocate Act and the recent judgment of the Mumbai High Court have imposed restrictions on the activities of foreign law firms in India. The law requires that anyone wishing to practice law must enroll as a member of the Bar Council of India. The foreign nationals must belong to a country that allows Indian nationals reciprocal rights to practice law in their countries². Foreign Direct Investment is not permitted in this sector, and international law firms are not authorized to open offices in India³. However, foreign services providers may be engaged as employees or consultants in local law firms, but they cannot sign legal documents, represent clients, or even be partners.

There is need to develop an integrated multi prong strategy for the opening up of the Indian legal market for the benefit of fast globalizing Indian organizations in need of the best of the comprehensive legal services, infusing competition and choices, cross fertilization of systems, harmonization, global best practices, productivity enhancement...

1 Economic Times of India

2 Bar Council of India Rules

3 Reserve Bank of India

Central objective:

- To open up the Indian legal market for US law firms – thereby imparting global best practices for the growth of this sector.

Related objectives:

- Allow free transfer of knowledge and expertise for the best comprehensive legal services to clients – individual and corporate – both national and international.
- Permit greater collaboration between the Indian legal practitioners and international legal fraternity to enable Indian legal professionals and international law firms to optimize growth on the basis of comparative advantages.
- Organize and streamline Indian legal pleading system to cater to the emerging legal needs and facilitate India's economic integration with the global requirements.

Legal Challenges:

a. Advocates Act, 1961 (<http://www.barcouncilofindia.org/bar-council/advocateact.php>)

Advocates Act came into existence in 1961 on the basis of a bill formulated by the All India Bar Committee set up in 1953 along with a Law Commission set up to suggest reforms of judicial administration. The Advocates Act, 1961 governs the procedures of legal practice in India along with standards of legal education as the qualification for the same.

Some relevant sections of the Advocates Act are:

Section 2(1)(a) – ‘Advocate’ means an advocate entered in any roll under the provisions of this Act;

Section 2(1)(h) – ‘Law Graduate’ means a person who has obtained a Bachelor’s degree in law from any University established by law in India;

Section 2(1)(k) – ‘roll’ means a roll of advocates prepared and maintained under this Act;

Section 7(1)(ic) – Functions of Bar Council of India – to recognize on a reciprocal basis foreign qualifications in law obtained outside India for the purpose of admission as an advocate under this Act;

Section 24(1)(a) – Persons who may be admitted as advocates on a State roll – Needs to be a citizen of India.....

“Provided that subject to other provisions contained in this Act, a national of any other country may be admitted as an advocate on a State roll, if citizens of India, duly qualified, are permitted to practice law in that other country.”

Section 29 – Advocates to be the only recognized class of persons entitled to practice law – “....only advocates can practice the profession of law....”

Clarification – The professional duty includes the counseling to client, legal opinions, drafting, affidavits, pleading and participating in Law Conference (Pravin C Shah vs. K.A. Mohd. Ali, (2001) 8 SCC 650).

Section 47 – (1) talks about unfair discrimination in that country

Section 47(2) – Subject to the provisions of sub-section (1), the Bar Council of India may prescribe the conditions, if any, subject to which foreign qualifications in law obtained by persons other than citizens of India shall be recognized for the purpose of admission as an advocate under the Act.

Section 49 – General powers of the Bar Council of India to make rules, including: (ag) – the class or category of persons entitled to be enrolled as advocates.

Section 49A – Power of Central Government to make rules, including:

(c) – the class or category of persons entitled to be enrolled as advocates.

b. Rules of Bar Council of India (<http://www.barcouncilofindia.org/bar-council/rules-index.php>)

Section 6(1) – provides for Legal Education Committee

Section 8(c) – talks about the powers of Bar Council to allow foreign qualifications in law obtained by persons other than citizens of India.

Section 24 – common admission test (All India Bar Examination) for the academic year 2009-10 onwards after enrollment under the section to bring in the standardization and in line with practices internationally.

Thus important points to remember in formulating any strategy are:

1. Foreign citizens having requisite qualifications from foreign universities may be allowed to become advocates and practice law in India, subject to the approval of the Bar Council of India, Bar Council(s) or the Central Government.
2. The powers provided to the Central Government to make any such rules is the final and can supersede rules made by any other body under any prevailing law.

The rules made by Central Government shall prevail over the rules of the Bar Council.

Recent adverse incidences in India:

A) JUDGEMENT OF THE BOMBAY HIGH COURT – Writ Petition No. 1526 of 1995

Many questions of law have been clarified vide this judgment of the honorable court. Some issues to be highlighted from the judgment are as follows:

1. *Para 4 – The very writ petition was admitted on the basis that the Petitioners viz. Lawyers Collective represent the collective opinion of the majority of legal practitioners in India – it can be disputed*
2. *Petitioners viz. Lawyers Collective had filed the petition in Public Interest. It can be argued if it is truly in Public Interest given the fact that none of the other stakeholders viz. the clients, litigants, have been at all prima facie been taken into consideration.*
3. *It has also been pointed out in the Judgment that the petitioner is concerned with ensuring that the ethical practice prevail in legal profession in India. Would allowing foreign citizens practice law in India tantamount to unethical practice?*
4. *Technically, decision of the High Court can be reviewed by the Supreme Court but this option has to be evaluated carefully because a judgment of the Supreme Court is final and even the Government of India is Constitutionally bound by such a decision unless it contravenes any fundamental ideal.*

B) Impact of Madras High Court petition on LPOs filed on March 18, 2010

The current writ petition in the Madras High Court definitely is a problem but nevertheless it has not touched upon any new legal issue vis-à-vis the Bombay High Court decision. The Madras petition has delved upon issues of reciprocity vis-à-vis the English court and is an appeal for opening up of the UK's legal market for Indians. The demand of reciprocity needs to be studied to form a strategy. But no new legal point has been touched upon and the petition can be dealt with by having good lawyers to quash this case.

Unlike UK, it is much more problematic for US because the states implement their Bar examinations separately.

Major Stakeholders in India & their current positions:

1. Government of India –

The position of government of India has been neutral so far. Even the Counsel for Government of India said so in his submissions before the Bombay High Court. Individual ministers have often expressed their ideas on this subject but that need not necessarily reflect the official position of the government in place. It is also construed as a negotiating point in multilateral negotiations. Keeping in mind of 4 years left for the present government at the center, it is the best time to lobby for the opening of the legal sector.

2. Bar Councils and Associations

a. Bar Council of India

Generally follows the adopted line of the government of India. Many of the new members, after the recent election of the council have close relationship with the major political parties. Some of the leaders of the key Indian law firm play deciding role at BCI and some of them oppose the opening of the market.

b. State Bar Councils

The office bearers (not necessarily the individual members) in general would be opposed to the idea of opening up of this sector. The members at

large can be informed and educated on the benefits of the foreign law firms by the effective PR exercise.

c. *Bar Associations* –

- i. Supreme Court Bar Association – It has high profile members and looks a divided house on the topic.
- ii. High Court Bar Associations – The members can be treated as an ally. The members are not as high profiles as SCBA but have strong regional roles, work closely with state governments and have larger aspirations.
- iii. District Bar Associations – They are large in numbers, and unclear on the issue. The members have the notion that the entry of the foreign firms will negatively impact their earnings. Though not understandable as they don't have significant percentage of their works in corporate law and are majorly in litigation, foreign law firms have little interests to get in the litigation.

BCI and State Bar councils have statutory backing. They emphasize that opening of the legal sector needs different treatment than the finance, telecom, retail etc. because the practice of law is more important as it is a 'noble profession' - which is subject of debate.

Opposition - Stakeholders and their Mapping:

- d. Law firms – Indian law firms had some genuine demands of reforms to create a level playing field with foreign firms like the relaxation of rule to advertise, amendment in the Limited Liability Partnership bill to increase the number of partners from 20, and foreign lawyers should be the subject to the same disciplinary rules as they are. *It is in interest of every one that efficient Indian law firms successfully compete with international firms in India and gain from sound internal processes of intl. firms, best practices managing global operations etc through cross fertilization.*

Like the opening of any sector in emerging countries (recently Korea and China opened their legal markets), the opposition has few genuine concerns, some anticipated worries and rest unfounded fears. Similarly, the Indian law firms have diverse views on opening of the legal market. Surprisingly, majority of them want to establish business relationship with foreign law firms for the international assignments as they have limited expertise to execute. So their respective stand needs to be regularly mapped to dispel the anticipated and unfounded worries. At the same time, government should and is addressing their genuine concerns. The Bar Council of India has allowed them to advertise and Limited Liability Partnership Act is amended, came in effect from January 7th 2009 and in practice by Ministry of Corporate Affairs (MCA) from April 1st, 2010 (**Appendix 1**). These reforms should move many of them from negative to neutral and neutral to positive. The list of sector wise law firms and their respective position are mapped (**Appendix 2 & 2A**). USIBC and US law firms must have wide-ranging engagement strategy to bring change.

- e. Advocates – Total number of lawyers enrolled with state bar councils in India are 10,86,626 (**Appendix 3**). Ironically, the advocates practicing in the litigation are opposing the opening of the legal sector. There is a general perception amongst them that their income will reduce if increasing percentage of clients start going to law foreign firms – even Indian law firms. Somehow, advocates have not accepted the position that the international law firms have little interest to appear in court and on the contrary their earning will go up once they are associated with foreign law firms for litigation assignment.

Vast majority of advocates in the lower courts have backgrounds comprising of vernacular schools. Some of them often lack the professional acumen desired by corporate clients. Given this realization, there is only an emotional opposition rather than an actual one.

Even the state bar councils would have a tendency to oppose the issue of opening up this sector because majority of the members (who are elected to these councils) are forced to take up multiple local/regional issues for elections gain rather than long term benefits of furthering the cause of the profession especially if it is unpopular too. They have often taken the plea that since their voters who elected them are generally opposed, hence they are bound to represent their view point.

Learning from Past: India had similar arguments when retail sector was to open. For example, to protect the interest of small grocery stores were highlighted and increase in the unemployment. Once the corporate India got the necessary reforms like the ceiling on acquiring land, the opposition subsided and sector got open. There are also different opinions the legal system is a 'noble profession'.

- f. NGOs and Civil Societies – Civil societies and NGOs play an active role in India and regularly file PILs on important issues. Coke and Pepsi had serious opposition from the Centre for Science and Environment, an environment NGO. Similar KFC got opposition from NGOs. There should be a study to map such NGOs on neutral/opposition/strong opposition scale and they will to be approached under the umbrella of PR exercise - no pro active involvement needed but only when they start opposing the legislative changes.
- g. Left Block – These political parties (CPI, CPI-M, AIFB, CPI(ML)L, MCPI, MCC) are generally not positive to the opening of sector and they may oppose particularly when advocates in the litigation field are opposing. So educating large numbers of litigating lawyers and preempting opposition from Left front is critical.

- h. Institute of Chartered Accountants of India (ICAI) – ICAI frames practice rules for auditing, accounting, book keeping and quasi - legal services provided by Chartered Accountants in India. ICAI rules also don't allow foreign chartered accountant firms to practice in India. They have recently issued show-cause notices to PwC, KPMG & E&Y for providing quasi legal services.

- i. Legal Educationists & Thinkers - Most of the educationists at law schools in India have socialistic orientation but even a few contrary thinkers will have a good impact. There should be discussion on topics like '*Cyber law*', '*Harmonization of laws*' etc. by experts like Ram Jethmalani, Nani P, ex Solicitor Generals, ex Justices of Supreme court, Dr. Singhvi etc.

The Allies in India:

- j. Law Firms – Proactive, Medium sized. They are looking for opportunities to grow and international tie-ups will bring in the required expertise to have global role. Incidentally majority of practicing advocates in the litigation have strong feeling that corporate legal practice is more remunerating. USIBC needs to build on this general feeling. Indian legal professionals are very competitive and can outperform many global organizations on cost, quality and local knowledge.

- k. Trade Associations (national, bilateral, and international) – Trade and industry associations need to be taken on board as they are important advocacy group. Contrary to US, India doesn't have well developed lobbyists segment. The trade and industry associations play that critical role. Also they have direct interest in supporting such issues because of their commitment to promote trade and interests of all the members not restrict to the few. The leading organizations of key sectors play deciding role and these organizations are majorly involved in M&A, IP and global trade. Bring the global best practice, increased competition, and enhanced competitiveness will be of their interests. Educating in-house counsels and

CEOs of these firms is very important. The Central Government will be most responsive to the demand from such organizations.

1. Multinational Corporations in India - MNCs would love to have same law firms and their local chapter in the every geography. They have working relations with in-house counsels of the Indian organizations at trade associations. MNCs can also be a pressure group as they determine the investments in the economy.
- m. Leading lawyers representing international clients - They are natural allies but need to make them active for advocacy for the opening sector.
- n. Practitioners of Accounting, Auditing, and Medical services – Very important to deviate thinking and may have some surprises. This would also include the consultancy/accounting firms like PwC, KPMG, E&Y etc.
- o. Law Students from leading Indian Institutes - This is highly ambitious group and not bothered by the current opinions till they get better professional prospects. USIBC can run debate and writing competitions on topics like ‘Opening of legal sector’ in premium law schools to educate, create awareness and build support base.
- p. Legal practitioners with qualifications from Foreign Law Schools / Universities / Firms / Organizations - This group can be a good pressure group as they understand the benefits of the best practices. They will be the ambassadors.

Key Stakeholders for USIBC to Engage in India:

- I. PMO – PM has shown interest in opening of the sector while UK and Australian lobbied. Functionally the key influencers at PMO are officials like Principal Secretary - Mr. TKA Nair and Secretary - Mr. M N Prasad.
- II. Office of Congress President – Mr. Ahmed Patel needs to be approached first for the support of the Congress president.
- III. Young Turks – Rahul Gandhi, Sachin Pilot, Naveen Jindal, Jitin Prasad, Jay Panda, Jyotiraditya Scindia, Milind Deora, Sandeep Dikshit, Agatha Sangama, Manvendra Singh etc. will be positively disposed to the opening of the sector.

- Indian trade associations like ASSOCHAM, CII and FICCI have regular interaction with them under the ‘Young Turks’.
- IV. Federal Ministers – Truly influential union ministers from effectiveness perspective include – Pranab Mukherjee (lawyer), Prithviraj Chauhan, Kapil Sibal (lawyer), Kamal Nath, Anand Sharma (for multilateral trade negotiations), P Chidambaram (lawyer) and Moodbidri Veerappa Moily (lawyer). Ministry of Law doesn’t look ready to accept the opening of the sector but Ministry of Commerce, Finance Ministry, Ministry of Information Technology & Communication can be the partners.
- V. Legal Cells of major Political Parties of India - Both Congress and BJP have vibrant legal cells. They should be taken into confidence. They would align by the thoughts of their political mentors.
- VI. Member of Parliaments – Needs further study for their position on the issue. But USIBC can tap such MPs who have been part of US-India delegations and prominent lawyers cutting across party line. CII and FICCI have regular interaction with parliamentarians under their ‘Parliament Forums’ and should be engaged.
- VII. ‘China Factor’- The policy makers in India keenly monitor development in China and want to maintain the lead in service sectors so talking about the gain Chinese law firms because of the opening of the legal market will have positive response from Indian government and the legislators. For example, Chinese firms have learnt the best practices, processes, are as big as the foreign law firms etc.
- VIII. Left Block Member of Parliaments – If a large number of law firms oppose, without being convinced on the benefit of competition and deeper collaboration with foreign firms, and find the battle losing then they may take support from left block MPs. So the strategy should be in place to brief them to avoid the uproar in the parliament. Key people are Prakash Karat, AB Bardhan, Sitaram Yechury and few other MPs.
- IX. Partnership with State Government - There is fierce competition among 6-7 state governments for foreign investments and every employment generation opportunity. US law firms while exploring the investment decision should

- establish close relationship with the concerned state governments. The law firms should take into consideration the concentration of the potential clients / presence of targeted industries, available skilled manpower, presence of good law school for supply, business friendliness parameters etc. of the state. These states will put pressure on federal government to open up the market. USIBC should be the nodal institution to collaborate information, facilitate the dialogue with state government and lobbying.
- X. Senior Government Officials – Need to study in great detail as civil servants would tend to align with their political bosses. In Indian bureaucracy, joint secretary upwards till secretary play critical role. USIBC should compile a database of civil servants who have studied in US and UK during their service and are pro globalization. Important secretaries are of ministry of Commerce, Finance, Law, External Affairs, etc.
- XI. Planning Commission – Planning Commission is generally for the opening of sectors and USIBC need to get in touch with Dy Chairman - Montek Singh Ahluwalia and others like member of Industry - Arun Maira, member of HRD & skill development - Dr. Jadhav to get the Planning Commission on board.
- XII. Push for setting of a Law Commission – But it will be the Ultimate task!
- XIII. Commission a Study – Opening of market creates competition and choice, quality and enlarged offering of services to customers, enhancement of productivity, efficient deployment of resources in economy, harmonization of processes etc. Advocacy in India requires an in-depth study to assess the situation, find out the long term benefits to India and Indian organizations (focus should be on Indian economy, not short term business loss of few Indian law firms), learning from opening of China and Korea markets, what these markets have gained etc. Probable organizations and institutions to conduct the proposed study are:
- a) Consulting firms – Big consulting firms like Accenture, Mckinsey, Deloitte, E&Y, KPMG and PWC have strong presence in India. They also play active role in policy discussions, lead industry associations and are good bets. *Ideally, the study should be co-branded with Indian chamber or trade association to be heard favorably by policy makers.*

- b) National Chambers – ASSOCHAM, CII and FICCI do studies and are effective in mobilizing support but effectiveness depends a lot on the key committees/members driving it. If willingness of key members is not ensured then not advised.
 - c) ICC India - They have the global clout, reputation to dig relevant data and locally sponsored by FICCI. Important since it's an independent and perceived as neutral international agency. ICC India has active Arbitration and legal committee.
 - d) Private Law Universities – Jindal group has come up with a great University in Sonapat, Haryana – Jindal Global Law School. It is headed by Prof. C Raj Kumar whose background is Campus Law Centre, Delhi University and LL.M from Harvard. In September'09 JGLS organized a conference on the Globalization of Legal Profession jointly with Harvard Law School and Oxford University's Said Business School. (*JGU Newsletter; Vol.1 Issue 4 Nov 2009*)
 - e) Indian Society of International Law – Often looks for funds to conduct such studies but strict monitoring required for quality output.
- XIV. National Chambers (CII, FICCI, ASSOCHAM, PHDCCI) – Since national chambers have members of user organizations of legal services and have huge stake vis-à-vis US so they need to be fully engaged in. *The demand to open the sector and have access to the best of the legal services for the global operation of Indian multinational organizations and multinational in India will be quickly acted by concerned government departments.* Key departments of the chambers for such demand are software, telecom, pharmaceutical, biotech, auto, international trade etc. *Organizing conference/seminar/talk show with a study paper would be best mode of engagement.*
- XV. Vertical Associations (NASSCOM, COAI, OPPI, etc) – Globalized business sectors (software, telecom, pharmaceutical, biotech, Indian export items – textile, gems, jewelry etc, manufacturing – auto, steel, oil & gas etc.) and their respective associations would be the natural allies. *These are the blue eyed sectors and*

Government has great appetite to listen to their problems and removing the bottlenecks.

So USIBC should broadly target:

- a) Advocates in Litigation - winning strategy through awareness, education on the benefit from international Firms.
- b) Opposing law firms - Neutralizing strategy.
- c) Like minded law firms and user organizations - stronger partnership strategy.
- d) Developing Ambassadors – Among policy makers, opinion makers, government officials.
- e) Media interventions and the Story – Opening of the market is good for India, Indian economy, India legal system, Young professionals etc.

Media interventions:

Unlike China, India is a vibrant democracy and every segment gets due to articulate their point of view. The discussion on major issues at public platforms is unavoidable and rather is advisable. So the role of media is very important. (Detail at the **Appendix 4**)

Broadly the media management will be:

- I. Press interventions highlighting the need for opening up of the services sector.
- II. Reports on need of global legal services by the In-house counsels of Indian organizations.
- III. Stories on the need for the best practices by In-house counsels of MNCs.
- IV. Participation in conferences and seminars by legal services user groups CEOs like Tata, Infy, Wipro, HCL, Reliance, Bharti, Mahindra, Essar, Reddy Lab, BioCon, ONGC, Indian Oil, Bajaj, HDFC, ICICI etc.
- V. Articles and quotes from leading opinion makers in newspaper / discussion on TV by pro market Indian economists, legislators, journalists and writers and well respected international thought leaders. Getting support from pro market liberalization like Nobel Laureate Amartya Sen, Lord Meghnad Desai would be great. They are also frequent traveler to India.

- VI. Awareness and education – The message is that opening of sector is in the interest of law professional, lawyers in litigation for collaborative businesses, legal service user organizations for the best practices for their global operations, legal system etc.
- VII. Opposition from NGO and litigation advocates together will be too much to handle. Preemptive media plan to make them shift from negative to neutral, neutral to positive is critical.

International Support:

- I. US Department of Commerce – They need to collaborate with UK and Australian concerned government departments to synchronize their efforts. UK and Australian visiting Government delegations have raised the opening with Indian relevant department in past. Australians have formed a Task Force with Indian Government for collaboration in law. I am not sure on the willingness of the Obama administration to take up the issue.
- II. Multilateral Trade Negotiation (GATS & WTO) – Till now the legal services is not on the list of negotiation. Some background:
 - a) India's primary focus has been on Mode 1 (cross-border) and Mode 4 (movement of natural persons).
 - b) The bilateral 'request-offer' approach changed into a plurilateral 'request-offer' approach post the Hong Kong Ministerial in 2005 due to the slow progress of the bilateral approach.
 - c) India has been liberalizing its stand over the years - from being a strong opponent, it is now on the negotiating table for Mode 1 & Mode 4 services.
 - d) But on the issue of legal services, retailing, audio-visual services, it is being said that India will not open up straightaway owing to 'domestic sensitivities'. *Incidentally, education service was also in this basket but it on the verge of opening up now through 'Higher Education Bill'.*
 - e) Primarily, India's movement has been graded because it feels that it's important to retain some bargaining blocks for negotiating on issues of

NAMA - Non-Agricultural Market Access and movement of natural persons.

- III. UK, Canadian & Australian Law Firms – British and Australian law firms like Ashurst, Clifford Chance, Linklaters, Freshfields Bruckhaus Deringer, Allen & Overy, DLA Piper, Lovells, Herbert Smith, Slaughter and May, Eversheds, Mallesons Stephen Jaques, Freehills, Minter Ellison, Clayton Utz etc. are active in India. Some of them have offices in US. Establishing connection and collaboration with them will be helpful.

Word of caution: British and Australian law firms are very active in lobbying to open up the Indian market and want to get in earlier than American. Law firms from these three countries have similar advantages in India and keep in mind the moderate Indian legal market size, there is not much room for everybody. I am not sure about the dedicated effort from US law firms in this direction.

- IV. Investment Promotion Bodies – India needs the inflow of foreign investment. Both Federal and state governments are actively encourage and closely work with international investment promotion institutions. USIBC should partner with such bodies and influence the decision making.
- V. Medical Associations/Bodies – These professionals significant presence in countries like USA and UK and remained connected with India. Many of Indian origin professionals practice in USA and UK and would want to practice in India due to the prestige, home reputation and also the increasing remunerations. Like advocate, it is considered a noble profession in India. Getting them and their associations in US and UK on board on this issue will be added advantage.

What US Law firms should do:

- I. US law firms interested in India should form a core group as quickly as possible under the legal committee of USIBC. Form sub groups with 1-2 leaders to achieve specific tasks towards the main goal in a defined timeline. Meet periodically to assess the development, open to tactical and strategic changes to achieve ‘Excellence in Execution’.



- II. Close door meetings – Core group of USIBC legal committee should have initially closed door meetings in India and with visiting Indian industry leaders, office bearers of chambers and associations, senior government officials, and ministers and parliamentarians to US.
- III. Hire services of PR agencies – Unlike China, orchestrating opinion and discussion in India will be critical so there should be a dedicated PR agency to work for opinion making. The ideal media message is ‘Protect the interest of a dozen Indian law firm vs. long term benefit of Indian legal system and rightful legal need of fast globalizing Indian industries’. No way, the discussion should lead to ‘We vs. They’. So activities like positive interviews from in-house counsel, opinion makers, and law authorities are important. Adverse petitions could have been avoided by positive stories.
- IV. Lobbyists – Service of effective lobbyist with right connection at Government, chambers, media etc would be advisable to support the efforts.

Lot many action points are to be done with USIBC. Please refer to the template to run a Public Affairs Program at (**Appendix 4**).

Conclusion:

Looking at the opposition from local law firms, USIBC need to synchronize efforts and work continuously to get the result. British law firms will give tough competition to US firms in India. US law firms need to work hard keeping in mind, EU and India are discussing Free Trade Agreement, UK is way ahead in lobbying in this direction and has uniform Bar system for extending reciprocity in one go. Early entry of UK law firms in India even by few months will be big disadvantage for US law firms.

My suggestion for US law firms till the market is not open is to establish direct relationship with Indian legal service user organizations through business development efforts (**Appendix 5**). They should build in house capacity to specifically understand the nuances of the Indian market. Forging direct business relationship with leaders of industry, head of influential institutions, media, and Government is also important. So, MOU and the ‘best friend’ relationship with Indian law firms, directly reaching out to



Indian organizations, joining Indian chambers and associations as international member, participate in seminars/conference on topics of interest etc will help in establishing strong foot and their thought leadership. The Competition Commission of India is getting active and establishing connection on investigations and educating them will be a good exercise. Similarly, talking about the best practices, standards and tools will be helpful to establish the leadership with Indian patent offices, arbitration institutions etc.

Leadership team of US law firms should not get bogged down by the regulatory delays, breach of intellectual property, volatility of currency or exchange rates, geopolitical instability, uncertain return in short term, quality standards etc., aggressively lobby for the opening of the legal market and mobilize resource to build their presence. Geographic expansion to India has answers to many growth bottleneck and cost concerns.

USIBC should prioritize their action plans for the opening of the Indian legal market as per 80:20 rules for efficient lobbying. I have listed many action points but few can fetch disproportionate results. So identify the 20% of the actions to give 80% result. Individual members of the core group at USIBC can champion specific action points and lead the execution efforts.

Appendix 1

A revised LLP Bill was introduced in the Rajya Sabha (Upper House) on Oct 21st, 2008 and passed on December 12th, 2008. The Bill received assent of Hon'ble President of India on January 7th, 2009 and came into effect from April 1, 2009. Ministry of Corporate Affairs has started registering under the act from April 1st 2010¹.

The Limited Liability Partnership Act, 2008 gave the white collar professionals like chartered accountants, lawyers and venture capitalists flexibility in setting up and operating the firm. It requires relatively lower cost to form and run, lesser compliance requirements, easy to manage and also easy to dissolve, no requirement of minimum capital contributions, partners are not liable for the acts of the other partners and importantly no minimum alternate tax.

The features of Limited Liability Partnership Act 2008 are in detail below:

1. A LLP is a body corporate and a legal entity separate from its partners having perpetual succession.
2. Though LLP is a separate legal entity, liable to the full extent of its assets, the liability of the partners would be limited to their agreed contribution.
3. So a LLP is a separate legal entity and separate from its partners. It can own its assets, sue and be sued.
4. An LLP can be formed with minimum of two partners. The Act doesn't prescribe the maximum number of members. This was one of the main demands by Indian law firms.
5. LLP has the benefit of a Partnership firm and separate legal entity status of limited liability aspect of a company.
6. Its members have the right to manage their businesses directly. This benefit is not available to the corporate shareholders.

1 Economic Times of India

7. It means that the mutual rights and duties among partners and the LLP entity and its partners shall be governed by the agreement between partners and between the LLP and the partners subject to the provisions of the LLP Act 2008.
8. This offers great flexibility to devise the agreement as per their need and choice.
9. The flexibility and benefit also comes with the responsibility to maintain an annual accounts reflecting true and fair view of its financial status.
10. Each LLP is responsible for maintaining annual accounts. However, the audit of the accounts is required only if the contribution exceeds INR 25,00,000 or annual turnover exceeds INR.40,00,000. (*Source: The Indian Rupee-US dollar exchange rate is around 44.75 per dollar*).
11. The LLP are required to file a statement of accounts and solvency with the Registrar of Companies (ROC) every year.
12. Every partner is responsible for his/her actions and shall not be liable for the account of the independent or unauthorized actions of other partners.
13. A big benefit is that the act does away with the joint liability created by another partner's wrongful business decisions or misconduct and shields individual partners from such actions/misconducts.
14. The liability of the partners is limited to the extent of his/her contribution in the LLP.
15. There is no exposure of personal assets of the partners, but yes in cases of any fraud.
16. LLP cannot raise money from the public.
17. The Registrar of Companies (ROC) has the jurisdiction over the incorporation under the Act.

(*Source: The Limited Liability Partnership Act, 2008 <http://www.llp.gov.in>*).

Appendix 2

Sector wise listing of Major Indian law firms

| |
|---|
| <p>Aviation - Bhasin & Co, Gagrats, Luthra & Luthra, Rajinder Narain & Co, FoxMandal Little, Tyabji Dayabhai</p> |
| <p>Banking and finance - A.R.A. LAW, Dave & Girish & Co, J Sagar Associates, Desai & Diwanji, ALMT Legal, India Law Services, Khaitan & Co., Khaitan & Co., Luthra & Luthra, AZB & Partners, FoxMandal Little, Amarchand & Mangaldas & Suresh A. Shroff & Co, Trilegal, Udadia & Udeshi, Tyabji Dayabhai, J Sagar Associates</p> |
| <p>Capital markets - Crawford Bayley & Co, Amarchand & Mangaldas & Suresh A. Shroff & Co, S&R Associates, A.R.A. LAW, Apurva Diwanji Desai & Diwanji, ALMT Legal, Khaitan & Co., Rajani Associates, Rajat Sethi S&R Associates, Amarchand & Mangaldas & Suresh A. Shroff & Co, J Sagar Associates, Thakker & Thakker, Talwar Thakore & Associates</p> |
| <p>Corporate/M&A - Crawford Bayley & Co, AZB & Partners, A.R.A. LAW, Kanga & Co, Wadia Ghandy & Co, DSK Legal, Mulla & Mulla Craigie Blunt & Caroe, Desai Associates, Desai & Diwanji, Dua Associates, Majmudar & Co, Khaitan & Co., Kochhar & Co, Luthra & Luthra, FoxMandal Little, J Sagar Associates, Amarchand & Mangaldas & Suresh A. Shroff & Co, Rajinder Narain & Co, P & A Law Offices, Trilegal, Seth Dua & Associates, Crawford Bayley & Co, Singhanian & Co, Swarup & Company, Talwar Thakore & Associates, Thakker & Thakker, Titus & Co</p> |
| <p>Intellectual property - Anand and Anand, Krishna & Saurastri, Lall & Sethi Advocates, Sai Krishna</p> |
| <p>Dispute resolution - Advani & Co, Anand and Anand, Bharucha & Partners, Bhasin & Co, Holla & Holla, Wadia Ghandy & Co, Mulla & Mulla & Craigie Blunt & Caroe, Crawford Bayley & Co, Associated Law Advisers, D H Law Associates, Holla & Holla, Karanjawala and Company, Kachwaha & Partners,</p> |

| |
|--|
| <p>Suman Khaitan & Co, FoxMandal Little, P H Parekh & Co, P H Parekh & Co, Mulla & Mulla & Craigie Blunt & Caroe, Federal & Rashmikant, Link Legal, Amarchand & Mangaldas & Suresh A. Shroff & Co, Surana & Surana International Attorneys</p> |
| <p>Insurance - Desai & Chinoy, Solomon & Co., Tuli & Co</p> |
| <p>Investment funds - Nishith Desai Associates, ALMT Legal, AZB & Partners, J Sagar Associates, Amarchand & Mangaldas & Suresh A. Shroff & Co</p> |
| <p>Projects and energy - Amarchand & Mangaldas & Suresh A. Shroff & Co, J Sagar Associates, FoxMandal Little, Desai & Diwanji, Trilegal, AZB & Partners, Khaitan & Co., Luthra & Luthra, Hemant Sahai Associates- Advocates, Seth Dua & Associates, Economic Laws Practice, Titus & Co, Udwardia & Udeshi</p> |
| <p>Real estate - J Sagar Associates, Luthra & Luthra, AZB & Partners, Mulla & Mulla & Craigie Blunt & Caroe, Seth Dua & Associates, Kanga & Co</p> |
| <p>Restructuring and insolvency - Kesar Dass B. & Associates, Dhir & Dhir Associates</p> <p>Shipping - Brus Chambers, Advocates & Solicitors, Mulla & Mulla & Craigie Blunt & Caroe, S. Venkateshwaran</p> |
| <p>Tax - AZB & Partners, Kanga & Co, Associated Law Advisers, Nishith Desai Associates, Seth Dua & Associates, Crawford Bayley & Co, ALMT Legal, DM Harish & Co, Lakshmikumar & Sridharan, Economic Laws Practice, Vaish Associates,</p> |
| <p>TMT - DSK Legal, Nishith Desai Associates, Seth Dua & Associates, Pavan Duggal Associates Advocates, Kochhar & Co, Trilegal, J Sagar Associates, Thakker & Thakker</p> |
| <p>WTO/International trade - Seth Dua & Associates, Economic Laws Practice</p> |

(Source: www.silf.org.in)

Appendix 2A

Mapped major Indian law firms below

| RANKS | INDIAN FIRMS | CURRENT POSITION |
|-------|-----------------------|--|
| 1= | Amarchand & Mangaldas | Indian magic circle firm. The biggest law firm and has capacity to go solo post liberalization. |
| 1= | AZB & Partners | Indian magic circle firm with the most promising growth and modern internal practices. MoU with Clifford Chance. |
| 3= | J Sagar Associates | Indian magic circle firm. Opposed, accepts benefit of opening too. |
| 3= | Luthra & Luthra | Indian magic circle firm. Strong opposition. |
| 5= | Khaitan & Co | Indian magic circle firm. Doing well recently & mild opposition. |
| 7= | Desai & Diwanji | Second tier firm. |
| 7= | Fox Mandal | Truly national law firm. Pro to open. |
| 7= | Nishith Desai | Niche practices. Has shown traces to be positive. Getting active on the issue at intl. conferences. |
| 10= | Anand and Anand | Niche IP practices and leader in the field. |
| 10= | LSV Legal | Niche practices. |
| 12 | Dua & Associates | Second tier firm. Opposed to opening. |
| 13= | DSK Legal | Niche practices – corporate & TMT law |
| 13= | ELP | Can be positive, attends conferences on this issue. |
| 13= | Wadia Ghandy | Second tier firm. |
| 29= | ALMT Legal | Positive. MoU with Intl firm |
| 41 | Trilegal | Positive. MoU with Intl firm |

(Source: Ranking by RSG Consulting)

Note: The stand of law firms is not permanent and depends on many dynamic factors.

Appendix 3

STATEMENT OF TOTAL NUMBER OF ADVOCATES (MEN & WOMEN) ENROLLED WITH THE STATE BAR COUNCILS AS ON 31ST DEC., 2009

| <u>STATES</u> | <u>MEN</u> | <u>WOMEN</u> | <u>TOTAL</u> |
|--------------------------|-------------------|---------------------|---------------------|
| 1. ANDHARA PRADESH | 64,016 | 11638 | 75654 |
| @2. ASSAM, NAGALAND, etc | 9,703 | 2022 | 11,725 |
| 3. BIHAR**** | | | 1,02,628 |
| 4. CHHATISGARH | 15618 | 2947 | 18,565 |
| 5. DELHI* | - | - | 38,549 |
| 6. GUJARAT**** | | | 56,568 |
| 7. HIMACHAL PRADESH | 5528 | 1003 | 6531 |
| 8. JAMMU & KASHMIR**** | | | 4111 |
| 9. JHARKHAND*** | | | 6693 |
| 10. KARNATAKA**** | | | 60,539 |
| 11. KERALA | 30991 | 9814 | 40805 |
| 12. MADHYA PRADESH**** | - | - | 73,017 |
| 13. MAHARASTRA & GOA* | 78,522 | 5,637 | 84,159 |
| 14. ORISSA* | - | - | 37,993 |
| 15. PUNJAB & HARYANA** | 42,411 | 4,265 | 46,676 |
| 16. RAJASTHAN | 51357 | 6643 | 58,000 |
| 17. TAMIL NADU** | 46,575 | 5,902 | 52,477 |
| 18. UTTARAKHAND**** | - | - | 7505 |
| 19. UTTAR PRADESH**** | - | - | 2,45,934 |
| 20. WEST BENGAL | - | - | 59535 |
| TOTAL | | | 10,86,626 |

* As on 31/3/2006 ** As on 31/12/2006 *** As on 31/3/2007 @ As on 31/3/2003
Modified on 1/2/2010 (Source: State Bar Councils)

Appendix 4

Template to run Public Affairs Campaign in India

This is a representative template for carrying out any public affairs campaign in India. These are broad based components and not final which are subject to customization depending upon the nature of the issue, background and progress. It needs to refer back regularly during execution.

- ✓ Public affairs objectives.
- ✓ Perspective of the situation / background.
- ✓ What is the solution to the aforementioned issue/ background?
- ✓ Identification of challenges / impediments.
- ✓ Fact finding to generate a database of Key Opinion Leaders and their orientation towards the issue.
- ✓ Status assessment of initiatives taken at a policy level.
- ✓ Identification of the target audience (individuals and institutions)
- ✓ Proposed government bodies/ agencies that need to be engaged and informed.
- ✓ Develop a public affairs approach / strategy & execution tactics to bring the team on same page.

Implementation stages

Stage 1 – Development of Market Information / Intelligence System

- ❖ Formation of core group.
- ❖ Developing a database of influencer/executors who are part of the “core group” that support larger implications of the issue.
- ❖ Brainstorming session of core group members for understanding the industry ecosystem with diverse perspective.
- ❖ Identification and rope in the relevant agencies that are to be involved in.
- ❖ Developing a database of key individuals from the concerned agencies that need to be targeted as part of the campaign
- ❖ Similar list of people to engage and influence these key individuals at agencies.

- ❖ Developing a roster of the status of disputes that concern the issue both at the federal and state levels. Because of the hung parliament mandate at elections, Indian states and regional parties in coalition at the federal government have critical role to play.
- ❖ Make the list of opinion makers and media/PR people to cover, manage, responsible to offer data points to them.

Stage 2 – Commission of Study for Effective Advocacy

- Should dispel the misinformation and remove fear. Exponentially growing Indian legal market has role for national and international law firms.
- Establish clearly the benefit to Indian economy/society in long term.
- Methodology, data point and authenticity will be questioned.
- Must have an Indian institution of repute as partner.
- Sensitization of right stakeholders in government, industry, media and public is the very important.
- Take into confidence the concerned ministry. Ideally inaugurate the study with them at a topical conference/seminar.

Stage 3 - Sensitization of Key Opinion Leaders (KOLs)

This stage would involve employment of customized communication approaches depending upon the nature and position held by the KOL

➤ **Parliamentarians & Ministers**

- ✚ Sensitization about the benefits of the issue and solutions, providing a perspective in the larger scheme of things and bring in international learning through formal and informal channels.
- ✚ Identification of relevant parliamentarians cutting across party lines is critical in India.
- ✚ Role of opposition parties is equal to ruling if not more.
- ✚ Sensitization to increase appetite for questioning in parliament / assembly in case of state subjects and regional issues.

- ✦ Providing perspective on linking overall consumer/social/economy interests aligning it with issue in question.
 - ✦ Report generation mechanism of friendliness quotient of contacted parliamentarians and regular monitoring.
 - ✦ Request positively disposed parliamentarian to champion the issue and mobilize support in the corridors of power.
- Departments/ Bureaucrats/ Relevant Government Functionaries
- ✦ First level sensitization to the Joint Secretary and higher ups till secretary by the appropriate level of the core group members.
 - ✦ Most of the works are initiated by JS so roping them in early is important.
 - ✦ Delivering preliminary presentations on the concept and answering their concerns to satisfaction.
 - ✦ Identifying interdepartmental synergies and dependencies.
 - ✦ Serious work on objection by government department, if any.
 - ✦ Intelligence gathering and offering further information by people having access and friendliness to them.
 - ✦ Perception audit and mapping exercise to each ministries/agencies/ bureaucrats.
 - ✦ Create report of friendliness quotient of the target group.
- NGOs & Foundations
- ✦ Identify and develop NGOs that have ideologies aligned with the issue through a detail study.
 - ✦ Engage and pre-empt if anticipate objection and opposition. Don't educate them and invite their participation unnecessarily.
 - ✦ Seed pertinent information to NGOs stimulating independent activism by the NGOs themselves.
 - ✦ Launch a series of multi-stakeholder across cities workshops with the NGOs front ending on the issue. Focus on metro and bigger cities as it the most concentration.

- Public Discussion
 - ✚ Plan and be ready for public discussion and scrutiny.
 - ✚ Keep in mind the large number of media and vibrant democracy.
 - ✚ Thought leadership on the topic and key to success is ‘how beneficial to India’.

- Coalition and Partners
 - ✚ Build partnership with Indian industries based on their evolution stage/business model/interest/aspiration/market orientation etc.
 - ✚ Allocate time and resource to hand hold and educate the Indian partners.
 - ✚ Encourage Indian partners to play active role and front end the advocacy debate.

- Communication campaign
 - ✚ Pre-empt the debate on “We vs They”, “Indian vs Foreigner” at any cost.
 - ✚ Create awareness around the need for incorporating the International best practices to address Indian organization’s emerging needs in complex global set up.
 - ✚ Highlight the need for bringing in a fresh perspective to archival laws/ acts (Advocates Act 1961) on the basic tenets of practicing legal profession in India, in light of a dramatically transformed nation which is in the high growth path.
 - ✚ Engage, generate, increase and leverage third party advocacy for opening up the legal services market for International players through key stakeholders sensitization (discussed above).
 - ✚ Communicate market estimations and growth potential for both national and international law firms if the market is opened up (part of the study).
 - ✚ Customized and regulated communications and outreach programs based on the findings of the status and inclinations report to steer desired behavior outcomes from various stakeholders.

- ✚ Open up avenues and discussions in public forums that stimulate various stakeholders to start thinking on the issue.
 - ✚ Employ a mix of direct and indirect communication tools based on the level of sensitization required in each stakeholder groups.
 - ✚ Reach out and engage with potential supporters of the cause from the legal services industry within India to reinforce and nurture more virtual feet on the ground that advocate the cause.
 - ✚ Create a core group of third party spokespersons which include people from various stakeholder groups to create opinion around the need to open up the legal services market.
 - ✚ Create group of politico friends who act as a pressure group that influences discussion on the issue in the parliamentary and assembly circles.
 - ✚ Leverage on the power of youth by engaging students in discussions pertaining to the attractiveness of the Indian legal services market as a career option.
 - ✚ Leverage on bilateral and multi-lateral trade guidelines to bring highlight the need for opening up the legal services market
- Media
- ✚ Select carefully the media to raise pertinent issues with government functionaries.
 - ✚ This should be only after the successful engagement with them one to one. Avoid communicating through media without reaching out.
 - ✚ Create a core group of media writers as friends of the issue to receive both passive and active support through editorials in the media.
 - ✚ This exercise should be targeted to create awareness on the real issue, dispel the misinformation, and garner support to bureaucracy and government.

(Source: Concepts, processes, benchmarked practices of running national and international Public Affairs campaigns are from my previous works at different institutions in India)

Appendix 5

Marketing and Business Development in India

Emerging markets are increasingly becoming critical for market and growth, though 5–25% of revenues of companies in developed countries come from these markets. But reducing cost to retain clients in developed market can be very attractive benefit. These markets will be major providers of capital, talent, and innovation in future. So law firms should work towards to open office in emerging markets, develop partnerships, form joint ventures with local companies, aggressively recruit talent from emerging markets, and develop new business models to capture growth from these markets.

UK and Australian law firms continued to work for opening of Indian legal market for the last 3-4 years. Till the Indian market is open, US law firms should aggressively establish contacts and do business development with the end users.

They have to keep in mind the uniqueness of Indian market:

- India is a price sensitive market.
- Exchange rate fluctuation further complicates the matter.
- The billing rate is low.
- Word of mouth messaging is critical for the success in India.
- Face to face contact and someone dedicated to address customer needs are important.
- The general practice law firms offer most of the services in major practice areas so price cutting is not unique.
- Indian corporate lawyers are very good and offer service at competitive rate.
- Indian law firms have sound knowledge about the local market and effectively navigate complex client issues.
- Initially high end services, which local law firms find difficult to support, have market. Once firms are allowed to establish offices then they can reduce cost by employing from local market and offer services at lower rate.

In this scenario, the US law firms should focus on building brand along with regular business development activities. For that they should:

- ❖ Map the competitor law firms from UK and Australian (But for policy change and lobbying they are partners).
- ❖ Chalk out respective strategy for each segment of services.
- ❖ Engage with In-house counsels and speak at the conferences at legal & industry institutions.
- ❖ Make customer a partner and focused and influential groups for word of mouth messaging. The best explanation of word of mouth marketing is ‘Volume of positive messages X Trusted and impactful sources = **Word of mouth equity**’¹
- ❖ Establish relationship with potential customers and develop robust partnership with customers.
- ❖ Use technology to influence the buying behavior of customers throughout the decision making processes. Digital influencers like bloggers with disproportionate power, banner ads, informative websites, and social networking sites should be leveraged to reach out to Indian customers.
- ❖ Senior partners of US law firms should travel to India to know the market, establish contacts, do business development, educate stakeholders on the benefit of the opening of the sector and mobilize support.
 - Speak and make presentations at key conferences.
 - Interact with officials of key ministries and government agencies like MCA, ML, FM, RBI, Planning Commission, DIPP, IPO, CCI, etc.
 - Meet visionary Indian industry captains like Ratan Tata, Ambani brothers, Sunil Mittal, Anand Mahindra, Azim Premji, Narayan Murthy, Rahul Bajaj, Chanda Kochhar, Venu Srinivas, Vineet Nayyar, Uday Kotak, Deepak S Parekh, Kiran M Shaw, Anji Reddy etc.
 - Garner support from leaders to influence policy like Tarun Das of CII, Amit Mitra & Rajan Mittal of FICCI, Sushil Jiwarajka of ICC – India etc.
- ❖ Make the company’s presence felt and be nearer to the customers to gain their confidence till market is open.

¹*McKinsey Global Institute*

- ❖ To demonstrate industry domain knowledge to build leadership position.
- ❖ Establish the reputation and recognition of offering best of the best.
- ❖ Occupy the prominent ‘Consumer Positioning’ for premium legal services.
- ❖ Build Brand, Build Brand,.....

Potential customer segments:

- ❖ *MNCs in India* will be quick to convert. The Indian subsidiaries of MNCs understand and recognize the value proposition of global law firms in all geographies.
- ❖ Target *Indian organizations with global business* operation for Intellectual Property, Merger & Acquisition, Alternate Dispute Resolution, Trade Disputes etc.
- ❖ *Industries like software, telecom, pharmaceutical, biotech, auto, manufacturing* etc. have more international operations than traditional sectors.
- ❖ Target the *2-3 leaders in each segment of globalized sectors*. Once converted, partner with them to influence the other companies in the segment.
- ❖ *Major Indian law firms* for the international assignments of their customers have exclusive Best Friends. Non-exclusive business relationship with a number of firms is also good idea.
- ❖ *Government departments and public sector companies* can be for international litigation, trade disputes, arbitration etc.

(Source: The Sales and Marketing concepts are from my previous works at multinational corporations)

The views are mine and in no way the position of any organization and institution. I have maintained the neutrality and focused on the long term benefits of the fast globalizing India organizations, Indian legal system, India legal professionals and global businesses. I have four distinct skill sets in law, business, technology, and regulatory affairs so incorporated these perspectives in the study. Feel free to give feedback at ***tabrezahmad_in@rediffmail.com***.

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