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Globetrotting Law Firms

JAYANTH K. KRISHNAN*

ABSTRACT

Despite the present financial crisis, prestigious law firms such as Davis Polk, Sullivan & Cromwell, Baker & McKenzie, Jones Day, Skadden Arps, and many others continue to maintain a presence in places like Europe, Latin America, and China. Yet, in one economically fertile, democratic country—India—such global legal powerhouses are nowhere to be found.

This study seeks to understand empirically why there is an absence of all foreign law firms practicing in India. Based on fieldwork and compiled interview data of lawyers, judges, government officials, activists, and clients from India, the United States, and Britain—the latter two being the foreign countries most interested in gaining access to the Indian legal market—I show that the conventional wisdom on this subject is inadequate, and that there are multiple layers to this debate. But what makes this story so fascinating is how both supporters and opponents of foreign law firms in India have strategically coupled their policy arguments with potent symbolic rhetoric to champion their perspectives. The study concludes by outlining a set of preliminary proposals that would permit American, British, and other foreign law firms gradually to enter India, but would also incorporate the concerns held by opponents and could serve as the foundation for reaching a comprehensive resolution.

INTRODUCTION

Over the past two decades, an increasing number of American and British law
firms have established offices in foreign countries.\(^1\) With the ongoing investment of American and British capital into previously untapped markets—Eastern Europe, Latin America, and Asia, for example—one might expect that these law firms would be present and readily available in foreign settings to advise their globalizing clients. Furthermore, American and British law firms have also opened offices abroad to serve the needs of newly acquired foreign clients.\(^2\) Globalization thus has created a host of new profit-making and client opportunities for those law firms from the United States and Britain that can afford to branch beyond domestic borders.

Two countries that have particularly caught the attention of these law firms during the last several years are China and India. Together, China and India account for over one-third of the globe’s population.\(^3\) Economic growth in each is exceedingly high.\(^4\) In addition, China and India are, respectively, the first and second “most attractive venue[s] for foreign direct investment"\(^5\) and each country is expected to have the world’s first and second largest gross domestic product numbers, again respectively, by the middle of this century.\(^6\)

In China, there are now American and British law firms in Hong Kong, Shanghai, and Beijing.\(^7\) Law firms from other countries, too, are locating in these cities and elsewhere in China.\(^8\) But curiously, in India, where multi-national corporations, international accounting agencies, and thousands of other busi-

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1. This is a subject I will be focusing on throughout this paper. For a directory that tracks this data see: Legal 500, www.legal500.com (last visited Sept. 12, 2009).
2. Id.
5. Neil Rose, Passage to India, LAW SOCIETY GAZETTE, Apr. 17, 2008, http://www.lawgazette.co.uk/features/passage-india-0. It should be noted that India’s economy, in recent months, has seen a rise in inflation and has been affected by a rise in oil prices. This has prompted some observers to wonder whether India’s economy may be entering a cooling period, with foreign investment declining. Even these commentators, however, concede that annual growth will be at least 7 percent, (optimists say it will be around 9.5 percent), and that most foreign investment will not evaporate “just because of a bit of cyclical gloom.” For a discussion of this point, see India’s Economy: Turning Sour, ECONOMIST, Aug. 2, 2008.
8. Id. For a nice overview of the legal profession in China, see ETHAN MICHAELSON, UNHOOKING FROM THE STATE: CHINESE LAWYERS IN TRANSITION (2003). It is important to note that there are limitations as to what foreign law firms in China are allowed to do. For a discussion of the parameters, and for complaints by a Chinese bar association that foreign law firms are running afoul of these limitations, see Anthony Lin, Shanghai Bar Association Goes After Foreign Firms, N.Y. L. J., May 16, 2006, http://www.law.com/jsp/l/l/l/ PubArticleLLF.jsp?id=1147856732635.
nesses from abroad are actively operating, American, British, and all foreign law firms and foreign lawyers are barred from practicing within the country.9

The goal of this study is to examine why this phenomenon is occurring in India. One standard view is that a politically powerful set of Indian lawyers and elite Indian law firms have sought to preserve their existing financial dominance and thus have successfully lobbied to block market liberalization of this sector.10 A competing view is that foreign law firms, driven by their greed, have made such onerous demands on the Indian government that the latter has refused to cave to this outside pressure and kept its legal services market closed.11

As I shall contend, however, these standard perspectives are both too blunt and inadequate. Based on fieldwork and compiled interview data of lawyers, judges, government officials, activists, and clients from India, Britain, and the United States—the latter two being the foreign countries most involved in this issue—I show that the controversy over whether law firms from abroad should be able to operate in the rapidly expanding market of India has several layered, substantive, symbolic, and even occasionally inconsistent aspects. It is important, therefore, to move beyond the existing dialogue and towards a more subtle, comprehensive analysis in order to appreciate the complexity of this matter.

For example, it is true that foreign law firms, not surprisingly, are interested in the Indian market for the purposes of increasing their profit margins and client base. But as I discovered and will explain, these firms offer other substantive policy justifications for why they believe liberalizing India’s legal services sector is an important and positive development.12 Similarly, the opponents, who comprise more than just those working in Indian law firms and include a seemingly unlikely group—Indian courtroom litigators who rarely work on transactional legal matters—also make serious policy arguments that extend beyond pecuniary-based ones, for why India should be cautious about granting

9. There are a few points to keep in mind here. First, even if a foreign firm sought to enter India and hire only Indian lawyers, under India’s current system, this would still be prohibited. Second, as we will discuss, there are special circumstances where foreign lawyers have been allowed to come in and litigate a case on behalf of a client (who usually is from that lawyer’s country), but this requires obtaining special permission from the Indian judiciary, and it is not a frequent occurrence. Third, India does host international arbitration forums where foreign lawyers represent their clients. However, because the law being adjudicated is considered foreign—not Indian—law, this activity is not considered ‘practicing law’ in India. (Where Indian law enters into the dispute, then Indian counsel would be required.) Moreover, I was told by several Indian lawyers that in these situations, foreign lawyers will typically hire Indian counsel to assist in these types of arbitration matters.
10. This point will be discussed infra Sections II and III.
11. This point will be discussed infra Sections II and III.
12. This point will be discussed at length in Section III. Moreover, I emphasize here that I recognize there is a difference between identifying the various justifications or arguments given by foreign lawyers and trying to decipher their actual motivations. As I shall contend, the contribution of this study is the uncovering of the former, with the stipulation that verifying the latter is much more difficult to do. The hope is that future researchers (particularly political and legal psychologists) will build upon this study to determine the precise psychological motivations of these foreign lawyers.
admission to foreign law firms.\textsuperscript{13}

In addition, what makes this story so fascinating is how both opponents and supporters strategically couple their substantive policy arguments with carefully selected symbolic rhetoric or to use the late scholar Murray Edelman's phrase, "symbolic politics,"\textsuperscript{14} to champion their point of view. As part of making their case, opponents often articulate the potent charge that liberalizing the legal services sector would inevitably lead to India's legal system being controlled by modern-day Western colonialists—something a country that suffered from centuries of imperial rule can never permit. The opponents point to what they say is repeated patronizing, condescending language from foreign law firms regarding the inadequacies of Indian lawyers as evidence to support this accusation.\textsuperscript{15}

The opponents' playing of the 'neo-colonialist card' ratchets-up the discourse and prompts supporters of liberalization to employ further rhetoric of their own, which then sparks an even more intense response from opponents.

Consequently, the Indian government finds itself in the middle of a political minefield. Notwithstanding some of its recent moves that will be discussed below, the government has procrastinated on this issue for over a decade. It has concluded that taking no formal stance, and instead placating both sides just enough, is politically less costly than making a formal decision and facing either an angry domestic constituency or a set of wealthy, disappointed foreign legal investors. Indeed, I maintain that this indecision is the main reason why foreign law firms remain prohibited from working in India. But lost in this emotional furor and government gamesmanship, as my findings suggest, is the fact that space exists to reconcile the policy disagreements between the two sides. Yet unless the temperature of the current rhetoric is reduced, it is difficult to envision how a resolution that satisfies the concerned parties can be brokered.

To explore these points in greater detail, Section I briefly describes the present state of the Indian legal profession, with a focus on the rise of a group of elite Indian law firms that have gained financial prominence since India liberalized its economy in the early 1990s. Section II shows how beginning in the mid-1990s, two high-powered law firms from the United States and one from Britain

\textsuperscript{13} This point will be discussed infra Section III. The same point in note 12 regarding justifications/arguments and motivations applies to the opponents as well.

\textsuperscript{14} Professor Edelman published numerous works on this topic and his research is groundbreaking. For some of his most prominent scholarship, see MURRAY EDELMAN, THE SYMBOLIC USES OF POLITICS (1967); MURRAY EDELMAN, POLITICS AS SYMBOLIC ACTION: MASS AROUSAL AND QUIESCENCE (1971); MURRAY EDELMAN, POLITICAL LANGUAGE: WORDS THAT SUCCEED AND POLICIES THAT FAIL (1977). Traditionally, Edelman's concept is seen as referring to the notion that those with material interests in an issue employ symbolic politics in order to mobilize a larger group that does not share that interest. My use of Edelman's work, as will be seen, builds upon and then expands on the manner in which this argument flows. I am grateful to Professor Herbert M. Kritzer for suggesting that I consider the work of the late Professor Edelman and for helping me think about this point. This point will be discussed further infra Subsection D of Section III of this article.

\textsuperscript{15} This point will be discussed infra Section III.
received permission from India to establish offices in the country. Shortly thereafter, though, an Indian public interest group filed a lawsuit in the Bombay High Court claiming that the presence of these foreign law firms in India was a violation of domestic law. It took thirteen years for a judgment finally to be rendered, but as I will explain in Section III, a series of important events occurred during this prolonged litigation, which moved this conflict from the courts into other venues. Section IV proposes a preliminary compromise that would allow foreign law firms gradually to enter India but also would incorporate the concerns held by the opponents. Provided that the rhetoric from both sides cools, this compromise could serve as the foundation for reaching a comprehensive resolution.

I. BRIEFLY CONTEXTUALIZING THE STATE OF THE INDIAN LEGAL PROFESSION

Ascertaining the specific number of lawyers in India has long been a challenge for those interested in empirical data collection. Upon my request, the Bar Council of India—a statutorily-created organization overseeing the licensing of lawyers in the country—compiled a state-by-state tabulation of the number of members that are currently enrolled within it throughout the country. Appendix A lists these figures and breaks them down by gender for most states as well. The data reveal that there are over one million lawyers in India. But this statistic requires scrutiny. The main reason is that while there may be one million law degree holders registered with the Bar Council, there is no information on how many actually practice law. Regardless of the number, what is certain is that of practitioners, most are solo practitioners who work as courtroom litigators.

Marc Galanter’s observation from years back still remains generally true: “Among the prominent features of Indian lawyers are their orientation to courts to the exclusion of other legal settings; the orientation to litigation . . . ”

16. Note Mumbai is the word now used to describe the city of Bombay. Proponents make the point that Mumbai was the original name of the city before colonial rule. The change to (or return of) this word has been accepted quite generally in English discourse except for when describing certain institutions, like the city’s High Court, which still retains the name, Bombay High Court—thus my retention of this latter phrase throughout the article.


18. See Appendix A.

conceptualism and orientation to rules; [and] their individualism.»20

In India there is no bar exam, and upon receiving their degrees, law graduates theoretically can begin practicing in any one of the country’s stratified layers of courts: the lower level district courts, the state supreme courts (or what are called state High Courts), or even the Supreme Court. Usually after law school, a recent law graduate, or ‘advocate’ as she is commonly known, takes a position as a ‘junior’ with an experienced lawyer. The recent graduate often slides back and forth among the different levels of courts depending on the clientele and the case, but mainly remains anchored at one, or at most two, of the three tiers.21 Where she does this ‘junior-ship’ depends on several factors, including law school performance, geographic location, personal ambition, connections, and the like.22 Upon completion of the junior-ship the advocate typically will stay on in the current practice (likely at a higher remuneration) or branch out and start her own office.23

The overall reputation of these courtroom advocates in India is mixed. A common belief is that lawyers who practice at the district court level are poorly reputed. India’s judiciary suffers from one of the world’s worst backlog of cases (both in number and the time needed to resolve these matters),24 which many believe is the result of deliberate procedural abuse by district court advocates.25 But recent work has shown variation in this group’s perception by clients and the community.26 Advocates who work in the High Courts and Supreme Court are

20. MARC GALANTER, LAW AND SOCIETY IN MODERN INDIA 282 (1989). For work on this subject, which although old is still relevant today, see Marc Galanter, The Study of the Indian Legal Profession, 3 LAW & SOC’Y REV. 201 (1968-69); Peter Rowe, Social Organizations at the District Courts—Colleague Relationships among Indian Lawyers, 3 LAW & SOC’Y REV. 219 (1968-1969); Oliver G. Koppell, Abstract of the Indian Lawyer as Social Innovator—Legal Aid in India, 3 LAW. & SOC’Y REV. 299 (1968-69); Charles Morrison, Abstract of Lawyers and Litigants in a North Indian District—Notes on Informal Aspects of the Legal System, 3 LAW & SOC’Y REV. 301 (1968-69); A. Samuel Schmittener, Sketch of the Development of the Legal Profession in India, 3 LAW. & SOC’Y REV. 337 (1968-69).

21. See Krishnan, Transgressive Cause Lawyering, 350. Note, in India for those wishing to practice in the Supreme Court, they are required to pass what is called an “advocates on record” examination. Passing this test allows the “advocate on record” to file any matter or document before the Court as well as to appear or act on behalf of a party in front of the Court.

22. The duration of a junior-ship depends on the agreement between the junior and the senior lawyer. For a discussion of this point, see id.; GALANTER, LAW AND SOCIETY IN MODERN INDIA 282 (1989). See also sources and text supra note 20.

23. If the advocate stays on in the practice, it is common that she will continue more as an employee rather than becoming a partner with her senior colleague. There are also other possibilities that the advocate can pursue, including moving to a law firm (the subject of which will be discussed shortly in this section), going abroad to study, joining a corporation, working for a non-governmental organization, or taking a position with the government. Pursuing these other options has become more common, although there still is a perception that they remain less-selected paths than the two mentioned in the above text.


25. This point will be discussed in detail, infra Section III. See also Galanter and Krishnan, supra note 19, at 789-90; Krishnan, Outsourcing, at 2226-27.

thought to capture relatively more public respect and financial prosperity than those practicing in the district courts. However, variation has been documented here as well.\(^27\)

Aside from these courtroom litigators, the Indian legal profession has seen a recent rise in the number of lawyers working in law firms. Although this segment of the bar overall remains small, law firm lawyers have gained increased prestige, political clout, and financial success over the past two decades. There is a subset of these lawyers working within one of some four dozen ‘elite law firms’ that are typically headquartered in either New Delhi or Mumbai.\(^28\) In 2000, these elite firms organized to form a political interest group known as the Society of Indian Law Firms (SILF).\(^29\) The president of SILF, Lalit Bhasin, provided me with a list of the law firms that are members, which can be found in Appendix B.\(^30\) Although these firm lawyers are also considered advocates and have the ability to appear in the Indian courts, they are referred to frequently as ‘company lawyers,’ or what in the West are called corporate lawyers, who engage in a great deal of transactional legal work.\(^31\) The elite law firms that house these lawyers have a reputational hierarchy among themselves, but overall they are classified as such because of the volume of revenue they generate, the reputation of the partners in charge, the prestigious clientele whom they serve, and the bright legal staff that they employ.

The history of this group of elite law firms has followed one of three trajectories. A few that exist today trace their roots back several decades before independence from Britain in 1947.\(^32\) In the major colonial cities (or what were called presidency towns) of Bombay, Madras, and Calcutta, most of these firms were established by British lawyers to meet the various business law demands of British companies that were operating within the colony.\(^33\) These British firms would sometimes hire Indian lawyers. After independence, with glass ceilings no longer a barrier and most of the British lawyers departing the country, Indian lawyers took over as the partners of these firms and thereafter filled their

\(^{27}\) Id.
\(^{28}\) This information on law firms and their rise in prominence was gathered during my fieldwork in India during the summer of 2008. See Appendix B. For why the term Mumbai is used here instead of Bombay, see supra note 16.
\(^{29}\) Interview with Lalit Bhasin, President, SILF (June 19, 2008). The president of SILF, Lalit Bhasin, provided me with a list of the law firms that are members, which can be found in Appendix B.
\(^{30}\) Id; see also Appendix B.
\(^{31}\) Interview with Lalit Bhasin, President, SILF, (June 19, 2008).
\(^{33}\) Galanter and Rehki, supra note 32. For further information on the history of solicitor-practices that date back to the 1670s more generally, see infra notes 47-48; Schimthener, supra note 20.
associate openings with other Indians. 34 Another set of today’s elite firms emerged after independence but prior to India entering the global economy in the early 1990s, mainly starting off as family or small partnerships and then steadily expanding. 35 The third set has formed recently, since the 1990s, as lawyers from the longer-standing firms have broken away, or as successful individual lawyers have partnered-up to establish these newer, highly-profitable practices. 36

In terms of clientele, multi-national corporations account for an important portion of these elite firms’ business. But as Indian companies have grown, they too have turned to these firms for legal assistance. 37 Also, over the last twenty years these firms have seen an increase in lucrative business from the Indian government (at the central and state levels), as well as from foreign governments (investing in India) on projects including infrastructure improvement and other transactional matters. 38

The liberalization of the Indian economy has been an economic boon for this group of elite law firms. It is important to remember the context in which these firms have thrived. As stated above, most Indian lawyers have individual practices, are courtroom litigators, and have varying degrees of economic and reputational success. Although there are those small to medium-size firms that do exist and make a profit, others struggle to break even, and none have been able to compete financially with the elite corps. Therefore, in a country of over one billion people, where one million hold law degrees, less than fifty elite firms—or about 2,500 lawyers total—are receiving a relatively enormous amount of wealth as a result of providing transactional legal services to a diverse, prosperous client

34. After independence and until the Advocates Act of 1961, which will be discussed shortly, those few British lawyers who remained in these firms continued to practice as before. This was provided that they had registered with their respective High Court per a colonial 1926 law called the Indian Bar Councils Act. Advocates Act, 1961, No. 25, Acts of Parliament, 1961. See Schmittener, supra note 20, at 360. Once the Advocates Act came into force, these British lawyers were grandfathered in by section 3 of the law (and thus permitted to continue practicing). For further discussion, see infra notes 44-51. See generally, JOHN J. PAUL, THE LEGAL PROFESSION IN COLONIAL SOUTH INDIA (2nd ed.) (1991). Note, some of these firms, which as stated, continue to exist today, retain their British names partly because of tradition, partly because there is some perceived prestige attached to having these Western names, and partly because that is how the public knows these firms. See, e.g., Crawford Bayley and Company (Mumbai), Orr Dignum (Calcutta), King and Partridge (Madras/Chennai), Little & Company (Calcutta), which is now Fox Mandal Little (for a brief, unique history of Fox Mandal Little, see Dipankar De Sarkar, India’s Oldest British Law Firm Returns to India after 152 Years, THAIINDIAN NEWS, Feb. 20 2008, http://www.thaindian.com/newsportal/world-news/indias-oldest-british-law-firm-returns-to-london-after-152-years_10019464.html) (Article interestingly describing how before it was Fox Mandal Little, there was Little and Company and a separate firm known as Fox Mandal, which formed in 1896 after John Fox hired an Indian, Gokul Chandra Mandal, as a partner. Fox Mandal and Little and Company merged in 2006.).

35. Information gathered from fieldwork conducted in India, Summer 2008.
36. Id.
37. Id.
38. Id.
base. Thus, when there are calls for India to open its market to allow foreign law firms to compete for business, it is only natural to assume that the main opposition would be from those working in these elite Indian firms. As will be seen in the next section, however, the story is more complicated than it appears.

II. THE COURT CASE AGAINST THE FOREIGN LAW FIRMS

Scholars have discussed reasons for India’s decision to liberalize its economy in the early 1990s; importantly, the immediate, recognizable consequence was that foreign investment and multi-national corporations soon entered the country hoping to capitalize on this untapped market. During this same period foreign law firms started to explore the possibility of expanding into India. Initiating this move, Chadbourne & Parke and White & Case, both American firms, and the British firm of Ashurst, formally sought to establish a presence in the country.

The three firms approached the Reserve Bank of India (RBI), which under the Indian Foreign Exchange Regulation Act, was in charge of reviewing applications of foreign businesses wishing to open offices in India. The RBI granted

39. This figure of 2,500 lawyers is arguably generous. If we estimate that within each of the SILF firms (of which there are forty-four), there are fifty lawyers per firm, and we add, say, another half dozen to this SILF list (assuming that there are a handful of elite firms that do not belong to SILF), in order to arrive at an even fifty law firms (with fifty lawyers per firm), then indeed we come out with about 2,500 lawyers. This sum, of which several SILF members agreed is about as accurate as we can get, is far less than some accounts that claim there are tens of thousands of elite corporate lawyers lobbying for the government to deny entry to the foreign firms. See, e.g., Dan Slater, Passage to India: Are Foreign Law Firms in the Country’s Future, LAW BLOG, Wall Street Journal, Apr. 30, 2008, http://blogs.wsj.com/law/2008/04/30/a-passage-to-india-are-foreign-law-firms-in-the-countrys-future/ (noting, without any support, that “India’s 15,000 corporate lawyers reportedly worry that they’re not ready for international competition...”).
40. See, e.g., Rob Jenkins, Democratic Politics and Economic Reform in India (2000); Vijay Joshi and I.M.D. Little, India’s Economic Reforms 1991-2001 (2000); Parthasasanthi Banderjee and Frank-Jurgen Richter, Economic Institutions in India: Sustainability Under Liberalization and Globalization (2003). See Patriarch of Reforms Narasimha Rao Dead, THE HINDU Bus. LINE, Dec. 24, 2004, http://www.thehindubusinessline.com/2004/12/24/stories/2004122402990100.htm (“A set of big-bang reforms were unveiled by Dr. [Manmohan] Singh under the watchful eyes of his Prime Minister within days of the Government taking office. A pre-Budget move to devalue the rupee by 20 per cent to encourage repatriation of export earnings was followed by Budget proposals (July 1991) that included abolition of licensing requirements in most industries, hiking fertiliser prices to reduce subsidies, and a clear signal for public sector reforms to improve efficiency. The Budget also proposed relaxation of controls on foreign investments. The second Budget of Mr Rao’s Government carried the reforms further and set a tone that virtually made the process of change irreversible leaving successive Governments with no option but to carry the task forward. While more import items were transferred to the Open General Licence list, further liberalisation was proposed for attracting investment flows. The period also saw major stock market reforms, including abolition of the office of Controller of Capital Issues that paved the way for a statutory regulator—the Securities and Exchange Board of India.”).
41. Interview with Ashok Mubayi, Liaison Head, Ashurst (June 17, 2008); Interview with David Roberts, Partner, Olswang (May 29, 2008); see also Richard Lloyd, Indian Court Ponders Opening Legal Market to Foreign Firms, AM. L. DAILY, May 2, 2008, http://amlawdaily.typepad.com/amlawdaily/2008/05/a-mumbai-court.html.
42. Interview with Ashok Mubayi, Liaison Head, Ashurst (June 17, 2008). In 2000 the Foreign Exchange Regulation Act was replaced by the Foreign Exchange Management Act.
Chadbourne, White & Case, and Ashurst liaison licenses, allowing them to set-up branches in India for the restrictive purposes of learning about the business environment, collecting investment information, serving as official representatives of the foreign firms to the Indian government and to Indian businesses, and promoting relationships and collaborations with those interested in such cooperative initiatives. As several people who followed the RBI’s approval practices during the 1990s mentioned, these liaison offices were meant simply to be the eyes and ears of the foreign law firms.

The reason why the RBI only provided a limited license to the three firms related to the existence of the Indian Advocates Act of 1961. Prior to this statute, ‘legal practitioners,’ as they were often called during the colonial period, were a compilation of several groups governed by various British-enacted laws from the late 1700s. Vakils, for instance, were practitioners who initially could only work in certain rural courts but eventually received the right to appear in “any High Court” in India by the 1860s. There were also private ‘pleaders’ who served as litigators in the lower courts. Then there were mukhtars, or nonLicensed legal practitioners.

43. Interview with Ashok Mubayi, Liaison Head, (June 17, 2008); see also Lloyd, supra note 41.

44. See Schmittener, supra note 20, at 351 (noting, e.g., that in 1793 the British passed the Bengal Regulation VII, which set up guidelines as to the professional conduct of vakils, a group which will be described in the ensuing text and footnote. There was also Regulation XXVIII of 1814, which expanded upon the 1793 Regulation. Id at 352.). Then as the current Advocates Act of 1961 states in its introduction: “The Indian High Courts Act, 1861 (commonly known as the Charter Act) passed by the British Parliament enabled the Crown to establish High Courts in India by Letters Patent and these Letters Patent authorised and empowered the High Courts to make rules for advocates and attorneys (commonly known as Solicitors). Advocates Act, 1961, sec. 32, No. 25, Acts of Parliament, 1961. The law relating to Legal Practitioners can be found in the Legal Practitioners Act, 1879 (18 of 1879), the Bombay Pleaders Act, 1920 (17 of 1920) and the Indian Bar Councils Act, 1926 (38 of 1926).”

45. See Legal Practitioners Act of 1879, No. 18, Acts of Parliament, 1879, Interpretations Clause, section 4; see also Schmittener, supra note 20, at 350 (giving a nice history of the vakil. As Schmittener discusses, vakils emerged in the mofussil, or rural, areas of the country during the 1700s. [The term, vakil, incidentally, dates itself back to the “Muslim law books in connection with marriage settlement.” Id. at n. 87. It came to mean agent or representative and after the Bengal Regulation of 1793 (see supra note 44). Id.] While solicitors and barristers in the main presidency towns of Calcutta, Bombay, and Madras were virtually all English in the 17th and 18th centuries, vakils in the rural areas were all Indian. Id. at 350. Prior to the Bengal Regulation of 1793, Schmittener argues that many vakils were unchecked extortionists, charging clients high fees while not necessarily having the requisite skills needed to defend them in the rural courts that were under the control of the British East India Company. As time went on, however, vakils became more professionalized; with the British crown taking over the area that the British East India Company had been ruling (i.e., the rural areas) in 1858, unifying the colony’s court system shortly thereafter, and then passing a law that created the High Courts in India. Vakils soon were defined as those “who had studied law in a university and had passed the High Court vakils’ examination. Later it came to mean the graduate of a university with an LL.B. degree who as a full-fledged advocate . . . [could] handle work without the help of counsel on either the Appellate or the Original Side.” Id. at note 87.). For an important discussion of the diversity of legal practitioners in India during the colonial era, see Ministry of Law, All-India Bar Committee Report (1953) [hereinafter 1953 BAR COMMITTEE REPORT] (on file with author). See generally PAUL, supra note 34.

46. Schmittener, supra note 20, at 352-354. Note vakils were initially considered pleaders after the 1793 Bengal Regulation. However, after the passage of the law that created the High Courts in the early 1860s, vakils were specifically denoted as High Court pleaders and the term pleader, on its own, came to signify those who
workers who provided assistance to licensed members of the bar. There were "[r]evenue agents as well, who worked in the revenue offices and courts [who] were given status as legal practitioners . . . ." Finally, there were solicitors and barristers who, while originally were almost exclusively British, towards the latter half of the 19th century began having an increasing number of Indians join their ranks.

The 1961 Advocates Act, which remains in force to this day, consolidated many of these distinctions and stated that the above groups would all be recognized as "advocates" who would be the only professionals "entitled to practice the profession of law" in India. Moreover, although there are exceptions, in general a practicing advocate has to be a "citizen of India" under

practiced in the lower courts. These lower court pleaders could move up to become High Court pleaders provided they completed three years of practice and successfully passed an examination. It should also be noted that the Regulation of 1793 provided posts for those who wished to be government pleaders, or legal representatives of the Raj. Id.; see also 1953 BAR COMMITTEE REPORT. See generally PAUL, supra note 34.

47. Schmittener, supra note 20, at 352-54; see also 1953 BAR COMMITTEE REPORT. See generally PAUL, supra note 34.

48. Schmittener, supra note 20, at 355.

49. See id. at 343-49 (describing how solicitors from the 1670s-1770s were poorly reputed, unprofessional, and often incompetent. This changed though as solicitors became more professionalized with the establishment of a more formal set of courts, first in Calcutta (1774), then in Madras (1801), and finally in Bombay (1824). As professional barristers from England began coming to India in the 1770s, solicitors stopped engaging in both litigation and transactional work, focusing on just the latter, which contributed to them become more specialized. For a full explanation of this evolution, see id.).

50. There are several points to emphasize here. First, solicitors in India during this time were often referred to as "attorneys," while barristers were denoted as "advocates." Second, solicitors and barristers were mainly located in the urban, presidency, British government-controlled (as opposed to British East India Company controlled) areas like Calcutta, Bombay, and Madras. Third, after the court system was unified, the allowance of vakils to practice in the High Courts "ended the monopoly that the [English] barristers had enjoyed." Id. at 356. (Vakils were considered one level lower than barristers in the pecking order; after unification they could now aspire to become barristers/advocates.) Fourth, English solicitors during the late 1800s began hiring some Indians into their firms. Several of these solicitor firms, after the passage of the High Court law, became very wealthy, because the High Courts were given, not surprisingly, appellate jurisdiction but also original jurisdiction for significant commercial matters. They also had original jurisdiction for major criminal cases. Solicitors who brought such commercial cases could prepare the transactional work and then would hire a barrister/advocate to argue these issues. See id. at 358-59, 367-68. See generally PAUL, supra note 34 (for what happened to solicitors and barristers practicing in India, who were British, after Independence).

51. See Advocates Act, 1961, No. 25, Acts of Parliament, 1961; see also Navoneed Dayanand, Overview of the Legal System in the Asia Pacific Region: India, Cornell Law School LL.M Paper Series (2004), available at http://lsr.nellco.org/cgi/viewcontent.cgi?article=1001&context=comell/lps (last visited Nov. 2, 2009). Dayanand also provides some background on the three foreign firms seeking to petition to enter India in the 1990's. Interestingly, in some Indian cities like Mumbai and Calcutta, there are still some lawyers who refer to themselves as solicitors and are officially recognized within these local jurisdictions as such. Indeed, in these cities there is still a solicitors' exam that is administered where lawyers can receive their 'solicitors' licenses. As stated above in the text, the Indian bar is unified today and so there is no requirement that lawyers take such tests or need to become solicitors. It appears that the motivation for why some do so, though, is that there is a perception that having such a listing next to their name provides these lawyers with an additional form of prestige. Information on this point gathered from Interview with Ashok Mubayi, Liaison Head, Ashurst (June 17, 2008).

the law.\textsuperscript{53} There is also the requirement that an advocate's law degree must come from an institution recognized as legitimate by the above-mentioned Bar Council of India—again, itself an elected body established by the Act that along with licensing practitioners, evaluates and accredits Indian law schools, and disciplines members who breach their fiduciary or ethical duties as advocates.\textsuperscript{54}

Soon after the liaison licenses to Chadbourne, White & Case, and Ashurst were issued, a lawsuit against them was brought in 1995 by a public interest organization based in the western state of Maharashtra.\textsuperscript{55} This group, known as the Lawyers Collective, argued that the three firms exceeded the terms of the licenses issued by the RBI.\textsuperscript{56} There were accusations, for example, that lawyers from White & Case and Chadbourne were working on transactional deals and that the latter was even openly housing its contingent of twenty-plus lawyers in a five-star hotel.\textsuperscript{57} (Interestingly, there was no specific accusation made against Ashurst, perhaps because its liaison office had just opened a few weeks before the suit was filed and had only one English lawyer and one legal secretary employed at the time.\textsuperscript{58} Nevertheless, it still was named as a defendant by the Lawyers Collective.) The complaint detailed how the liaison offices were being used as fronts by these foreign firms in order to circumvent the strict rules governing the practice of law enumerated in the 1961 Advocates Act.\textsuperscript{59} The law firms sought to have the complaint dismissed, but the Bombay High Court held that even the “rendering [of] legal assistance and/or ... executing [of] documents, negotiations and settlements of documents would certainly amount to [the] practice of law.”\textsuperscript{60} The court then ordered the RBI to perform an investigation to determine the extent to which the firms were contravening the statute.\textsuperscript{61}

The law firms appealed this decision to the Indian Supreme Court, but the case

\textsuperscript{53. Id. at Section 24(1)(a). We will be discussing the exceptions shortly, but they include receiving special permission from the judiciary to practice law in the country or where the Bar Council of India, under its discretionary powers, grants a foreign lawyer the right to practice. Typically the latter will occur where Indians are given the right to practice in that lawyer's home country.}

\textsuperscript{54. See id. at Sections 4-15 (State chapters also answer to the national Bar Council of India. These sections outline the powers and functions of both the national and state Bar Councils.).}

\textsuperscript{55. See LAWYERS COLLECTIVE CASE (on file with author).}

\textsuperscript{56. Id.}

\textsuperscript{57. Interview with Anonymous Respondent (June 8, 2008).}

\textsuperscript{58. Interview with Ashok Mubayi, Liaison Head, Ashurst (June 17, 2008).}

\textsuperscript{59. See LAWYERS COLLECTIVE CASE (on file with author).}

\textsuperscript{60. See id. Note the case was originally heard in the Bombay High Court, which although is the appellate court of the state of Maharashtra (and the state of Goa and the union territories of Daman and Diu and the Dadra and Nagar Haveli) also serves as a court of original jurisdiction in matters where a petitioner is claiming that there is a violation of the Constitution's fundamental rights, or as in this case, a violation of a statute. The Supreme Court of India has similar original jurisdiction in terms of a petitioner bringing a claim on the basis of the former.}

\textsuperscript{61. Id. See also Knocking on India's Doors, BUSINESS WORLD, Dec. 5, 2007, available at http://www.businessworld.in/index.php/Web-Exclusives/Knocking-On-India-s-Doors.html.}
was sent back to the Bombay High Court in 1996 for further deliberation.\textsuperscript{62} Thirteen years passed without any resolution to the conflict. Of the three Western law firms that were originally sued by the Lawyers Collective, only one remains in India today. Chadbourne departed soon after the Bombay High Court’s initial judgment and White & Case closed its operations in the spring of 2008; Ashurst to-date has kept its doors open. As this article was set to print, in December 2009 the Bombay High Court finally issued a ruling that legal work done by foreign lawyers in India—litigation and non-litigation—was prohibited by the Advocates Act of 1961; the court thus appears to have struck a blow to the efforts of Western firms seeking to penetrate the Indian market.\textsuperscript{63}

Yet, as I describe in the next section, this struggle has become indeed more than just a litigation dispute. I discuss what has transpired over the last many years and who is now involved in the debate.

III. EXPANDING THE FIGHT BEYOND THE COURTS

A. THE INITIAL CONFLICTS

From 1996 until Autumn 1999, India experienced a series of fractured parliamentary coalitions at the central governmental level.\textsuperscript{64} In spite of this political instability, foreign investment into India continued and foreign lawyers representing these investors began devising ways to advise their clients without being accused of unlawfully practicing within the country. For example, several foreign law firms established offices in nearby Singapore to keep a close eye on the Indian legal scene.\textsuperscript{65} In addition, a number of British firms and a few American ones set up “India desks” within their headquartered offices to monitor and work on legal issues involving India.\textsuperscript{66} And many foreign law firms formed

\textsuperscript{62} See Lloyd, supra note 41.

\textsuperscript{63} Lawyers Collective v. Bar Council of India et al, Writ Petition 1526 of 1995 (Dec. 2009) (As of this printing, it is unclear whether the decision will be appealed. In its ruling the court stated that the Reserve Bank of India, discussed above in the text, violated section 23 of the 1973 FERA in allowing Ashurst, White & Case, and Chadbourne to open offices in India during the 1990s.).

\textsuperscript{64} For a general discussion of this point, see Thomas Blom Hansen, The Saffron Wave: Democracy and Hindu Nationalism in Modern India (1999); Atul Kohli, The Success of India’s Democracy (2001); Jenkins, supra note 40; Pratap Bhanu Mehta, Burden of Democracy (2003).


relationships with their Indian counterparts, referring their clients to the latter whenever necessary and in turn taking-on clients when so referred. 67

By October of 1999 electoral politics stabilized. The right-of-center Bharatiya Janata Party (BJP) and its coalition partners captured a majority of seats in the Indian Parliament. 68 While foreign law firms wondered whether the self-proclaimed Hindu-nationalist BJP might be hostile to their particular agenda, the government’s eventual appointment of the eminent lawyer Ram Jethmalani to the position of Minister of Law and Justice allayed many of these observers’ concerns. Although free-speaking and an oft-provocateur, Jethmalani, who now is in his 80s, was then and still is viewed as one of India’s best civil rights and criminal law experts. 69 He was seen as a strong selection by those interested in opening India’s legal services market because of his vast experiences abroad and his exposure and acclaim in different international legal circles.

Upon becoming Law Minister, Jethmalani did not disappoint. Among one of his first initiatives included proposing changes to India’s Code of Civil Procedure. As stated above, the Indian judiciary has been in crisis for years; currently there are roughly 40,000 cases pending before the Supreme Court, a total of about 3 million cases languishing in all of the state High Courts, 70 and 25 million cases lying dormant in the district courts. 71 The explanation for this backlog has been discussed elsewhere, 72 but in short there has been a long-held


67. Supra note 66; information gathered during the course of fieldwork.

68. For reference, see supra note 64.

69. For an interesting background on part of Jethmalani’s career, see Sumit Mitra, The Wrath of Ram, INDIA TODAY, Aug. 7, 2000, available at http://www.india-today.com/today/20000807/cover.html [hereinafter Mitra, Wrath of Ram]. Also India’s CNN-IBN news service conducted a very provocative interview with Jethmalani and his decision to defend a controversial defendant accused of murder, Manu Sharma, in a case that was decided in 2006. (Sharma was found guilty.) To observe a snapshot of Jethmalani’s reaction, which he states is a window into his personality, and his views of this case and of the criminal justice system more generally, see Ram Jethmalani interviewed by Karan Thapar, YouTube, http://www.youtube.com/watch?v=3Os-yqbitHk (Part I of the interview); http://www.youtube.com/watch?v=ADJjbKAZKm8&feature=related (Part II of the interview); http://www.youtube.com/watch?v=P7pNUNLbck&feature=related (Part III of the interview) (last visited Oct. 23, 2009).


71. The website India Stat is the most comprehensive database that tracks pending suits in court, and as of June 30, 2006 stated the figure as 25,393,251. District/Subordinate Courts, INDIA STAT.COM, http://www.indiastat.com/crimeandlaw/6/courts/72/districtsubordinatecourts/17697/stats.aspx (data on file with author).

72. "Most observers agree that the main issue in India is not how many cases enter the courts, but how few come out. India’s legal system, in both its civil and criminal procedure codes, allows for many different types of interlocutory appeals. This practice is a carry-over from the colonial period. The British believed that in order to protect themselves from adverse judgments in lawsuits, they (the British) needed to preserve the right to appeal both substantive and procedural rulings from lower courts, which were generally staffed by Indians. In fact the British system allowed substantive and procedural decisions to be appealed all the way to the Privy Council, Britain’s highest court at the time, in London. The tradition of prolonged appeals continues today in independent
belief that because both the criminal and civil procedure codes allow for multiple interlocutory appeals, parties have the ability to drag cases on for decades. To reduce the backlog and provide more timely legal remedies to both Indians and foreign investors seeking to use the courts, Jethmalani advanced the idea of curtailing the number of adjournments and appeals allowed for by the civil procedure code. (He did not broach the criminal procedure code at this juncture.)

The second of Jethmalani’s proposals, which even further pleased the ever-watchful foreign bar, suggested exploring the possibility of opening India’s legal services market. For the Law Minister, the opposition was “misunderstanding deliberately” the entire debate over the admission of foreign lawyers entry into India. Furthermore, he argued that the frequently cited provisions in the Advocates Act prohibiting foreign lawyers from practicing in India were not absolute. There were exceptions, for example, where if another country allowed Indian lawyers to practice in its jurisdiction, then lawyers from that country would be granted reciprocal privilege in India. Plus, upon special permission of the Indian judiciary, foreign lawyers could, and have in the past, appeared in Indian courts.

Nevertheless, both of Jethmalani’s propositions received a harsh response from the largest segment of the Indian bar, the district court lawyers. They argued that his amendments to the code unfairly reduced the amount of time they could prepare for cases and virtually eliminated the ability of everyday litigants to appeal most civil trial judgments. On the second proposal, they accused Jethmalani of succumbing to the seductive pressure from foreign law firms and for not consulting with them on this idea.

The district court lawyers contemplated how to react. Those involved in the

India. A sub-category of “delay lawyers” has even emerged who are specialists in perpetuating the length of litigation. These lawyers are in part motivated to keep litigation pending because of the way the Indian Bar organizes its fee-structure—lawyers typically receive payment per court appearance.” Krishnan, Outsourcing, at 2226-27. “In 2002, the Indian Civil Procedure Code was overhauled, with the intent to reduce the number of these types of appeals. It is uncertain whether such a change will make a substantive difference in how the system operates.” Krishnan, Outsourcing, at 2226, n.183.

74. See Minister Lambasts Strike against Foreign Lawyers and CPC Amendments, PRESS TRUST OF INDIA, Feb. 23, 2000, http://www.expressindia.com/news/ie/daily/20000223/ina23042.html (Jethmalani argued that he was only following up on an idea raised by the government’s Law Commission’s report. He stated that there was not a “legislative proposal before the Government.” It was only an idea in progress.).
75. Id.
76. Id.
77. Id.
79. For a detailed critique of Jethmalani’s amendments’ proposal, see Mitra, supra note 73.
80. Interview with Rajiv Khosla, current president of the Delhi Bar Association (Tis Hazari branch) (June 18, 2008).
main strategic decision-making sessions were members of the Delhi (district court) Bar Association (DBA), the most mobilized and politically effective group of its kind in the country. One thought was to sue the government, but that was rejected ironically because of the time required to receive a final judgment. Another option discussed was whether to launch a grassroots political response. As one lawyer stated, "we wanted to make our position as political as could be. That's the only way to get anything in this country done." The DBA eventually decided to call a one-day strike to be held on December 21, 1999 in the nation's capital. The protest drew 5,000 lawyers from three of the city's district courts as well as from the Delhi High Court. A follow-up strike occurred on February 24, 2000. At this rally, approximately 40,000 lawyers gathered in Delhi, and nation-wide an estimated 500,000 lawyers struck, shutting down the courts throughout the country.

The February strike made international news. The main reason was because the government's response, namely in Delhi, by using force to break up the demonstration. According to the government, the police were compelled to use violence because the protesting lawyers were on the brink of instigating a riot. The lawyers, however, tell a much different story. Rajiv Khosla, the current president of the DBA and an organizer of the strike, recalls that the police beatings of the lawyers were unprovoked. Not only did they use batons, but the police also propelled water canisters to disperse the crowd—one of which hit Khosla in the face, causing him to lose his right eye. The Delhi Bar extended the strike for several more weeks, bringing to a halt all work in the city's district courts and the Delhi High Court.

81. It is important to note that in each state there is a bar association that serves those who practice in the district courts; there are more practitioners who work primarily in the district courts than in any other venue in the country. There are also parallel-state-bar associations that represent lawyers who primarily work in each state's High Court; and there is a Supreme Court bar association for those who work primarily in the Supreme Court. The Bar Association of India is the comprehensive group that represents all of these lawyers, although again, the main constituents are those lawyers who mainly practice in the district courts. These district court lawyers, as we will see, thus have a great deal of lobbying and political power.

82. Interview with Anonymous Attorney (June 19, 2008).
83. Id.
84. Interview with Rajiv Khosla, current president of the Delhi Bar Association (Tis Hazari branch) (June 18, 2008).
85. Id.
86. Id.
87. Id.
It is hard to tell whether the proposed change to the civil procedure code or the possibility of foreign lawyers entering India was the driving force behind the lawyers’ agitation. There are those who believe that the former was the main contributor. Because district court lawyers are often paid per court appearance, the amendments, which reduced the opportunities for adjournments and appeals, would have cut into the fees of Indian litigators. On the other hand, DBA President Khosla insists that it was the issue of foreign lawyers that infuriated him and his constituents the most. For Khosla, that the Law Minister had not consulted with the district-court lawyers but instead engaged in conversations and correspondences with a handful of domestic allies sympathetic to liberalizing the legal services sector, which the Minister then touted as an endorsement from the legal establishment, provoked the strike.

Ultimately a compromise was reached on the amendments to the civil procedure code, which Khosla cites as support for his claim that this issue was not as problematic for the district court lawyers as some have suggested. On the issue relating to foreign lawyers, however, the district court bar refused to budge; the government eventually shelved its plans, and Khosla and his colleagues claimed victory. But the fact is that neither the district court lawyers nor the government had a detailed set of policy arguments explaining their respective positions. Add to this that India’s elite law firms were not even major players in this conflict and had a minimally articulated position-platform of their own at this time. For those in favor of liberalizing India’s legal market, what occurred in December 1999 and February 2000 served as an important lesson and forced them to craft a more sophisticated strategy that they then employed in the years that followed. The district court lawyers and their ideological allies similarly did the same. These developments will be explored next.

B. CHANGES IN GOVERNMENT, CHANGES IN STRATEGY: A NEW PUSH BY LIBERALIZATION ADVOCATES

Ram Jethmalani’s tenure as Law Minister ended on July 22, 2000. Although
the two strikes by the Indian lawyers occurred during his time in office and may have played a role in the BJP government's decision to ask for his resignation, there were other high profile incidents, unrelated to our study, which contributed to his departure.\footnote{Id. (noting, among other points, the intra-ministerial conflict that existed within the government during this time).}


Jaitley's position on the issue of foreign lawyers entering India was two-fold. He believed that given its politically volatile nature, there simply could be "no proposal to allow foreign lawyers to practice" in India during his time in power.\footnote{Id.} At the same time, Jaitley insisted that the Indian bar needed to acknowledge that globalization was changing the way lawyers were doing business. "There is an increasing element of competition and trend towards commercialization of [the] legal profession," he stated.\footnote{Id.} "This has come to stay and it is a hard reality. The territorial restriction on law practice . . . [is] cracking down."\footnote{Id.}

Jaitley's stance offered hope to American and British law firms who still sought to be part of the expanding Indian economy. Recall that although Chadbourne & Parke had left India, the U.S. firm of White & Case and the U.K. firm of Ashurst remained.\footnote{Supra Section II.} In addition, elite English firms such as Clifford Chance, Freshfields, Olswang, Herbert Smith, and Linklaters continued to show interest in India, as did American firms such as Jones Day, Baker & McKenzie, and those that focused on the field of intellectual property.\footnote{See supra note 66. See also Brian Baxter, Gibson Dunn Taps Jones Day Talent for Singapore Office, AM. L. DAILY, May 20, 2008, available at http://amlawdaily.typepad.com/amlawdaily/2008/05/gibson-dunn-tap.html; Freshfields Bruckhaus Deringer website, http://www.freshfields.com/locations/india/ (last visited Oct. 26, 2009); Krishnan, Outsourcing, supra note 24.} But with the Law Minister and the government ultimately unwilling to push for the opening of the legal services sector, foreign law firms were left to work outside of the country as they had been doing since the mid-1990s.

The national elections of 2004 ushered in a new coalition government led by
the historically dominant Indian Congress Party. As of this writing, this coalition continues to remain in power. This government is viewed by many observers in and outside of India as having the economic ‘dream team’ at the helm. The Prime Minister, Dr. Manmohan Singh, is a Cambridge- and Oxford-trained economist who worked at the International Monetary Fund (IMF) and helped India begin the process of liberalizing its economy in the early 1990s. His deputy chairman of the government’s planning commission, Montek Singh Aluwalia, similarly is a former IMF official who has served in several key economic posts in the Indian government. And the National Home Affairs Minister, Palaniappan Chidambaram, a lawyer as well as a graduate of the Harvard Business School, has long been involved on the international stage dealing with multi-national corporations and foreign nations as a government official and before that working in his private law practice.

In addition to these internationalists, the government appointed H.R. Bhardwaj, an intellectually agile and savvy official, as Law Minister. For the law firms based in Britain, in particular, the Bhardwaj selection and the overall formation of the new government were the best opportunities they had seen in ten years for opening India’s legal market. In short order, the Law Society of England and Wales, which is the organization that has represented the political and legal interests of solicitors since 1845, began “actively lobbying the Indian government and legal profession for an easing of its regime on foreign legal practitioners.” In January of 2005, a high-ranking official from the Law


105. In July of 2008, the Congress-led coalition faced a no-confidence vote, which it survived, despite an important coalition member, the Communist Party of India, pulling out of the alliance. For further discussion of this subject, see India’s government survives vote of confidence, GUARDIAN.UK.CO, July 22, 2008, http://www.guardian.co.uk/world/2008/jul/22/india.nuclear; see also Tejas Mehta, Cash-for-Vote Scam Lead to Rise in News Channels TRPs, NDTV.COM, July 24, 2008, http://www.ndtv.com/convergence/ndtvstory.aspx?id=NEWEN20080058419&ch=7/24/2008%208:54:00%20AM (The Congress Party was accused of buying votes with cash and other perks in order to maintain its control of Parliament. Members of the Congress Party vehemently deny the allegation. The matter, as of this writing, is currently under investigation.).


108. For background on Chidambaram, see http://parliamentofindia.nic.in/lsl/lok12/biodata/12TN33.htm. It should be noted that Chidambaram only became Home Affairs Minister in late 2008, following the November 2008 terrorist attacks in Mumbai. Prior to this post, he held the finance portfolio, where he was a central player in developing India’s economic policies.


Society became part of the Joint Economic and Trade Committee (JETCO), a large delegation established by the governments of Britain and India to promote bilateral cooperation in various fields. Legal services were designated as one such field and along with this Law Society member, the English negotiating team on this issue included four private sector solicitors and three government officials. The Indian team consisted of two lawyers, each from two different well-reputed private law firms, and two courtroom litigators, one from the Delhi Bar Association and the other from the Mumbai Bar Association.

The goal of JETCO’s legal services “working group” was to arrive at a mutual understanding on the steps needed to liberalize India’s legal market. To this end, the English side prepared a report detailing its suggestions and proposals. It is hard to say to what extent the English influenced Law Minister Bhardwaj or vice versa. Or for that matter if they both independently shared the same views all along. Regardless, Bhardwaj, the British contingent, and other supporters (including some American law firms) built a methodical, some say provocative, case as to why foreign lawyers should be allowed to practice in India. Let us consider each of the arguments in turn.

1. Teaching them what we know to make them better

There is a direct and oft-repeated sentiment among those advocating for liberalization: “letting in foreign lawyers will help India to become globally competitive in legal services in its own right.” For these proponents, Indian lawyers, as a whole, currently lack the experience and skill-set needed to compete in the global marketplace. By introducing foreign lawyers who are fluent in international legal services into the Indian space, competition within the domestic market would ensue and force underperforming Indian lawyers to improve their practice, merge with their new competitors, or fold.

This position is not just held by foreign lawyers; several Indian transactional

112. Id. Also note that these fields included those ranging from accounting to financial investments to infrastructure development to healthcare to intellectual property. For a full breakdown of JETCO, see the following information from the UK-India Business Council. UK-India Business Council, Joint Economic and Trade Commission (JETCO)-India, http://www.ukibc.com/ukindia2/files/JETCO%20membership%20and%20organogram.pdf.
114. Id. Each side was responsible for reporting on their efforts to supervising governmental officials, with each delegation ultimately working under the auspices of the British Secretary of State for Business, Enterprise and Regulatory Reform, John Hutton, and the Indian Minister for Commerce and Industry, Kamal Nath. Id.
115. Id.
117. See Market Opening in India, supra note 111.
lawyers feel the same way. Som Mandal, the managing partner of one of India's oldest law firms, Fox Mandal Little & Company, has stated that he believes the presence of foreign law firms in India would only strengthen the Indian legal profession. According to Mandal, "[c]ontrary to popular belief that domestic firms will be wiped out by the entry of international firms, . . . foreign players will enhance the quality of service, facilitate the adoption of international best practices, and promote the overall development of individual [Indian] lawyers." Similarly, Suresh Talwar, one of India's most respected corporate lawyers, argues that competition from foreign law firms will improve the professionalism of the Indian bar where "those who are good will survive, and those who aren't won't." Talwar, like Mandal, also believes that Indian law firms could benefit by "imbibing the best practices" of foreign law firms. In fact his new firm, Talwar Thakore and Associates, has announced a formal "tie-up," or "best-friends cooperative," with the elite British firm Linklaters. In addition to establishing a joint referral network and sharing legal and technical know-how, Talwar's new firm is incorporating the professional norms and practices of Linklaters in hopes that it will thrive like the British firm.

Irrespective of whether domestic or Western lawyers articulate this position, the message of this argument is clear: the entry of foreign law firms into India would allow Indian lawyers to realize their full potential. With Indian lawyers so insulated from the rest of the world for so many decades, it is only to be expected that they would not have the expertise to deal with the complicated transactional work demanded by high-profit yielding, multi-national clients. As a partner from the London-based Ashurst firm has said, foreign lawyers would bring "higher standards and new techniques to the Indian market." And another British practitioner has remarked, the Indian transactional bar "need[s] the breadth of experience that the U.S. and U.K. law firms can bring. It is not to knock the Indian firms, but they are much smaller and do not have such a full range of

120. Id. (Although Mandal is supportive, he also believes that foreign lawyers should "be allowed to practice only the law of their jurisdiction and later be allowed to enter into joint ventures with local firms. Furthermore, litigation can be preserved for domestic lawyers.").
121. Telephone interview with Suresh Talwar, June 3, 2008.
122. Id. Another Indian firm, Trilegal, has recently done the same with the British firm Allen and Overy. For a discussion of this point, see Malathi Nayak, Trilegal Makes Innovative Deal with Top UK Firm, LIVEMINT.COM, Feb. 21, 2008, available at http://www.livemint.com/2008/02/212335203/Trilegal-makes-innovative-deal.html. And in January 2009, "Clifford Chance, the world's largest law firm, announced an alliance with leading Indian counterpart AZB . . . as global legal practices try to gain access to the country's burgeoning cross-border market." Joe Leahy and Michael Peel, Clifford Chance Finds AZB India Ally, FIN. TIMES, Jan. 15, 2009, available at http://www.ft.com/cms/s/0/19ff657f-e266-11dd-b1dd-0000779fd2ac.i_email=y.html.
2. Better for Clients and Law Students

Indian lawyers would not be the sole beneficiaries from the presence of foreign law firms, according to liberalization supporters; Indian clients and law students would gain as well. Earlier it was discussed how there is a relatively small number of elite law firms in India that work on transactional matters. With the booming growth of Indian businesses over the past decade, the Indian law firms servicing these clients have financially capitalized. Open-marketers, however, claim that because the legal services sector is closed to international competition, Indian clients are forced to pay whatever fees are demanded of them. If foreign law firms were granted access, clients would have a wider selection from which to choose. Further, because these firms would seek to attract business of their own, they would likely enter India charging less than their Indian counterparts, which would be savings directly felt by clients. (And for wealthier Indian clients who already travel abroad to use foreign law firms, having their lawyers in the “same time zone” would reduce the costs currently spent working across international borders.)

Indian law students are another group that could see their situation improved with the admission of foreign law firms. Over the past twenty years, India has witnessed a transformation in legal education. Previous work has detailed this development, but briefly, since the late 1980s a set of prestigious five-year, post-high school law programs have emerged that have attracted some of the country’s best students. Many of these graduates, together with a number of top students who have matriculated from the handful of historically-reputed, three-year, post-baccalaureate law programs have been accepting positions

124. See Chris Crowe, Middle East and India: Standing Guard, LEGALWEEK.COM, Mar. 29, 2007, http://www.legalweek.com/Articles/1018790/Middle+East+and+India+Standing+guard.html. But see quotation of Doug Peel, a partner with White & Case, who shows much more deference to elite Indian law firms which he says “are operating to very high standards, and in most cases to international standards.” ALB Special Report: India Prepares to Open its Doors, ALB LEGAL NEWS, Mar. 1, 2007, http://asia.legalbusinessonline.com/reports/23706/details.aspx (The author notes “that internationals name as among the handful [of Indian firms] able to stand the competition include Amarchand Mangaldas & Suresh A Shroff & Co, Fox Mandal Little, Khaitan & Co, AZB & Partners, Crawford Bailey & Co, Luthra and Luthra, Trilegal, J Sagar & Associates, Rajani & Associates, and Mulla & Mulla.” As we have seen from above, and from Appendix B, however, there are others that could be included in this list as well.).


126. ld.


128. ld.

129. Id.
overseas (mainly in the U.K.) with several of the same firms that are seeking entry into India.\textsuperscript{130}

This legal "brain drain," as the argument goes, is occurring because these graduates are attracted to the salaries, vertical opportunities, and prestige that foreign law firms offer; liberalization supporters contend nothing comparable is present in even the most elite Indian firms. First-year associates, or "freshers" as they are often called, at the top Indian firms earn, at a maximum, $2,000-$2,500 a month.\textsuperscript{131} Furthermore, the probability of a fresher becoming an equity partner within one of these top firms historically has been remote.\textsuperscript{132} Finally, no Indian firm has the caché of a Clifford Chance, Jones Day, or Allen & Overy. Yet if foreign law firms were permitted into the Indian market, it would be a win-win situation, according to this argument.\textsuperscript{133} Many of these stellar Indian students who would prefer to stay in their home country could do so; they also could reap the benefits that accompany working for an elite Western firm; and the country's ongoing legal brain-drain could be curtailed.

3. A MATTER OF FAIRNESS

For supporters who believe India should open its legal services sector, those opposing this move are acting in a terribly unfair manner. As advocates for liberalization claim, Britain and the United States have long welcomed Indians interested in studying law into their universities. Upon graduation, a number of these Indians have offers to practice in some of the most lucrative law firms in the world. As one Western lawyer remarked, "you don't see Brits or Americans

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\item[131] This information was gathered after speaking with several partners who work in the most elite Indian law firms.
\item[132] One reason is that until late 2008 law firms in India were not allowed to have more than twenty equity partners. This point relates to the 1956 Indian Company Act, section 11.2 ("No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Indian law."). The Companies Act, No.1, Acts of Parliament, 1956. However, at the end of 2008, Parliament passed the Limited Liability Partnership Bill, which gives the go-ahead for partnerships to have more than twenty partners. See Kian Ganz, Indian Liberalisation Comes Closer with LLP Act, \textit{TheLawyer.com}, Jan. 17, 2009, http://www.thelawyer.com/cgi-bin/item.cgi?id=136195&d=415&h=417&f=416. We will be exploring this point later in the text, but it should be noted that technically section 11.2 of the Companies Act needs to be dealt with before the LLP bill can become effective. A new version of the Companies law is pending before Parliament and has a provision (section 422) that indeed increases the cap to one-hundred.
\end{footnotes}
banging down the doors of Indian universities; no, it’s always the other way around, but we don’t complain about it. Most of us think it’s good for our schools and for our [legal] system.134

Indian law firms also recently have opened offices in the U.K and U.S. For example, the Indian firm of Fox Mandal established a London office in the spring of 2008.135 The Mumbai-based firm of Nishith Desai Associates has an office in Palo Alto, California.136 Other Indian firms, too, are likely to follow this lead.

In addition, India is a member of the World Trade Organization (WTO) and a signatory to the 1995 General Agreement on Trade in Services (GATS).137 Much has been written on the WTO, the GATS, and the “Uruguay Round,” the site where this agreement was reached.138 For our purposes, this treaty contains a goal to form more open relationships among member states in various service sectors, including legal services.139 Although there is flexibility for states on how and when they decide to liberalize each sector, the argument pro-liberalization advocates make is that pure politics has affected the decision-making calculus of Indian government leaders.140 Consider, they claim, the accounting services sector, which opened-up years ago in India pursuant to the GATS. Unlike the political lobbying power of the Indian bar, Indian accountants had no such leverage; thus, the government was free to move forward on liberalization. Yet the Indian bar, according to these observers, has unreasonably exerted disproportional influence on its government, thereby preventing the Indian parliament from further implementing the treaty.141 How can India, they ask, expect to be treated as a major player on the world’s economic stage when it is unwilling to comply fully with its obligations as a WTO member and instead succumbs to pressure from a bullying interest group?142

The above discussion highlights how considerably the case for liberalization has evolved since the strikes and violence of 1999 and 2000. The arguments by foreign law firms and their supporters have become more detailed and hard-hitting, and indeed to some, smack of arrogance and paternalism. With a

134. Interview with Anonymous Attorney (July 20, 2008).
140. Id.
141. Telephone interview with Anonymous English Attorney (June 29, 2008).
142. Telephone interview with Anonymous American Attorney (June 28, 2008).
sympathetic government now willing to defend them, it might seem that the country is on its way to opening its legal services sector. But based on in-depth fieldwork conducted in India during 2008, I offer first-hand empirical evidence showing that contrary to the conventional wisdom, opponents of liberalization have developed a sophisticated case of their own. The opponents' arguments and the constituencies that support them, as I show, have forced the government to reconsider the pace at which foreign law firms should be admitted into the country.

C. THE OPPONENTS AND THEIR ARGUMENTS: MORE THAN SIMPLY PROTECTIONISM

There is a common perception among foreign lawyers and their supporters that those who oppose them are mainly equity partners from the elite Indian law firms who are earning an enormous amount of wealth under the current closed system. The animosity district court lawyers have held towards liberalizing the legal market, dating back to 1999, undermines this conventional view. There is also evidence that lawyers working in smaller firms, and even some lawyers based in both Britain and the United States, have expressed concern about allowing foreign practitioners to enter India. Still, it is not inaccurate to suggest that among the most vociferous skeptics of this liberalization initiative are indeed equity partners from some of the elite Indian law firms.

For this project I met with several of these lawyers. While they acknowledged that their financial prosperity might be affected by the presence of foreign law firms in the country, they insisted and articulated a point-by-point rebuttal to the arguments made by those on the other side. For example, the Indian partners bristled at the suggestion that the introduction of foreign lawyers would improve the quality of transactional legal practice within the country; “[t]his just shows how little they [the foreign law firms] know about what we do,” stated one Mumbai-based practitioner. Another well-regarded lawyer, Lalit Bhasin, the above-mentioned president of the Society of Indian Law Firms (SILF), echoed these sentiments. Bhasin is the managing partner of the New Delhi-based Bhasin and Company and has long argued that Indian law firms are already “globally competitive and need no support from foreign lawyers.”

143. Author interview with managing partner (anonymity requested) of one such smaller firm, June 7, 2008. See also Frumin, supra note 118 at 19 (Bob Nelson of Thelen Reid in San Francisco states: “I fear that excessive liberalization at too fast a pace could lead to a real overall quality dilution—where top Indian firms lose many of their good lawyers, while foreign firms that hire such lawyers and establish local presences cannot establish sufficient depth and critical mass—essentially creating a situation where quality is spread too thinly.” He goes on to say that “slow, organic change over time is best.”).
144. Telephone interview with Anonymous Mumbai Attorney (June 7, 2008).
145. Interview with Lalit Bhasin (June 19, 2008).
146. Letter from Lalit Bhasin (July 5, 2008).
According to Bhasin and a number of his SILF colleagues, Indian transactional lawyers have not been working in a vacuum all these years. In fact, many in SILF have long had productive and ongoing working relationships with foreign law firms. Indian firms and foreign firms have referred clients to one another; they have hosted joint conferences where information and experiences are shared; and they have worked closely together when client-interests so demand. Thus this depiction that they are isolated entities, sequestered from the rest of the world, is seen with disbelief and leads these Indian law firms to conclude that their foreign counterparts are engaging in a rhetorical stunt in order to caricature the Indian bar for "self-serving and malafide" purposes. After all, how can it be, Bhasin and his SILF colleagues ask, that yesterday Indian transactional lawyers were able and competent but today they are inferior?

For these Indians, British, and American lawyers are simply searching for new employment opportunities. In their press releases, editorials, and internal communications, the Indian lawyers repeatedly point to studies showing how saturated the legal markets are in Britain and the United States. While well-paying jobs are few and far between in their own home countries, foreign lawyers view India as a "fertile market." For this reason, Indians are skeptical that the foreigners sincerely wish to improve the quality of lawyering in India.

Then there is the contention of how Indian clients would benefit. "This is such a straw-man argument," remarked one Indian law firm partner. According to this lawyer, foreign firms purposely mischaracterize Indian transactional lawyers as a cartel, where prices are somehow fixed and there is no domestic competition. Nothing could be further from the truth, this lawyer and others say. The Indian legal market is bustling with competition and, moreover, the fees charged to Indian clients are affordable. As one of India’s top transactional lawyers stated, “I charge 16,000 rupees [$400] an hour, maximum, for my services. Would a London or New York partner’s rate be so low?”

If anything, there is a sense that the entry of foreign lawyers would lead to increased financial hardship for clients. As this argument goes, the elite London and Wall Street firms clamoring for liberalization employ thousands of lawyers. If these firms were granted admission into India, they may, yes, initially undercut

147. Interview with Lalit Bhasin (June 19, 2008).
148. Id.
149. Letter from Lalit Bhasin (July 5, 2008).
151. Letter from Lalit Bhasin (July 5, 2008).
152. Interview with Anonymous Respondent (June 18, 2008).
153. Id.
154. Interview with respondent (June 16, 2008).
the fees of Indian lawyers. (With enough resources at their disposal, the foreign firms could absorb the costs that accompany the lower rates.) But once the domestic competition was eliminated or brought under their control, foreign firms, as Indians contend, would be in a position of complete power.\textsuperscript{155} Indian clients in need of transactional work would have no alternative but to use the services of these foreign firms and pay the fees demanded of them.\textsuperscript{156}

That Indian law students would also benefit from the presence of foreign law firms is viewed as another red herring. Indian firms dismiss the allegation that they are having problems recruiting and staffing their offices with the country's best and brightest law graduates. As for salaries, Indian law firms argue that in terms of purchasing power they are as competitive, if not more so, than their foreign rivals. As a partner of one firm commented, the "2,500 dollars a month in India that freshers [i.e., first year associates] get is nothing to sneeze at. Plus we sometimes give them a car with a driver, a mobile phone, and other great perks."\textsuperscript{157} Compare these benefits to what associates earn in London, he asserted, which is of course one of the most expensive cities in the world, and it is not difficult to understand why he sees many Indian law students eschewing a move to the U.K.\textsuperscript{158} And although this lawyer conceded that the salaries in elite American firms could not be matched in India, he noted that the lifestyle for lawyers in Indian law firms is more manageable and enjoyable while working within one of the most dynamic economies in the world.\textsuperscript{159}

As for the charge that there is little upward mobility for Indian associates, that too is an exaggeration, according to equity partners from several different law firms.\textsuperscript{160} It is true that becoming an equity partner within an elite Indian firm traditionally has been difficult.\textsuperscript{161} But there is a valid explanation, relating to the

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\item 155. Even one foreign lawyer has expressed concern about this occurring too. See Frumin, \textit{supra} note 118, at 17 (quoting Richard D. Rogovin of the Ohio firm, Fred Brown Todd, that indeed "a large international firm can soon dominate an area of practice because it has the financial resources that most local firms do not enjoy").

\item 156. Interview with Anonymous New Delhi Attorney (June 15, 2008); see also Frumin, \textit{supra} note 118, at 16 (A partner of the Indian firm, ALMT, expects legal fees "to rise to international levels" with foreign law firms entering the country. Although it should be noted that this partner, Sakate Khaitan, seems to be suggesting from the Frumin piece that this development would be good, presumably because lawyers' incomes would rise as well.).


\item 158. \textit{Id.} As he noted, training contracts, which are what law graduates sign onto during their first two years with a London firm, typically pay about 40,000–50,000 pounds per year. Of course, salaries increase after this two year period quite dramatically, but he still argues that in terms of purchasing power, Indian associates do well.

\item 159. \textit{Id.; see also} Ganz, \textit{supra} note 157.

\item 160. Information gathered from four different partners from four different law firms during the week of June 15th, 2008.

\item 161. \textit{Id.} Some may wonder whether law firm associates feel the same way. Of the law firm associates with whom I spoke, the responses given were varied. Several said that they did believe they could achieve equity
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country’s longstanding limited liability partnership law. Until recently, India’s main partnership statute barred law firms from having any more than twenty equity partners. The rationale for this cap was that equity partners were open to unlimited liability if they were sued. The more equity partners, the greater the possibility that one of them could act in a manner that placed the other partners and the firm in financial jeopardy. In order to contain this risk, the statute arrived at a reasonable number—twenty—that allowed firms the ability to grow at a steady rate but also made it possible for the senior leadership to police one another without expending inordinate resources.

To prove that they are not conspiring to hoard profits and restrict the vertical mobility of those who work under them, equity partners point to how they were among the leading lobbying force behind the passage of a December 2008 Parliamentary bill that raised the number of equity partners allowed in law firms. I was also informed that even before this bill passed, partnerships cleverly maneuvered around the twenty partner rule to reward and accommodate ambitious associates. To understand how this arrangement worked, assume that law firm XYZ had twenty equity partners and thirty associates. Assume also that the partners believed that five associates deserved to be promoted to equity level. The partners would form a sub-partnership, between for example X and Y, which would then be allowed to have twenty equity partners of its own. If need-be, subsequent sub-partnerships would be formed between X and Z or Y and Z, and while the specifics of profit-sharing and firm management would have to be determined, it was through this technique that associates could indeed become partners.

Finally, that India is failing to reciprocate on the many advantages it receives from the West is an accusation without merit, according to these lawyers. On the

status; some simply did not know the odds; a few were more skeptical, while a couple were reluctant to commit one way or the other on this point.

163. Id.
164. Information gathered from four different partners from four different law firms during the week of June 15th, 2008.
165. Id. Also for a discussion of this bill and the related Indian Companies Act, see supra note 132. The bill also had a provision they are supporting that would introduce the concept of limited liability to these partnerships. Although the latter would certainly better insulate them financially, it also would help to recruit potential equity partner prospects who otherwise might be reluctant to enter a business where they may be open to suit both professionally and personally. For a nice synopsis of this bill’s provisions, see Shantanu Surpure, Limited Liability Partnership Bill 2006 in Line with International Practices, VC CIRCLE: INDIA’S DEAL CHRON., Jan. 22, 2007, available at http://www.vccircle.com/2007/01/22/legal-guest-column-limited-liability-partnership-bill-2006-in-line-with-international-practices/. For another set of comments on the new bill, including how it is likely to be affected by the government’s plans on taxing the new limited liability partnerships, see Umakanth Varottil, LLP Bill Passed in Parliament, INDIAN CORP. LAW, Dec. 15, 2008, http://indiacorplaw.blogspot.com/2008/12/llp-bill-passed-in-parliament.html.
166. Supra note 165.
167. Id.
issue of Indians studying law abroad, as one lawyer from New Delhi noted, “it’s not as though we aren’t helping them when we go there.”\textsuperscript{168} This individual, like others with whom I met, received an LL.M. from an Ivy League school, worked for a large American law firm, but returned to India a few years ago. Even though she was already a licensed lawyer in India, before she could practice in the U.S. firm she had to take a state bar exam, which itself first required her to receive an LL.M from an accredited American law school.\textsuperscript{169} While in the U.S. she received no financial aid and paid tens of thousands of dollars in tuition.\textsuperscript{170} At the law firm she billed over two thousand hours a year and helped to settle a case that brought her partners a large sum in legal fees.\textsuperscript{171} Further, she had to comply with strict immigration laws.\textsuperscript{172} “I had to jump through a lot of hurdles before I could be a lawyer in the States,” she recalled.\textsuperscript{173} Similarly, Indians who wish to practice in the U.K. must first pass what is called the Qualified Lawyers Transfer Test (QLTT) if they want to work as licensed solicitors.\textsuperscript{174} For opponents of foreign law firms entering India, it is galling that while such requirements exist both in the U.S and U.K., American and British law firms have no qualms arguing that they should be able to come freely into India and establish their practices.\textsuperscript{175}

With respect to the issue of the WTO and the GATS, opponents of liberalization contend that here again there is great hypocrisy from the West. Under the GATS, India has latitude to determine when it should act on the provision regarding legal services.\textsuperscript{176} A contingent of domestic legal observers

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\item 168. Interview with Anonymous Respondent (June 7, 2008).
\item 169. Id.
\item 170. Id.
\item 171. Id.
\item 172. Id.
\item 173. Id. Moreover, she remembered how many of her classmates from India, after spending a great deal of money on tuition, graduating, and passing the bar never even received interviews for legal positions and had to return home.
\item 174. The Law Society of England and Wales, mentioned above, has an independent body known as the Solicitors Regulation Authority (SRA) that “regulates more than 100,000 solicitors in England and Wales, as well as registered European and foreign lawyers.” See Solicitors Regulation Authority, http://www.sra.org.uk/solicitors/solicitors.page (last visited Oct. 26, 2009). As part of its jurisdiction, the SRA oversees the QLTT, which now is being offered in foreign countries, including India, and which leads foreign lawyers to argue that they are making efforts to accommodate those wanting to take the test, so that they do not have to travel to the U.K. to do so.
\item 175. Noting this disparity, the British Indian Lawyers Association, which is a group of Indians who have passed the QLTT and now work in the U.K., has issued public statements and sent formal letters to government officials in New Delhi and London calling on real reciprocity between the two countries—including abandoning licensing tests and easing immigration restrictions—before India opens its legal market to British firms. For further discussion of these points, see Indian Lawyers Oppose Move to Allow Foreign Law Firms in India, EXPRESS INDIA, July 29, 2008, available at http://www.expressindia.com/latest-news/indian-lawyers-oppose-move-to-allow-foreign-law-firms-in-india/254885/.
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also feel that India has provided Western law firms with access to the Indian market—particularly through legal process outsourcing (LPOs). There has been recent research published on this topic, but essentially over the past fifteen years Western law firms have used intermediaries or have directly hired Indians to perform a range of administrative, secretarial, and paralegal tasks. With the line between paralegal and legal work often blurred, there is dismay that Western firms can claim denial of access. As one frustrated Indian lawyer remarked, “What are they crying about, really?” Besides, that India is being called upon to open its legal services market when for years the United States and European countries have failed fully to end the subsidies they provide to a precious constituency within their own economies—agribusiness—raises further ire. “What a bunch of hypocrites,” a Delhi-practitioner stated. “They’re okay with protecting their rich farmers, but they get angry when we want to protect our legal system.”

Contrary to the conventional wisdom then, the empirical information reveals that elite Indian law firm partners indeed have a sophisticated set of responses to the charges leveled against them. More than just lamenting about profit-loss, this group provides policy rebuttals on issues relating to lawyer quality, client costs, opportunities in Indian law firms, and reciprocity. The fieldwork also uncovers another finding. In the next section, I discuss how these partners, joined by


179. Interview with Anonymous Respondent (June 7, 2008). This lawyer also noted that the fact that Western firms are engaging in “tie-ups” with Indian firms, which were discussed above, is also another way that they (the Western firms) have access to the Indian market.

180. Of course, agriculture and other goods (rather than services) that are dealt with by the WTO fall under the General Agreement on Tariffs and Trade. To some, this will appear to be conflating issues, and while there is indeed a distinction between the GATT and the GATS, where the frustration lies is in the larger perceived inconsistency that the quotation in the next sentence brings to light. For a discussion of this treaty and the details behind it, see The GATT Years: From Havana to Marrakesh, WORLD TRADE ORGANIZATION, http://www.wto.org/english/tratop_e/whatis_e/tif_e/fact4_e.htm. During the last week of July 2008, the WTO’s major set of trade talks that had consequences for some 150 economies around the world broke-down, namely because of this issue regarding agriculture. India was accused (along with China) by the United States and the European Union of contributing to the inability of the parties to reach an agreement. For a summary of what occurred, see Stephen Castle and Mark Landler, After 7 Years, Talks Collapse on World Trade, N.Y. TIMES, July 30, 2008, http://www.nytimes.com/2008/07/30/business/worldbusiness/30trade.html?_r=1&oref=slogin.

181. Interview with Anonymous Respondent (June 15, 2008). This particular interviewee stated he understood that there was a distinction in the West between the rich agribusinesses and everyday farmers—the latter which he noted actually has sympathized with the call by farmers in the developing world to end governmental subsidies to the former.
another group of opponents of liberalization in India, district court lawyers, have moved beyond the point-by-point rejoinders of this policy debate and have employed intensely provocative, symbolic rhetoric as well. The opposition argues that this is a response to the paternalism exhibited by advocates for liberalization. In turn, foreign lawyers and their supporters have reacted with heated rhetoric of their own, which has triggered even further passions among the domestic constituency. The question is whether a compromise might be brokered to accommodate these seemingly irreconcilable positions. I tackle that issue in the conclusion.

D. SYMBOLIC POLITICS

The last quote from the Delhi practitioner reflects a sentiment that several Indian lawyers expressed during the course of my research. That Western law firms are moving to establish a presence in India evinces enormous symbolic rhetoric from those who are opposed to this initiative, and they articulate their perspective in the following manner: 182 It has only been a little over sixty years since India freed itself from British oppression. 183 During the colonial period, the British used the law to consolidate their hold over Indian society. The British attempted to shape every aspect of Indian life—economic, social, political, religious, and familial. The exploitation of Indians under this system was notorious, and it took a long, hard struggle to win independence from the Crown in 1947. Since that time India has made significant progress. It is a vibrant constitutional republic, with a thriving economy, a diverse and free press, and an energetic civil society. 184 But now for a group of private British law firms, with the support of the British government, to claim as a substantive policy argument that their entering India will only help their counterparts and improve the country overall is in reality a smokescreen for ulterior motives and recalls the rhetoric used by the British East India Company in the 17th century. 185 Add to this that law firms from the United States—a country that has clear expansionist ambitions—are aligned with the British on this issue, and Indians have no choice but to resist.

182. Note the following is the synopsis of the points raised by the various interviewees during the course of the fieldwork during the summer of 2008. The interviewees often made more than one of these points during the conversations, but this synopsis provides the comprehensive account of what the opponents stated.


184. See, e.g., GARY J. JACOBSON, THE WHEEL OF LAW: INDIA’S SECULARISM IN COMPARATIVE CONSTITUTIONAL CONTEXT 91-121 (2003); KOHLI, supra note 64.

Not surprisingly, these emotions espoused by the opponents prompt immediate reaction from pro-liberalization corners. It is outrageous, they say, to compare an open services request to the rulings of an empire two generations ago. According to one London-based lawyer, such hyperbole is jingoistic if not outright racist.186 It is easy, he contends, “to whip people up into a frenzy once you start talking about white neo-colonialists.”187 Another lawyer based in New York comments that the “Indians want it both ways.”188 On the one hand, they love having “all things Western,” or as he calls it the “three Cs”: “commodities” from the West, “client-referrals” from the West, and a reputation for being “cosmopolitan.”189 At the same time, these Indians are not hesitant to revert to provincialism the moment they feel their positions of privilege are threatened.190

As an illustration, several pro-liberalization supporters point to the response of elite Indian law firm lawyers to an episode involving Law Minister Bhardwaj’s cabinet office. On September 21, 2007, government officials from this department filed an affidavit in the Bombay High Court case initiated by the Lawyers Collective in 1995.191 Because there was still no decision from the court, the Law Ministry intervened to place its position officially on the record.192 The sworn statement declared that foreign lawyers should be allowed to practice in India, so long as their work involved providing: “assistance and advice on [the] international practice of foreign law to their clients, whether Indian or foreign, [and that] there may not be any restrictions of them . . . nor may there be any need for those foreign lawyers to enroll themselves as advocates under the Advocates Act [of 1961].”193 The affidavit stunned many elite Indian law firm lawyers. A few days earlier, Law Minister Bhardwaj had met with this group. While affirming his support for liberalizing the legal services sector, he did not close the possibility that he remained open to feedback.194 There is some disagreement about the extent to which Bhardwaj was willing to consider changing his position,195 but once the Ministry’s affidavit was issued, the rhetorical gloves came off. One foreign lawyer reported that he heard Indians on the other side—say that they believed the Minister had betrayed them and sold out to the West.196 Lalit Bhasin, the SILF president discussed above, arguably went further by stating: “It makes us feel very bad. We have pointed out that this is not the
correct way. It is like stabbing someone in the back. You are asking someone to enter into a dialogue—meanwhile you are presenting them with a *fait accompli*.” On one level, deriding a government official for being duplicitous or a backstabbber is nothing new in Indian politics or politics in general. Yet this episode highlights how what initially started as a battle in the courts between one public interest group and three foreign law firms is now a much larger conflict involving multiple constituencies. The specific characterization of the Law Minister as someone willing to 'carry the water' for the foreign law firms is symbolic rhetoric of the most provocative nature. Such messages evoke images of the colonial era where Indians who worked with the British administration were not infrequently depicted as accomplices in the oppression of the indigenous population. It is difficult to verify whether the users of this type of language truly believe that the Law Minister and those Indians who share his viewpoint have “sold out” their country; or, whether they (the opponents) know how incendiary this rhetoric is and are purposely employing it in order to rally support. Likewise, the thought process of foreign law firms is uncertain when they speak of needing to help the Indian bar improve, or when they refer to opponents of liberalization as jingoistic or racist. Regardless, the fact is that both sides are coupling their policy arguments with this heated rhetoric, which only helps widen the chasm between the two sides.

This point perhaps is most apparent when examining how the Indian district court bar today is reacting to the possibility of foreign lawyers practicing in the country. Recall that in 1999 and 2000 district court litigators in the nation’s capital organized strikes as a response to the proposal by the then center-right government to consider allowing foreign law firms into India. For this study, I spent time at the place where these protests were conceived, the Tis Hazari district court complex that is located in a historic area called Old Delhi. Arguably the most important political set of district court lawyers in the country

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197. *See Frumin, supra note 118, at 15.*
198. This complex is the largest of its type in Asia, housing some 250 civil and criminal courts and serving as the site where an astonishing 50,000 people work or have business to which they attend on a daily basis. In addition, there are thousands of mostly solo practicing lawyers whose primary work is at the complex. Around the complex yard is a seemingly endless number of what are referred to as individual “chambers,” which serve as each practitioner’s individual office (some practitioners do office-share). *The Cruel Case of Tis Hazari, Yahoo News, July 27, 2009.* http://in.news.yahoo.com/2009/07/27/1053/ml-the-cruel-case-of-tis-hazari-judges.html. Generally these chambers have no library, no staff, and no computers; usually there is just a wooden desk, an operational typewriter, and a few statutory books to which they can refer. Furthermore, these lawyers have to compete with unlicensed brokers, better known as *touts*, who stroll around the courtyard offering potential clients the ability to resolve their legal disputes for nearly half the costs. In Geertzian terminology, the picture is one of a massive bustling bazaar, although there is a curious order to the seemingly existing chaos. The court was officially out of session when I visited the premises during the June of 2008. I have been to this site on previous occasions for other research projects, and so the contrast in the settings was marked. Indeed I thought it might be difficult to accomplish anything during this most recent time I was there; however the exact opposite was true. As it turned out, many of the lawyers, particularly those involved in the politics of the Delhi Bar Association were present, catching-up on older case files during this recess. The DBA officials spent a great deal
practices at Tis Hazari. The Bar Association of India has an active branch at this complex, and it was at this site where I met with dozens of everyday practitioners as well as the branch’s elected representatives, including its president, Rajiv Khosla, the aforementioned lawyer who lost his eye in the February 2000 strike.

Many pro-liberalization supporters express shock that district court lawyers could be so opposed to granting the foreign firms official permission to practice in the country. These firms have stated that they are interested in transactional work and not litigation; moreover they contend Indian litigators would benefit by opening the legal services sector. After all, given their unfamiliarity with the local norms and practices of the lower courts, foreign lawyers would depend on these Indian advocates whenever the need to litigate a matter would arise.

However, this is not how the district court lawyers see the situation. There is a palpable sentiment among this group that once foreign law firms acquire a toehold into the country, they will soon petition to make regular appearances in the Indian courts. Above I referenced how liberalization-supporters have lauded the development in India’s chartered accountancy sector, where foreigner accountants today are allowed to compete. The district court lawyers though point to this same example as evidence of how most of the thriving Indian accounting businesses that once existed are now gone, with foreign accounting firms currently reigning as the dominant force within this profession. For the district court lawyers, they believe this same pattern will repeat itself if the legal services sector is opened.

Furthermore, they worry about the potential of Indian clients being duped by the slick marketing tactics of foreign lawyers who may look appealing on a website or in an advertisement, but who in reality know little about the issues of concern to that client. As a district court representative proudly explained, Indian lawyers are strictly prohibited from advertising their services, because of the belief that unsophisticated clients are susceptible to exploitative and

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199. For a review of how the bar associations in India work, see supra note 81.
200. The views of the district court lawyers presented above are a summary of my empirical findings during my field visit to Tis Hazari during June of 2008.
201. Id. I am grateful to Professor Mark Sidel (University of Iowa College of Law) for prodding me to consider this point in greater detail. As Sidel has noted, it would be worth inquiring about the extent to which domestic Indian law practice (e.g., tax law, trusts and estates work, and the like) is being done within these multi-national accounting firms. Conversation with Professor Mark Sidel, South Asian Studies Program Event, (Sept.18, 2009).
202. Id.
203. Id.
deceptive marketing techniques.\textsuperscript{204} By itself this position is one that has been made in other countries, like in the United States and Britain, where there has been a debate about the benefits and drawbacks of allowing lawyers to advertise.\textsuperscript{205} But almost as quickly as he stated this policy objection, the Indian lawyer ended his thought by noting how unfathomable it would be to have "Western lawyers" working within, as he put it, "our legal system."\textsuperscript{206} Similarly, after raising a policy concern about the rates foreign lawyers might charge Indian clients, another district court lawyer remarked: "even if their fees are fair, they [the foreign lawyers] still can’t be allowed in. What’s next, having white judges?"\textsuperscript{207}

The above discussion illustrates how the main players in this debate have interwoven into their policy arguments provocative rhetorical language that has significantly affected the intensity of the discourse. Some years back the late

\footnotesize
\begin{itemize}
  \item \textsuperscript{204} I single out this point because one of the district court lawyers with whom I met was insistent that he has championed this issue and has been the leader in bringing around his colleagues to this point of view. Interview with Anonymous Attorney (June 18, 2008).
  \item \textsuperscript{205} I am grateful to my colleague, Professor Douglas Heidenreich, an expert in legal ethics and professional responsibility of American lawyers, for summarizing the debate in the United States for me on this topic. Professor Heidenreich wrote to me the following:
    \begin{itemize}
      \item There is a long and tortuous history involving lawyer advertising [in the U.S.]. While early in the 20th century lawyers often advertised in newspapers and other places, around 1937 the old Canons of Ethics (they were about the only guidance that lawyers had in those days) were formally amended to disapprove of the practice. For the next forty years or so lawyers were generally barred from advertising. (Lawyers sometimes ran for public office in those days as a way of getting their names before the public.) An Arizona law firm, Bates and O’Steen [sic]... sued to challenge these rules, and the case went to the US Supreme Court in 1977... \textit{(Bates v. State Bar, 433 U.S. 350, rehearing denied, 434 U.S. 881(1977))}. The challenge was based on a constitutional argument involving the first amendment, [and] commercial speech ... The Court overturned the regulation forbidding advertising, but did recognize that some regulation of such commercial speech would be ... [acceptable] .... The rule (7.1) now allows advertising that is not false or misleading.
    
    Professor Heidenreich went on to say that the rationale for prohibiting advertising was that "it was considered to be 'not the thing,' as it were. It was considered undignified and thought to reflect badly on the profession .... Even indirect advertising 'and all other self-laudation, offend the traditions and lower the tone of our profession and are reprehensible; but the customary use of simple professional cards is not improper.' This is part of Canon 27." Canons of Professional Ethics Canon 27 (1908). He then notes that contributing to this ban was also in part due to anti-Semitism (Jewish lawyers often were plaintiff's personal injury lawyers and collection lawyers who tended to advertise; there were few if any Jewish lawyers in the white-shoe firms.) ... [The thinking was that while] fancy lawyers could hobnob with potential clients at the country club and otherwise make themselves known to potential clients ... upstart lawyers, often immigrants and night-school grads, shouldn’t be able to get a piece of the pie, especially by [such] undignified means.
  \end{itemize}
  \item \textsuperscript{206} See Correspondence, supra note 205.
  \item \textsuperscript{207} See id.
  \item \textsuperscript{208} Interview with Anonymous Indian District Court Lawyer (June 18, 2008).
\end{itemize}
University of Wisconsin scholar, Murray Edelman, conducted research on the significance of symbolic and rhetorical politics. Edelman argued that political actors behave with multiple objectives; they can act instrumentally, symbolically, rhetorically, and genuinely towards their cause. What can occur though, according to Edelman, is that these actors, unintentionally or even subconsciously, often ultimately rely on symbolism and rhetoric as the main vehicles to convey their political message to the media, those in government, and to the general public. This lesson seems to have relevance for our study. As discussed above, there are serious and substantive policy arguments made by supporters and opponents of liberalizing India's legal market. But the characterization of the Indian bar in desperate need of assistance from foreign lawyers (and of being jingoistic for rejecting this offer) on the one hand, and the portrayal of foreign law firms entering India as symbolically equivalent to the British colonial regime on the other, are concise, powerful, and maybe even subconscious ways of packaging messages that otherwise are complicated to convey.

Given the direction this debate has taken, I next offer a set of modest proposals that could satisfy the various constituencies.

IV. CONCLUSION

This study has sought to provide first-hand insight on the issue of whether foreign law firms should be granted official licenses to practice in the burgeoning market of India. Unlike its depiction in conventional wisdom, the debate, as this study reveals, is rife with complexity involving several distinct constituencies.

As this study has also uncovered, though, much of this controversy has moved beyond the courts. At the time of this writing, the status of India's central government is in flux. In November 2008, the city of Mumbai witnessed a series of brazen terrorist attacks for which the government was harshly criticized in its handling of the situation. Prior to that, the government's coalition, led by the Congress Party, saw a key ally in Parliament depart. Although the coalition survived a no-confidence vote and ultimately returned to power during the spring 2009 elections, there remains a strong sense among observers that a policy decision on the foreign lawyers issue will not necessarily be made in the immediate future.

As we have seen, because of the intense lobbying pressure exerted by supporters and opponents, the different governments to date have had to walk a

210. Id.
211. The new Law Minister is Veerappa Moily. As one legal magazine that has been tracking the foreign law firms issue notes, Moily has been carefully balancing the interests of the various sides of this subject and has been "half-hearted" in his push for liberalization. See Kian Ganz, Blog: Moily to Start Super-Law-Schools; Half-Hearted on Liberalization, LEGALLY INDIA, Oct. 9, 2009, http://www.legallyindia.com/index.php/20091009236/News/Blog-Moily-to-start-super-law-schools-half-hearted-on-liberalisation.
political tightrope, doing just enough to cater to both sides while making sure not to alienate either. The calculation is that there are fewer costs in making no affirmative decision than in selecting a policy that could result in significant political fallout. At the same time, however, even government officials recognize that this current strategy cannot continue indefinitely. As they and the foreign law firm lawyers have said, at some point the latter will decide that it is not worth any further effort trying to gain admission and will turn their attention elsewhere.\footnote{212}

In my view, prohibiting skilled, transactional, foreign lawyers from competing with adroit Indian law firm lawyers in India would not be optimal, and it would cut against the state's larger policy decision of seeking to play in the global arena. Based on the above research, it is extremely improbable (and functionally inconceivable) that allowing foreign lawyers to enter India would lead to a massive foreign overtaking of the entire Indian legal system. Foreign lawyers are interested in only a relatively small (albeit lucrative) area of high-end, transactional practice. Moreover, there is little doubt that their elite Indian counterparts are every bit as talented, knowledgeable, and capable of holding their own against these foreign lawyers.

Therefore, I do believe that the current policy towards foreign lawyers practicing in India should be changed. I hasten, however, to acknowledge that those opposed to this move do have certain objections that deserve respect and consideration. Furthermore, there is a political reality that must be recognized. Unlike many Indian sectors that have been liberalized over the past decade, those who oppose opening the legal services market, constitute a significant political force that simply cannot be bulldozed. Thus, it makes the most sense to engage in a gradual integrative process that would be sensitive to these opponents' concerns and incorporate dissenting opinions. To accomplish this goal, I outline three possible proposals below.

A. RESTRICTING PRACTICE AREAS OF FOREIGN FIRMS

The government could insist that the foreign law firms interested in working in India issue a categorical statement, as well as sign an agreement that they will restrict their practices to areas of non-Indian law.\footnote{213} Skeptics will immediately highlight two problems. First, they will say that although it may be possible to do so with litigation matters, in transactional dealings deciphering between what is an 'Indian' and 'non-Indian' issue is meaningless. Consider that Indian clients seeking to establish an initial public offering on a foreign stock exchange or

\footnote{212} This sentiment was reflected in several of the interviews I had with the foreign lawyers from the U.K. and U.S.

\footnote{213} This proposal has already received some support to date. See, e.g., Ferheen Mahomed, A Phased Opening, in Ben Frumin, Lowering the Bar, INDIA BUS. J., Nov. 2007, 17, http://vantageasia.com/pdfs/Is%20India%20ready%20for%20foreign%20lawyers.pdf.; Mandal, supra note 119.
wishing to have a contract prepared to apply to an overseas operation could easily have their work handled by an Indian law firm or a foreign law firm, particularly if the former has within it lawyers with international experience. Second, assuming that such a distinction could be made, there would be a policing problem: how could foreign lawyers be trusted to stay within their specific domain?

With respect to the latter, deterrence measures would be needed to limit the practice scope of foreign lawyers. This could come in the way of amendments to the 1961 Advocates Act or new provisions added to the bar’s code of professional responsibility. The foreign lawyers would also arguably have little financial incentive to expand beyond their areas of familiarity. But, yes, ultimately there would be no fool-proof way of assuring compliance; any transgressions would have to be addressed if and when they occurred. In terms of the skeptics’ first concern, the lines admittedly are blurred in certain transactions. Nevertheless, in these deals there is regularly a choice of law provision that states what jurisdiction’s legal regime will govern, with the selection often being one that is foreign. It seems only a mild concession then to allow foreign lawyers to advise Indian clients within India, especially when such legal assistance would be: (a) acceptable to opponents of liberalization if the interaction occurred on foreign soil, and (b) cheaper for Indian clients who otherwise might have to travel overseas for this service.

B. CRAFTING JOINT VENTURE ARRANGEMENTS

Another proposal would allow for ‘joint venture law firms’ between the foreign and domestic entities. As one recent report notes, generally “India’s foreign investment policy is fairly liberal, allowing up to 100% foreign investment in most sectors.” However, because of political, national security, or other domestic reasons, there are some sectors in which the government places a cap on the amount of investment from foreigners. One possibility then would be to consider legal services in India as one of these protected sectors, limiting foreign investment to, say, 26 percent, which is the capping figure that the government


215. Id.

216. For a recent paper published by a lawyer who works for a British ‘Magic Circle’ firm (Freshfields Bruckhaus Deringer), on this topic of choice of law (particularly as it relates to insolvency), see Look Chan Ho, Conflict of Laws in Insolvency Transaction Avoidance, 20 SING. ACAD. L.J. 343 (2008).

217. Moreover, acquiescing to this condition could deflect the charge that the opponents are behaving in a protectionist-manner; it could also be interpreted as a good-faith gesture that might prove beneficial as these opponents make demands of their own during the negotiation process.


219. Id.
has used for some of these other areas. The result would be that a foreign firm, for example from New York, could enter into a joint venture with an Indian law firm.

This new U.S.-India partnership would be a legally distinct entity with the same rights, obligations, and privileges afforded to Indian law firms. Presumably there would be some irritation from foreign firms at having to be overseen by what they would perceive as unnecessary bureaucratic regulations. But such a creation would come with important advantages. Foreign firms would gain the foothold into the country they have long-wanted. Also, their willingness to work within this framework would dispel the notion that they possess grand neo-colonial ambitions. Perhaps most importantly, the joint venture firm would be able to practice domestic law and have access to clients that the foreign law firms on their own would not.

Opponents at first will likely be outraged at the concessions they see foreign firms receiving. Upon closer scrutiny though, they would gain as well. Most Indian bar regulations would remain intact; foreign law firms would have only a minority interest in the joint venture; and the Indian side in the joint venture could police the activities of the foreign lawyers. Moreover, the joint venture could foster greater cooperation and increased sharing of best practices so that lawyers from both sides could benefit.

Of course, there will remain several open questions that would accompany this


221. For example, based on my conversations with various foreign lawyers, these might include the cap on the number of equity partners in the new entity, the 26% foreign investment limitation, and the requirement of having to enter into a joint venture in the first place. See, e.g., Interview with Anonymous Respondent (July 28, 2006); Telephone interview with Anonymous English Attorney (June 29, 2008).

222. Although high-end, wealthier Indian clients could seek (and have sought) legal assistance from foreign law firms by traveling abroad, the new types of clients would be those of lesser economic means but still would possess enough wealth to make entering into the joint venture worth it for foreign firms.

223. And for those Indian firms who currently receive referrals from multiple foreign law firms, they (the Indian firms) may be upset over potentially losing business because of the mandate that they officially join into a relationship with just one foreign firm. Obviously, though, so long as there is no conflict of interest at stake, the Indian firm could have joint ventures with more than one foreign firm.

224. There is another aspect as well. By having an open, regulated system, like the one I am proposing here, it might cut down on foreign firms—and Indian firms interested in working with them—from trying to circumvent the ban that currently exists. There is an infamous story that has become almost legendary in Indian elite law firm circles. Some years back, a very well-known foreign firm that had been trying to enter the Indian legal market established an ‘under-the-table’ agreement with an Indian firm. In addition to the back-and-forth referrals between the two and the obvious legal work that the foreign law firm was performing in the country, there was even a special boardroom present in the Indian firm’s office to house the foreign firm’s lawyers whenever they came to India to do business. There was also a billboard listing the name of the foreign firm in that boardroom, and a stack of the foreign firm’s business cards there as well. When the foreign firm’s lawyers would leave, apparently the Indian firm reversed the billboard and put away the business cards. Assuming that even part of this story is true, legalizing and regulating the presence of foreign law firms in the country would help to reduce this type of obvious chicanery and thereby begin the process of trying to solve how best to deal with the interests of foreign lawyers and the domestic bar as well.
joint venture proposal. For example, how, if at all, would profits be shared with the parent foreign law firm? How many equity partners would each side have? Would this be determined proportionately by the percentage contributed to the joint venture? How would the salaries of lawyers in the joint venture be structured? Would they be on par with what the lawyers in the foreign parent firm earn? If not, how much of a difference would there be? And how would the joint venture comport to the ban on advertising that applies to all lawyers in India?225

In the nearby country of Singapore, which has admitted foreign law firms and indeed seen joint ventures with domestic Singaporean firms emerge, many of these particular issues have arisen. In fact, while more research needs to be

225. With respect to the last question, it is likely the foreign parent firm would have a website, a marketing department, and existing advertisements in both the print and electronic media. Even if there was no specific mention of the investment in India, it is difficult to envision how at least some of the public would not come to know of the joint venture operation given these media publications. As part of this proposal, one way to address this issue would be simply to lift the prohibition on Indian lawyers from advertising their legal services. Within the Indian bar there is a split on this issue. Lawyers in Indian law firms have favored this move, saying that if they could promote their expertise then this would begin the process of leveling the playing field with foreign law firms. This was a consensus point that was articulated to me by the various Indian law firm lawyers that I met. See also Mandal, supra note 119; Frumin, supra note 118, at 17 (quoting Diljeet Titus, managing partner of an Indian law firm, Titus & Company, saying, “advertising restrictions on Indian law firms should be removed”); Dinesh Sharma, Sharing Good Staff, in Frumin, Lowering the Bar, INDIA BUS. J., Nov. 2007, 16, http://vantageasia.com/pdfs/%73%20India%20ready%20for%20foreign%20lawyers.pdf. And in fact, some Indian law firms have actually established websites, varying in the degree to which they are ‘advertising’ their services. Indian lawyers also have advertised in foreign legal directories for some time. This issue on whether the ban is constitutional recently went before the Indian Supreme Court. In 2000, a petition by V.B. Joshi challenged the ban. In the initial hearing, the Bar Council of India, supported by the Government of India, opposed any alteration of the advertising-preclusion imposed on India advocates by Rule 36 of the Council’s code of conduct. The case then was adjourned, and as is quite common in the Indian judiciary, the matter languished for some eight years before being heard again, this time by a three-judge panel of the Supreme Court. As the panel was considering the arguments from both sides, the Bar Council and the Indian government decided to modify their position. While still opposing advertisements on road-side billboards, television, and radio, the two defendants indicated a willingness to permit Indian lawyers to place factual information on the internet (in, for example, legal directories) about the services they provide. See V.B. Joshi v. Union of India and Bar Council of India (2000); India Debates Letting Lawyers Advertise, CLICKJOBS.COM, http://marcom.click jobs.com/?p=99 (last visited Oct. 23, 2009); see also Sakshi Chopra, A crusader for advertising, THE RAINMAKER, http://www.rainmaker.co.in/therainmaker/feature/advertisingjoshi.htm. Still, as we just learned, many lawyers who practice in the district courts, like Tis Hazari, have remained opposed, claiming, as described above, that unsophisticated clients are too susceptible of being manipulated by the ads. It should be noted that there are those (mainly from law firms who want to be able to advertise) who remain skeptical of the district court lawyers’ claim and instead believe that this segment of the bar holds an unjustified fear that they will somehow lose business to those who are engaging in advertising. The intensity of the district court lawyers’ opposition is fueled in large part by their frustration that their sentiments have not been considered by government officials on a range of matters over a long period of time. As one such lawyer stated, for decades he and his colleagues have been clamoring for the government to devote more money for legal aid, courtroom infrastructure, more judges to fill open judicial vacancies, better prison facilities, and the like; yet none of these demands have been met to their satisfaction. Their perception, however, is that when rich foreign law firms lobby the government immediate attention is given and within a short time there are accompanying results. Perhaps one way to make advertising more acceptable to the district court lawyers would be for the government to include them in the discussions on the foreign lawyers’ petition, ensure them that their litigation practices will remain largely unfazed, and acknowledge and inquire into their list of grievances.
completed, the conventional wisdom is that law firm-joint ventures in Singapore have been of mixed success. For this reason, Singapore is in the process of implementing another method to deal with the treatment of foreign law firms, which India could find useful.

C. DECISION BY EXPERT COMMITTEE

India could establish a commission staffed by experts from the competing domestic constituencies that would be in charge of evaluating applications for admission into the country by foreign firms on a case-by-case basis. As part of its procedure, the commission could require foreign lawyers who wish to practice to meet certain fitness and character criteria. Singapore has recently enacted such a program, and the early reviews from foreign law firms, government officials, as well as the domestic bar are positive. In the Singaporean context there has been buy-in from the different parties, which likely explains the favorable response thus far. Whether this could succeed in India depends on the willingness of the different interests to work together on such an initiative.

To facilitate better cooperation, the Indian government might seek to enlist the assistance of lawyers who mainly practice in the appellate courts. These advocates have not been of focus to this point, mainly because most have not publicly revealed their views on whether foreign lawyers should be granted admission into the country. This reticence is understandable. These upper court lawyers generally enjoy high levels of prestige and respect from within the bar and are relatively wealthy professionals, deriving a percentage of their business from referrals from lower court lawyers. There is, though, an incentive for them to push for liberalization, as they would likely receive a new set of revenue from foreign lawyers who would need their services for any matter pending in the upper judiciary. By wisely appropriating the professional capital they possess, these High Court and Supreme Court lawyers could serve as important intermediaries between their lower court colleagues and those who support opening India’s legal services sector.

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Ultimately, this study has sought to reveal how the different arguments over whether globetrotting law firms should be admitted into India. In many ways this research adds another layer to the years of work conducted by the esteemed

226. I am currently in the process of researching joint ventures. From my early research, this has been the reaction I have received from Singaporean lawyers and academics who have been studying this issue. See Jayanth K. Krishnan, The Joint Law Venture: A Pilot Study (forthcoming BERKLEY J. INT’L L., 2010).

227. Id. The same observers who have expressed skepticism regarding joint ventures have hope regarding this committee process.
scholar, Professor Richard Abel.\textsuperscript{228} In his famous series of volumes published during the 1980s, Abel theorized and empirically showed how up until the second-half of the twentieth century an elite segment of the legal profession in Western nations monopolized the distribution of legal services.\textsuperscript{229} By requiring particular credentials and mandating that certain criteria be met in order for individuals to become members of the bar, lawyers in countries like the United States, England, and Wales successfully staved-off competition for generations.\textsuperscript{230} In a parallel vein, Indian lawyers too have resisted altering the status quo. Whereas in Abel’s case studies the control the lawyers wielded over their markets eventually diminished, the outcome in India is still to be determined. The hope is that the fieldwork and empirical evidence gathered for this study and the proposals outlined above will give policymakers, members from the sparring camps, and those theorizing about comparative legal norms the necessary insights to evaluate how foreign law firms can gradually enter India while addressing the concerns of all interested parties.

**APPENDIX A**

**STATEMENT OF TOTAL NUMBER OF ADVOCATES ENROLLED WITH THE STATE BAR COUNCILS AS OF 31/3/2008**

<table>
<thead>
<tr>
<th>STATES</th>
<th>MEN</th>
<th>WOMEN</th>
<th>TOTAL</th>
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<tr>
<td>1. ANDHARA PRADESH</td>
<td>58,147</td>
<td>9605</td>
<td>67,752</td>
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<td>2. ASSAM, NAGALAND, etc</td>
<td>9,703</td>
<td>2022</td>
<td>11,725</td>
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<tr>
<td>3. BIHAR</td>
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<td>N/A</td>
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<td>N/A</td>
<td>17,213</td>
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<tr>
<td>5. DELHI</td>
<td>N/A</td>
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<td>38,549</td>
</tr>
<tr>
<td>6. GUJARAT</td>
<td>38,586</td>
<td>9,208</td>
<td>47,794</td>
</tr>
<tr>
<td>7. HIMACHAL PRADESH</td>
<td>4,680</td>
<td>741</td>
<td>5,421</td>
</tr>
<tr>
<td>8. JAMMU &amp; KASHMIR</td>
<td>2,832</td>
<td>597</td>
<td>3,429</td>
</tr>
<tr>
<td>9. JHARKHAND</td>
<td>5,407</td>
<td>485</td>
<td>5,892</td>
</tr>
<tr>
<td>10. KARNATAKA</td>
<td>N/A</td>
<td>N/A</td>
<td>60,539</td>
</tr>
<tr>
<td>11. KERALA</td>
<td>29,769</td>
<td>8,863</td>
<td>38,632</td>
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<tr>
<td>12. MADHYA PRADESH</td>
<td>N/A</td>
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<td>69,208</td>
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\textsuperscript{229} Supra note 228.

\textsuperscript{230} Id. For a terrific essay reviewing Abel’s enormous contributions, see Herbert M. Kritzer, Abel and the Professional Project: The Institutional Analysis of the Legal Profession, 16 Law & Soc. Inquiry 529 (1991).
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<th>STATES</th>
<th>MEN</th>
<th>WOMEN</th>
<th>TOTAL</th>
</tr>
</thead>
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<tr>
<td>13. MAHARASHTRA &amp; GOA</td>
<td>78,522</td>
<td>5,637</td>
<td>84,159</td>
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<tr>
<td>14. ORISSA</td>
<td>N/A</td>
<td>N/A</td>
<td>37,993</td>
</tr>
<tr>
<td>15. PUNJAB &amp; HARYANA</td>
<td>42,411</td>
<td>4,265</td>
<td>46,676</td>
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<tr>
<td>16. RAJASTHAN</td>
<td>3,924</td>
<td>4,712</td>
<td>48,636</td>
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<tr>
<td>17. TAMIL NADU</td>
<td>46,575</td>
<td>5,902</td>
<td>52,477</td>
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<td>18. UTTARAKHAND</td>
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<td>19. UTTAR PRADESH</td>
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<td>20. WEST BENGAL</td>
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<td>1,052,290</td>
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**APPENDIX B**

SOCIETY OF INDIAN LAW FIRMS, LIST OF FORTY-FOUR FIRMS

<p>| Mr. Hiroo Advani Advani &amp; Co. 10, Thakur Nivas Level 2, 173 J. Tata Road Mumbai – 400020 | Mr. Pravin Anand Anand &amp; Anand, Advocates B-41, Nizamuddin East New Delhi 110 013 |
| Mr. Lalit Bhasin Bhasin &amp; Co. 10, Hailey Road, 10th Floor Near Connaught Place New Delhi 110001 | Ms. Mona Bhide Dave &amp; Girish &amp; Co. 1st Floor, Sethna Building, 55, Maharshi Karve Road, Marine Lines, Mumbai |
| Mr. Nishith Desai Nishith Desai Associates 93-B Mittal Court Nariman Point Mumbai 400021 | Mr. C. R. Dua Dua Associates 202-206 Tolstoy House, 15 Tolstoy Marg, New Delhi 110 001 |
| Mr. Dinkar Goswami Goswami Associates B-63, Soami Nagar North New Delhi – 110 017 | Mr. Ameet Hariani Hariani &amp; Co. Ali Chambers, Ground Floor Homi Mody 2nd Cross Lane Fort, Mumbai – 400 023 |</p>
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<thead>
<tr>
<th>Mr. Anil Harish</th>
<th>Mr. Akil Hirani</th>
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<tr>
<td>D. M. Harish &amp; Co.</td>
<td>Senior Partner</td>
</tr>
<tr>
<td>305-309 Neelkanth, 98, Marine Drive, Mumbai – 400002</td>
<td>Majmudar &amp; Co.</td>
</tr>
<tr>
<td></td>
<td>96, Free Press Journal House</td>
</tr>
<tr>
<td></td>
<td>Free Press Journal Road</td>
</tr>
<tr>
<td></td>
<td>Nariman Point</td>
</tr>
<tr>
<td></td>
<td>Mumbai 400 021</td>
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<th>Dr A.K. Kainth &amp; Associates</th>
<th>Mr. R. N. Karanjawala,</th>
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<tr>
<td>G-01, Ground Floor ‘Oakview’</td>
<td>Karanjawala &amp; Co., Advocates,</td>
</tr>
<tr>
<td>14, Haudin Road</td>
<td>Hindustan Times House</td>
</tr>
<tr>
<td>Bangalore 560042</td>
<td>10th Floor,</td>
</tr>
<tr>
<td></td>
<td>18-20 Kasturba Gandhi Marg</td>
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<td></td>
<td>New Delhi – 110001</td>
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<tr>
<th>Mr. Gautam Khaitan</th>
<th>Mr. Suman J. Khaitan</th>
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<td>Khaitan House, B-1 Defence Colony, New Delhi 110024, India</td>
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<td></td>
<td>Greater Kailash, Part – 2</td>
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<td></td>
<td>New Delhi – 110048</td>
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<tr>
<th>Mr. Rohit Kochhar</th>
<th>Mr. Rajendra Kumar</th>
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<tbody>
<tr>
<td>Kochhar &amp; Co.</td>
<td>K &amp; S Partners</td>
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<tr>
<td>S-454, G.K. II</td>
<td>84C, C-6 Lane (Off Central Avenue),</td>
</tr>
<tr>
<td>New Delhi – 110 048</td>
<td>Sainik Farms,</td>
</tr>
<tr>
<td></td>
<td>New Delhi 110 062</td>
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<thead>
<tr>
<th>Mr. Sudhir Kumar</th>
<th>Mr. V. Lakshmikumaran</th>
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<tr>
<td>India International Jurists</td>
<td>Lakshmikumaran &amp; Sridharan</td>
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<tr>
<td>1201 B, Antriksh Bhawan</td>
<td>B-6/10 Safdarjung Enclave,</td>
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<tr>
<td>22 Kasturba Gandhi Marg</td>
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<thead>
<tr>
<th>Mr. Rajiv K. Luthra</th>
<th>Mr. Som Mandal</th>
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<tr>
<td>Luthra &amp; Luthra Law Offices</td>
<td>Fox Mandal &amp; Co.</td>
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<tr>
<td>103 Ashoka Estate, 24 Barakamba Road, New Delhi 110 001, India</td>
<td>A-9, Sector – 9</td>
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<td>Noida – 201 301 (U.P)</td>
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<tr>
<th>Mr. Dara P. Mehta</th>
<th>Mr. Devang Nanavati</th>
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<tr>
<td>Little &amp; Company</td>
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<td>Mr. Badri Nath</td>
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<td>Mr. Sandeep Singhi</td>
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<td>Ms. Ramni Taneja</td>
<td>Mr. Sameer Tapia</td>
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<td>Law Office of Ramni Taneja</td>
<td>ALMT Legal</td>
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<td>Mr. Vinay Vaish</td>
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<td>Vaish Associates</td>
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<td>Flat 5 &amp; 7, 10 Hailey Road,</td>
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<td>Mr. V.S. Yadav</td>
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<td>Udwadia, Udeshi &amp; Co.</td>
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