

Overview of Legal Practice in India and the Indian Legal Profession

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I. INTRODUCTION

As we begin to explore the impact of globalization on corporate legal practice in India, and on the Indian legal profession more generally, it is critical to obtain a deeper understanding of the pre-existing structure of Indian corporate law practice. Such an understanding not only provides the context against which we can more fully explore the changes that have occurred but also aids in constructing a relatively common factual base, which is shared by other chapters in this book. In light of that, this chapter maps the current state of corporate legal practice in India beginning with an historical exploration of business, law, the state, and the legal profession in India. This is because corporate legal practice is often closely associated with developments in these areas, which drive the demand for corporate legal work and structure how it is provided. Indeed, as we shall see, the fortunes of the corporate legal sector in India have ebbed and flowed over time as developments occurred in these areas. Finally, our analysis enables us to provide a detailed typology of corporate legal practice in India as well as identifying the key areas of general legal practice. This further aids in constructing a common reference point for other chapters in this book.

Parts II–IV examine pre-Independence India. Part II discusses pre-British India, focusing on the Mughal Empire, to highlight the early evidence we have on the development of the legal profession in India. A profession of pleaders (*vakils*) had developed by this time and occupied an important role. Part III explores the impact of the arrival of the British East India Company (the “Company”). The Company developed its own courts and continued to rely on *vakils* in many matters, but reserved the more formal Supreme Court for British attorneys. The system of two types of pleaders would be a feature of Indian legal practice for quite some time. There was also evidence of the

development of early law firms in India at this time (primarily to serve British clients whose business interests were expanding in India). Part IV describes how the advent of the British Raj influenced the legal profession in India. The multiple classes of pleaders continued, and Company courts were subsumed into a more official judicial structure. In addition, as British business and Indian family groups grew, we witnessed the growth of many more law firms (many of which continue to exist today) with strong connections to business communities in India. Moreover, Indian legal education began in earnest during this time to serve the expanding needs of the Raj. Indeed, as the prestige of the profession increased, many more Indians decided to pursue legal study.

Part V examines the developments following India's Independence, in 1947, to 1991. The government of India took over parts of the economy and engaged in a heavier form of state planning involving the creation of a detailed license regime with strong restrictions on foreign investment. This had numerous effects on the legal profession. First, the state directly overhauled the legal profession with the enactment of the Advocates Act, 1961, which abolished the multiple categories of pleaders and created a national regulator (the Bar Council of India). Second, because the apex court (the Supreme Court) was now in Delhi rather than London, litigators based in India prospered as more and more matters were being decided locally. Third, these developments limited the growth prospects for law firms because many of the skills associated with law firms (e.g., fine contract drafting, addressing intricate cross border matters) took a second seat to the skills needed to comply with, and challenge judicially, the large array of regulatory proscriptions.

Part VI discusses the first decade of liberalization (1991–2000) and how that influenced the corporate legal sector. As regulations were pared back, the demand grew for fine contract drafting and other skills associated with law firms. In addition, as restrictions on foreign investment were relaxed, the amount of cross border work increased, which also enhanced the demand for the skills associated with law firms. Further, the increase in demand for transactional work triggered the growth of in-house departments, which now focused on more than just compliance with regulations. Finally, litigators also experienced substantially increased demand as issues associated with the retraction of the state began to get addressed in the courts. The overall increase in demand for lawyers skilled in relatively newer areas of law led to increased pressure on legal education in India, and we witnessed the creation and growth of the National Law Schools.

Part VII hones in on developments from 2000 until now. As India's global interactions continued to increase, so did the law firms and in-house

departments. Moreover, new players – such as legal process outsourcers – entered the fray. These developments led to ever-growing demand for lawyers and to even further demand for law schools to train these lawyers. Now, with a new government, it appears that further changes are anticipated for the development of corporate legal practice in India.

Part VIII concludes with a typology of Indian corporate legal practice that builds upon the typology developed in the United States. A number of later chapters take up some of the issues noted in this chapter and explore them in greater depth thereby enriching our understanding of the complex and multihued tapestry that is corporate legal practice in India in the age of globalization.

II. PRE-BRITISH INDIA

India has a long and successful history of business, with the subcontinent accounting for roughly 25 percent of global GDP until as late as the beginning of the eighteenth century.¹ Indeed, there is substantial evidence throughout much of Indian history of a wide variety of fairly advanced and significant business entities that were regulated by a combination of community norms (e.g., caste and kinship ties), contract (or contract-like) arrangements, and numerous religious, quasi-religious, law, and law-like codes (Khanna 2005). In spite of this, there is limited evidence to date on the presence and activities of a legal or pleader profession (or a functional equivalent) until the Mughal Empire. In light of this, we begin our inquiry with them.

The Mughal Empire ruled over large parts of India for the better part of three hundred years until the mid-1700s. Although this period witnessed much upheaval on many fronts, there is also substantial evidence of economic growth and the operation of a judicial system (Raychoudhuri et al. 1982, 172–477).

Under the Mughals, the emperor was the head of judicial administration (Baillie 1875; Scrafton; Rankin 1946; Shahidullah 2012). However, this function was largely carried out by a series of imperial officials and their subordinates. Justice was speedy, and settlement was common and quick. The Mughals maintained both secular and ecclesiastical courts, but in matters relating to “nonbelievers” (e.g., Hindus, Christians), they generally allowed them to be resolved under Hindu or Christian law and, in cases in rural environments, often allowed matters to be determined by local customs as understood and applied by village and caste-based adjudicators (often called *panchayats*). Indeed, it may be safe to say that for the vast majority of people in the subcontinent (who were living in villages), most disputes were settled under local customs and usages as applied by local adjudicators without much

intervention from the Mughals. However, within the rest of the Mughal system there was substantial discretion given to the decision makers (often called *qazis*), and there was concern that corruption was an increasing problem.

As a disputant, you could have a representative present your petition or argument before a court or local decision-making body. This person was usually called a *vakil*, even though the term originally refers to a very high government official (at one time considered second only to the emperor). Although *vakils* may not always have had legal training, they were usually people with good advocacy skills who understood the local political, administrative, and judicial structures.² Indeed, some British observers seemed to have measured praise for the system, which appeared to protect and favor, in some respects, foreign trade, a matter the British East India Company would have greatly valued.

III. THE BRITISH EAST INDIA COMPANY

As the Mughal Empire weakened, regional powers rose in significance and brought with them an even greater vigor in economic activity (Chandra 1986; Prakash 2002). India witnessed many developments including the increase of external trade, primarily with Europe, which in turn attracted many from Europe to come to India (e.g., the English, French, Portuguese) (Bayly 2002). The European traders usually kept large militias that often supported various successor states as they battled one another for supremacy and influence in the waning days of the Mughal Empire. Over time, the English and French trading companies became key powers in India. Indeed, by the mid-eighteenth century, the British East India Company was the most powerful military force in the subcontinent and was essentially ruling over large parts of it. The Company reigned, in effect, from 1757 to 1857. This was quite a profitable arrangement for the Company as witnessed by the estimate that one single province (that of Bengal) produced 60 percent of the total English imports from Asia (Gupta 1962; Lawson 1993).

The Company established its own courts (addressing matters of relevance to it) as well as provincial and appellate courts. In addition, in the three presidency regions (i.e., Bombay, Madras, and Bengal), the British created Supreme Courts of Judicature (via British Regal Charter), which appeared to apply common law principles to matters primarily occurring in the jurisdiction of the presidencies.³

In spite of de facto Company rule, the Mughal Empire still cast a long shadow in the form of its administrative institutions and practices, which were, by in large, continued by the Company and various successor states (Eaton 1993). For example, when the Company established the provincial

and appellate courts, it permitted *vakils* or other native pleaders to enroll, creating “for the first time a regular legal profession for the Company’s courts” (Schmitthener 1968–1969).⁴ But the supreme courts of Bombay, Madras, and Bengal were the sole preserve of British legal professionals (barristers, advocates, and attorneys), completely excluding the indigenous legal practitioners. The development of two groups of pleaders (e.g., *vakils* and British barristers) is something that would become ensconced in India for some time to come.

The vast majority of *vakils* and attorneys were engaged in litigation and court (or adjudicatory fora) related work. It was only toward the end of the third decade of the nineteenth century that the first law firms of colonial India appear to be founded. Crawford Bayley & Company, established in 1828, is considered one of India’s oldest law firms and one of the few nineteenth-century firms that continues to exist today. It engaged in work that seemed closest to what solicitors did at the time (e.g., commercial contracts, conveyancing, real estate) and often served British clients operating in India (Schmitthener 1968–1969; Galanter and Rekhi 1996). Little & Company, established in 1856, also continues to function today. Over the long period of its existence, it represented a number of prominent clients such as the British East India Company, Bombay Presidency, State of Maharashtra, and Tata Iron & Steel Company, among others.

IV. THE “BRITISH RAJ”

The Company’s reign effectively ended with the revolt of 1857, which led to the British Parliament passing the Act for the Better Government of India, 1858, bringing “British India” under its direct sovereignty.⁵ The British then set about establishing a highly centralized system of revenue, judicial, and military administration, which was headed by the governor general and his council.

A new hierarchy of courts was established where the Company’s courts and the supreme courts were abolished and their jurisdictions subsumed under the high courts. There were three kinds of legal practitioners in these courts: attorneys, advocates (mainly the members of the Bar of England/Ireland/Scotland), and native *vakils* (those holding law degrees from Indian universities), who were the lowest-ranking high court practitioners (Schmitthener 1968–1969; Paul 1991). The rules on specific requirements for enrollment varied from court to court. A system of various subordinate courts was established, where legal practitioners such as pleaders, *mukhtars*, and revenue agents could litigate, even without holding a law degree (Dutt-Majumdar 1974, 30).⁶

Initially, only British barristers and solicitors could plead on the original side in most of the high courts. This distinction between advocates and *vakils* was resented by the latter, who from time to time used to demand an all-India bar, with no distinction between the two kinds of legal practitioners.⁷

In addition to this, there was also a remarkable shift, over time, in the constitution of legal practitioners. For instance, in 1891, out of twenty-four advocates in the Bombay High Court, only seven were Indians. However, by 1911, out of 250 advocates, 234 were Indians (Dutt-Majumdar 1974, 33.) At the same time many new law firms were formed. Between 1872 and 1943, no fewer than ten new law firms were formed, all of which continue in some form today: Tyabji Dayabhai, Wadia Ghandy & Company, Kanga & Company, Mulla & Mulla, Fox Mandal, Khaitan & Company, Amarchand Mangaldas, Anand & Anand, Desai & Diwanji, and Majmudar & Company.

Most of these firms were based in Bombay and had deep connections to various business communities (e.g., Gujaratis, Marwaris, Parsis) in the major business hubs in India at the time (Bombay and Calcutta). In addition, many of these firms started as family-run businesses, or were run by those with other close personal connections with one another (e.g., community, caste). The prevalence of family or community connections is due to many reasons ranging from cultural to religious to greater ease of enforcing arrangements, but regardless of the reasons for their existence, the presence of family-run enterprises meant that more than just legal norms influenced how these enterprises operated (Birla 2008; Sharafi 2010, 2014). Recent studies of these firms have brought to the fore some fascinating insights into how the communities they served often avoided interaction with the official legal system, preferring their own methods of resolving disputes (Birla 2008). Although not uniform across communities – the Parsis were quite willing to interact with the legal system and took leading positions in it – these experiences underscore the complex reality of the interaction between the legal system the British had begun to put in place and the responses of the citizens of India (Sharafi 2010, 2014).

In any case, these firms were primarily involved in commercial matters, real estate, and dispute resolution – leaving the bulk of litigation work to the individual practitioners. In addition, some businesses hired those with some legal training to work within their firms in the company secretary's office. Although these nonlitigation venues were increasing, the vast majority of legal practitioners were individuals focused on litigating in specific courts.⁸

With all these developments, the legal profession became an increasingly popular choice among educated Indians. As a group, lawyers were very active in the public sphere and took up leadership roles. This is amply demonstrated through the predominance of lawyers in all stages of the Indian independence

movement.⁹ For example, Gandhi, Nehru, Patel, Jinnah, and Ambedkar were lawyers and all had obtained some legal training in the United Kingdom.¹⁰

To sustain such a large increase in the legal profession, it was necessary to have a concerted effort to increase legal education and training. The earliest roots of the modern legal education system in India can be traced to the recommendation for the introduction of studies related to jurisprudence in colleges, made by a committee constituted pursuant to the issuance of “Macaulay’s Minute” in 1835. The first class for regular classroom teaching of law as a course was constituted in 1855 in the Madras Institution and in Elphinstone College (Bombay). Gradually all the major Indian universities established law colleges (Ekbote 1973).¹¹ This did not happen without criticism – many considered legal education unduly focused on examinations and not on the needs of Indian society – but that did not abate its growth. By the time of Independence (in 1947), 116 law colleges were in the country (Raza 1991).

The popularity of legal studies under the British Raj led to it become a most cherished and prestigious profession. However, the British Raj was coming under increasing pressure from many corners (Sen 1981; Ray 1994; Bandyopadhyay 2004; Bagchi 2010). By the 1940s, and perhaps earlier, it was increasingly clear that the days of the British Raj were numbered.¹²

5. INDEPENDENCE TO LIBERALIZATION (1947–1991)

As India gained Independence in 1947, the new government pursued policies where the state took a much more active and central role.¹³ Economic policy and development were pursued primarily through centralized planning via the Planning Commission of India in five-year plans. The state took a key role in running basic industries and strictly regulated private industries via licenses and legislation (Khanna 2009).

The Nehru–Mahalanobis strategy provided the analytical framework for growth in the first fifteen years after Independence (Mahalanobis 1960). The focus was on development of balanced agricultural and industrial growth, establishment of heavy industries, movement toward import-substitution industrialization for self-sufficiency purposes, limits on foreign investment, promotion of science and technology research, and construction of basic infrastructure necessary for agricultural and industrial growth (Anant and Mitra 1998). Although progress was made on some fronts, the rate of economic growth was below the anticipated rate (Ibid). This led the state to gradually shift away, in the mid-1980s, from active state-run economic growth, including placing limits on the role of the public sector, deregulating the industrial sector, and liberalizing imports.

From the perspective of the Indian legal profession there were a number of important developments. First, the government enacted the Advocates Act in 1961, which abolished the distinction between *vakils* and barristers that had persisted for more than two hundred years. There would be only one class of advocates who could practice across India in any court.

Second, in 1961 the Bar Council of India (BCI) was constituted as a central body, unifying the bar throughout the country. The BCI was made the primary body responsible for governing, promoting, and providing standards for legal education in India, as well as recognizing universities whose law degrees satisfied the requirements to qualify for enrollment as an advocate (Advocates Act 1961, S. 7h-i). Indeed, by the beginning of the 1990s there appeared to be more than four hundred law schools throughout the country (many perceived to be of poor quality) and a sense that reform was desperately needed in legal education.¹⁴

The third development was the increasing role of the state and the rise of the so-called License Raj, because that shaped the nature of legal work. The government of India adopted policies that gave the state control over large parts of the economy (often via state-owned enterprises [SOEs]), imposed many regulations that appeared to operate as entry barriers (thereby reducing competition), tightly limited foreign investment and competition, and made the state the primary provider of debt and equity capital among other things (Anant and Mitra 1998; Khanna 2009). The combined effect of these policies was that the scope for transactional work in India became more limited.

In such tightly regulated markets, the skills commonly associated with corporate law firm practice (e.g., fine contract negotiation, deal making, and drafting) were less important than compliance with regulatory proscriptions. In light of this, skills were needed in compliance and in managing governmental affairs – tasks usually carried out by company secretaries or CFOs (who often were not lawyers) rather than law firms. This was especially true for SOEs, who were the major players in many sectors in India.

Other factors also conspired to limit the scope for corporate law firm work. First, given the prevalence of family-run businesses in India, law firms often engaged in matters related to the issues facing family business (e.g., real estate, inheritance) rather than typical corporate law matters. Second, the restrictions on foreign investment and currency dealings limited the scope for cross border work, which was another area where corporate law firm skills might be valuable. Third, given the slow-to-moderate economic growth during this period, the opportunities for high-frequency domestic commercial work (an important factor in aiding the development of a law firm market) were limited.¹⁵

A fourth development was the creation of the apex court (the Supreme Court of India) in 1950 in Delhi, as opposed to London, leading to even more attention being focused on the practicing bar in Delhi.¹⁶ The mandate of the Supreme Court was vast – India’s constitution is the longest-written constitution in the world and there are a large number of statutes often effectuating government policy. In addition to this, the birth of a new nation raises many questions that are often addressed in an apex court. The Supreme Court thus had many critical decisions in this formative period (e.g., on property rights, the ability of the state to regulate in certain spheres, affirmative action, social justice litigation, and many others, including the emergency state) that led to an even greater focus on it.¹⁷

In light of this, the caseload at the Supreme Court (and the judicial system in general) increased substantially, which contributed to the now well-known delays in the Indian judicial system.¹⁸ With these delays and the importance of the court, the ability of an attorney to get the audience (face time) of the court became critical. Over time the better attorneys did not necessarily specialize by substantive area but rather in a specific court (e.g., the Supreme Court, the Bombay High Court, and so forth) because the returns came from there.

Although later chapters address the structure of the Supreme Court in greater detail, here we provide a thumbnail account of the operation of the Supreme Court. There are two key sets of attorneys at the Supreme Court. First, the advocates-on-record (AoR), who are the only people who may file any matter or document in the Supreme Court.¹⁹ However, it is usually not the AoR who argues in front of the court. This role largely falls at the feet of the senior advocates. These individuals are designated by the Supreme Court or any high court as advocates who, based on their reputation, ability, knowledge of the law, and standing at the bar, merit a designation as a senior advocate.²⁰ Although as discussed in a later chapter, being a senior advocate carries with it the potential for substantial earnings and great influence,²¹ senior advocates are not entitled to appear in the Supreme Court without an AoR.²²

However, in spite of the increased focus on the litigating bar in Delhi, there was an overall decline in the reputation and prestige of litigating attorneys. The reasons for this are complex, but suffice to say that the very large increase in qualified attorneys in India was not perceived to be associated with an increase in average quality. The estimated number of attorneys increased from roughly 88,000 at Independence to around 450,000 by the mid-1990s. Given the structure of the court system and the delays endemic in it, the returns to most attorneys would not have been very high (with the highest returns largely available for senior advocates). This would have led many of

the best and brightest to consider careers besides law, leading to a drop in the average quality and prestige of an attorney relative to that in pre-Independence India.

VI. LIBERALIZATION TO GLOBALIZATION (1991–2000)

In 1991 India faced a balance of payment crisis (brought on in part by the large debt taken on under the state planning model), culminating in a large drop in the Indian rupee and a severe shortage of funds in India's international reserves (Anant and Mitra 1998; Nayar 1998; Cerra and Saxena 2002). The response was swift, with the government initiating the process of economic liberalization and taking large strides to deregulate the economy (Anant and Mitra 1998). Over the medium to longer term the government began to remove the industrial license system, open up predominantly state-run sectors to private competition, liberalize FDI norms and trade, and implement various financial sector and currency reforms (Ibid).

Although the reforms have proceeded gradually, it is undeniable that there has been a higher and more stable economic growth rate and a substantial reduction in poverty.²³ In addition to this, these reforms laid the foundations for the process of rejuvenation in the legal profession.

A. *Law Firm Growth*

On the heels of liberalization there was a considerable influx of foreign capital into India along with a need to devise new contractual arrangements to fill the gaps left by the excising of regulations. This resulted in an unprecedented demand for transactional advice on complex deals like mergers and acquisitions, often involving multinational entities. This milieu provided the space, opportunity, and demand for law firms to emerge as indispensable service providers to the major domestic and foreign players in the Indian economy.

Indeed, in less than ten years at least nineteen new firms were started, and some of the preexisting firms (e.g., Amarchand Mangaldas, Luthra & Luthra, Nishith Desai) began to grow at an almost exponential rate.²⁴ These firms have become known for a high degree of sophistication and expertise in multiple practice areas, as evidenced by the kind of deals they handle, the clients they serve, and the highly technical areas of law with which they deal.²⁵ Nonetheless, this growth seems largely concentrated in just a handful of large-sized (along with some medium-sized) firms, located in large metropolitan cities like Delhi, Mumbai, Bangalore, Chennai, and Kolkata.

Even within the large metropolitan cities, some law firms have either maintained their position (without much growth) or lost some of their business. Some firms like Kanga & Company, Crawford Bayley & Company, and others – formed many years ago – continued to work primarily with their preexisting book of clients on matters related to real estate, inheritance, and tax, as well as to focus on the relationships they had with the larger business houses/families in India. Most of these firms did not (prior to 2000) attempt to develop much of a corporate or capital markets practice. The reason that some firms decided to take advantage of the opening market and others chose to defer is complex and the subject of further discussion later in this book.

In any case, those firms that did grow quickly were, by and large, fairly progressive, all-service (multispecialist), well-paying, and profitable entities. They were staffed with bright young lawyers who had been educated at the best law schools in India and abroad, many of whom had worked in some of the biggest foreign law firms. This knowledge and experience would prove valuable as much of the newer work in India involved cross border issues and multinational clients. Moreover, even though Indian law currently prohibits foreign lawyers from advising on Indian law or practicing in the Indian courts, Indian law firms have established loose business ties with prominent foreign law firms.²⁶

Given the growth of these Indian law firms, it might be natural to examine how similar they are to their Western counterparts. Indeed, there are similarities, but there are also important differences especially relating to size, turnover, and organizational structure. These can be attributed in part to the significant time gap between the establishment of Indian and Western corporate legal markets – the former mostly came into being post-1991 and thus are less than twenty-five years old, whereas the latter date back at least to the middle of the twentieth century (RSG Consulting 2015). In addition, there are fundamental differences in context rooted in the nature and role of the state, legal environment, and culture. The myriad interaction between these local specificities and global forces calls for an increasingly nuanced approach to the study and analysis of the legal profession in India.

In terms of size, Indian law firms are smaller than Western ones. According to RSG India Law Centre data, for the top forty Indian law firms in the year 2013, the largest firm had 600 lawyers, the second largest firm had 300 lawyers, the next ten largest firms employed between 150 and 300 lawyers each, and the head count for the rest of the firms ranged between 8 and 150 (Ibid). These figures are substantially smaller than those of their Western counterparts. For instance, the head count for the top 100 US law firms ranged between 489 and

4,036. Further, twenty-one of the top hundred US law firms employed more than one thousand lawyers each (AmLaw 100 2013).

In terms of gross annual turnover, the cumulative size of the commercial legal market in India in 2012 was US\$1.075 billion (Vyas 2013). This figure is low compared with that of law firms in the West. For instance, the gross revenue earned by the top hundred law firms in the United States was around US\$73.4 billion.²⁷

The basic organizational structure of Indian law firms is similar to Western firms, that is, a two-tiered partnership model, distinguishing between equity and nonequity partners. However, there are three major differences. First, US law firms usually take the form of limited liability partnerships. Indian law firms were by and large general partnerships until 2008, when the Limited Liability Partnership Act was enacted, and since then many have converted. Second, firm ownership is more concentrated in Indian firms compared with US firms. In 2012 the average ratio between the number of partners (including both equity and nonequity partners) and associates for the top forty law firms in India was 1:6.2, whereas the ratio between the number of equity partners and the number of lawyers for the top forty law firms in the United States was 1:5.29.²⁸ Lastly, along with a greater concentration of ownership, family succession and kinship ties among the partners of a firm are more common in Indian law firms.

B. In-House Departments

Another area in which substantial change occurred was in in-house departments at Indian corporations. As with law firms, the peeling back of the License Raj and the relaxing of restrictions on foreign investment increased the need for corporations to work with people who have stronger contracting skills, were creative in drafting, and had the necessary skills for facilitating deals in a changing marketplace. Initially, corporations looked to their company secretaries and CFOs to meet these needs. In particular, the CFOs were pivotal because for many firms, most legal and compliance matters were within the CFO's office. Satisfying these needs, however, would prove challenging. CFOs could have approached litigators, but these attorneys had little expertise with commercial matters, and perhaps little inclination to work in-house. In light of this, CFOs frequently began to send this kind of work to outside law firms, which in turn led to the company secretary becoming less significant.²⁹ However, law firms also had only a handful of people with whom to try to meet the large demand, and that, along with a desire to have a legal advisor familiar with the business, would lead to even greater pressure to develop in-house

departments. This formed the base from which in-house departments would both grow and gain in influence, as discussed in Chapter 4.

C. *Litigation*

The litigating bar also benefited from liberalization as new cases arose involving new arrangements drafted with parties from both outside and inside India. Traditionally these issues might have been determined by a regulator, but with the paring back of regulation under liberalization, they began to fall to the already overburdened Indian courts.

This provided litigators in India with more work (and new, often foreign, clients), as well as new challenges, because they were now litigating more commercial matters as compared with constitutional law, tax law, criminal law, real estate, and inheritance. The increase in demand was met by an increase in the fees they charged. In addition, other groups of litigators also experienced growth (e.g., government attorneys and attorneys dealing with inheritance, matrimonial law, and real estate).³⁹ Indeed, the higher fees for litigation and arbitration have led some law firms to explicitly state that they intend to develop (or increase) their litigation and arbitration departments.

D. *Legal Education*

The growth across so many sectors of the legal profession put great pressure on legal education in India to meet these demands. Immediately before liberalization, the BCI began to take a few steps toward reform with the establishment of the first national law school in Bangalore in 1987, which offered a five-year integrated degree (BA/LLB) to undergraduate students.³¹ The development of the national law school was accompanied by reforms in curriculum, pedagogy and teaching methods, accreditation of law schools, law school entrance criteria, and so forth. The motivation underlying these reforms was that Indian legal education needed a considerable overhaul in order to successfully tackle the challenges unleashed by the forces of globalization (Bar Council of India 2010). However, the BCI did not start out to train corporate attorneys but rather to train leaders and lawyers in the public interest. This changed over time – as discussed in papers in this volume – leading to the rising popularity of the five-year integrated degree model. The next set of national law schools (i.e., NALSAR [Hyderabad], NUJS [Kolkata], NLIU [Bhopal], and NLU [Jodhpur]) all opened in the late 1990s as it became clear that the demand for lawyers in the corporate sector was soaring. Overall, the national law schools have proved quite successful with their highly competitive selection

procedures and market-oriented curriculum, and they have come to be regarded as premier legal institutions, with their graduates actively pursued by law firms and corporate in-house departments.

VII. GLOBALIZATION TO BRICS (2000–NOW)³²

With its growing economy and increasing interaction in the global market-place, India is considered the “I” within the fast-growing BRICS countries (Kobayashi-Hillary 2008; World Bank 2011). Perhaps in recognition (and anticipation) of this, the BRICS countries themselves have banded together in various fora, including the closely followed annual BRICS summits (Kramer 2009; Fourth BRICS Summit 2014).

A. *Continuing Growth as Globalization Grows*

As India’s interaction with the global economy increased and as more sectors were liberalized, the demand for corporate legal services grew even stronger. Many new law firms were started, and those in existence continued to grow and morph even faster.³³ Their number, size, and work specialties have grown exponentially (Galanter and Palay 1990).³⁴ There has also been a stunning growth in specialized law firms that target specific areas of law (e.g., intellectual property, foreign private equity, hedge funds, competition laws) as well as specific business sectors (e.g., infrastructure). Part of this reflects India’s continued growth but also a certain degree of reregulation of business as India marches toward the next century.

This growth has occurred along with parallel changes in Indian firms’ in-house departments. Increasing globalization and reregulation of certain areas has put pressure on Indian firms to become more familiar with the laws of other countries and come to grips with new developments in India. Of course, firms could simply hire Indian or foreign law firms for some of those needs, but Indian law firms may not be able to provide both the scale and talent levels desired, and foreign law firms, even if they could practice in India, may not have the familiarity with the Indian firm’s business and culture. In this situation expanding in-house departments appears desirable.³⁵ This is precisely what many firms have done, with some in-house departments becoming larger than the largest law firms.³⁶ The increasing role of in-house departments has been a critical development in many Western economies and may well be in the offing in India, a matter explored in a later chapter.

There were also new developments in the legal services market. As with other professional services, legal services also began to be outsourced to India.

LPO has become a new growth area for Indian attorneys; the largest employer of transactionally oriented attorneys in India is an LPO. The LPO market, as with many global supply chains, is also changing and morphing as we speak and is the subject of another chapter in this book.

Although the corporate sector has grown, the litigation sector is not far behind. Now, the top senior advocates' fees and earnings are regularly referenced in Indian magazines and have become a source of fascination for the news media. Moreover, the presence of arbitration (domestic and foreign) has been growing in India.³⁷

The growth in the legal profession in India has been impressive, but we should not lose touch with the ground realities. The corporate legal sector represents – across law firms, in-house departments, and LPOs – a small subset of attorneys (maybe ten thousand or so) out of the 1.3 million plus attorneys registered with different state bar associations in India.³⁸ Moreover, most law firms are run by partners with close familial or community ties to one another (Galanter and Rekhi 1996). Nonetheless, it is the corporate sector that is the fastest growing and on average the most remunerative.³⁹ The growth of the corporate sector alongside the presence of globalization has created a sea change in attitudes toward the legal profession in India.

Perhaps nowhere is this seen more starkly than in the growth of law schools and the intense competition to obtain admission and pursue the study of law. At least twelve new national law schools have been established since 2001, and countless other law schools have opened their doors across the country. New private schools – some offering global legal education, such as the Jindal Global Law School – have also entered the fray. Although there is still much to be done to reform legal education, recent developments indicate much optimism for the future.

B. Modifying the Indian Legal Profession

In the May 2014 Indian national elections, a new government – led by Prime Minister Narendra Modi – was elected with a clear majority. The new government has promised to push forward with a number of further economic reforms. For our purposes, the most critical has been the recent discussions to allow foreign law firms to enter in some form in India (Mehra 2015). Although discussions have occurred under prior governments, the current discussions have moved much more quickly and seem very likely to eventuate. They appear to allow for foreign law firms to provide advice and engage in arbitration in India. These steps would lead to a substantial opening of the market and to further seismic changes in the Indian legal profession. We are awaiting these further developments with great anticipation.

VIII. CONCLUSION: A TYPOLOGY OF THE INDIAN CORPORATE
LEGAL MARKET

We conclude by offering a typology of the Indian legal market that is similar to – but as we will see, different in important respects from – the one that we utilized for categorizing the current state of the Western corporate legal market. Although one could construct a typology in many different ways, we base ours on the one developed for the US corporate legal market. This is for a number of reasons.

First, because Western corporate law firms and in-house departments were the first to develop and are generally acclaimed as being the best in the world, they become a reference point for comparing developments elsewhere. Second, even Indian lawyers who prefer not to adopt the American model often define their approach in opposition to the American model, making the comparison more relevant. Third, given India's increasing interactions with the global marketplace, Indian law firms, their employees,⁴⁰ and their clients are likely to have more direct exposure to US and UK corporate law firms and legal departments. Finally, to the extent that the new corporate legal market in India has developed in part in response to perceptions about the Anglo-American corporate legal market, changes in the latter market may foretell changes that will affect the Indian legal market in coming years. This is particularly of interest because some of the realignment of corporate legal services markets in the United States and the United Kingdom are precipitated by globalization – which is one of the key drivers of change in the Indian market.

In light of these considerations, we use as our starting point the five categories used to define the Western corporate legal market: global firms; national, regional, and local firms; focused firms and boutiques; in-house legal departments; and new players. Although we use these categories as a starting point, we highlight where the Indian market contains important variations.

A. *Global Indian Law Firms*

At the moment, India has no truly global law firms. Although a few Indian law firms have a presence outside of India, these “offices” are little more than outposts with little independent significance. This does not mean, however, that there are no Indian firms with global ambitions. To the contrary, prior to its splitting in two, India's largest law firm, Amarchand Mangaldas, had expressly declared that it intends to reach one thousand lawyers and open several foreign offices by 2015. Whether after its split those same ambitions hold true remains to be seen, but the public declaration indicates that the

top Indian law firms are grappling with their response to globalization and whether to follow their clients or to compete with the growing presence of Western global law firms in India.

B. *National, Regional, and Local Law Firms*

The top of the Indian legal market is occupied by what we have characterized as large national firms. It is useful to distinguish three variations within this category.

The first are the most elite Indian firms. Traditionally five firms routinely occupy the top of the various rankings with respect to size, revenue, and profitability: Amarchand Mangaldas, AZB Partners, J. Sagar & Associates, Luthra & Luthra, and Khaitan & Company. With the splitting of Amarchand into two, there are now six elite firms. Each of these firms has at least 240 lawyers. And each consistently ranks at the top of the prestige rankings by both clients and law students. There are important differences among these firms in terms of their pedigree, size, structure, specialization, and practices. Each grew significantly following liberalization and played an important role in facilitating the entry of foreign direct investment into India. And each of these firms has explicitly adopted the American model of production of law, albeit with important variations, as we will see.

The elite firms, however, were not the first “national” corporate law firms in India. That distinction belongs to the second category of colonial era solicitor firms. Several of these firms continue to exist today, most notably Crawford Bailey & Company, Bashin & Company, Mulla & Mulla, Rajinder Narain & Company, and Udadia & Udeshi. Although large by Indian standards, typically between 100 and 200 lawyers, the firms are significantly smaller than the elite firms. The practices of these firms differ significantly as well. Whereas the elite firms tend to concentrate on representing foreign clients in transnational matters, particularly FDI, the colonial era firms tend to represent Indian corporations in domestic matters, particularly real estate, inheritance, and dispute resolution. Finally, unlike the elite firms – some of which can also trace their history to colonial times – the firms that remain in this category have not adopted the American mode of production and instead are structured as a hybrid between the older English model and the model of traditional Indian law firms that existed in the period leading up to Independence.

Finally, there is a third group of national firms that can neither claim the elite mantle, nor the historical pedigree (and client relationships) of the colonial era firms. These firms are also large by Indian standards – typically more than 100 lawyers – and many have offices in cities outside of the major

commercial centers of Mumbai, Delhi, and Bangalore, where the elite and colonial era firms tend to be located. These firms tend to represent primarily Indian corporations and family-owned businesses, many of which are themselves regional as opposed to national. Prominent firms in this group include Fox Mandal, Dua Associates, ALMT, Kochhar & Company, Singhania & Company, Desai & Diwanji, DSK Legal, and Wadia Ghandy & Co.⁴¹

C. Focused Firms and Boutique Firms

In the latest rankings of Indian law firms, boutique and specialized firms received some of the highest marks from both international and Indian clients with respect to innovation, client satisfaction, and quality of service. Unlike in the West, where this category contains a mix of some of the oldest and most established firms (e.g., Cravath, Slaughter & May) and new firms, in India the firms that comprise this group, with a few notable exceptions, were almost all formed during what we have characterized earlier as the globalization era beginning in 2000.

These firms, which range in size from a few dozen lawyers to more than 100, tend to specialize in high-end fields of modern corporate practice: private equity, infrastructure and project finance, tax, intellectual property, and arbitration. They have made strong inroads in attracting international clients but also are increasingly popular with Indian corporations engaged in international transactions. They pride themselves on being “modern” in both their internal structure and the way that they conduct their work, and aggressively market themselves to both clients and talent as being much closer to the Anglo-American model than the elite firms. Indeed, as we will discuss in Chapter 6, several of these firms were started by lawyers who left the elite firm in search of opportunities they felt they could not obtain there. Other firms were started by lawyers who were educated in the United States or United Kingdom and/or who already had significant experience working in international firms. Prominent examples in this group are Trilegal, Nishith Desai Associates, Anand & Anand, Phoenix Legal, Platinum Partners, and Talwar Thakore & Associates.

There is, however, another category of “focused” firms that does not exist in the American context, although there is an important analogue in the United Kingdom. These are the advocates-on-record, who often organize as firms and work with senior advocates. As we indicated earlier, and as further described in Chapter 14 of this volume, senior advocates are quite important in the Indian context, often earning incomes that far exceed those of even the most highly compensated elite law firm partner. Although senior advocates – like their UK barrister counterparts – are solo practitioners, they must be briefed

and supported by an AoR.⁴² Some of the colonial era firms act in this role, particularly for important cases, thus giving them preferred access to some of the most powerful senior advocates.

D. In-House Departments

As we indicated above, in-house legal departments are becoming increasingly important in India. As is elaborated on in Chapter 4, in analyzing this rapidly growing sector of the Indian corporate bar, it is useful to distinguish four kinds of companies: foreign multinational national companies (FNCs), Indian state-owned enterprises (SOEs), family-owned or promoter-driven Indian companies, and publicly controlled Indian companies. Because these types of companies reflect different governance structures and have differing degrees of exposure to the global business environment, we would expect that their in-house departments will differ in important ways.

E. New Players

India is the birthplace of one of the most important new players in the global corporate legal market: LPO. India's LPO industry is the oldest and largest in the world – although in recognition of the growing importance of “unbundling” legal work and applying technology and process management to reduce costs, this industry has now spawned a number of important competitors around the world, including “near-sourcing” facilities offering similar services in low-cost cities in Western legal markets such as Wheeling, West Virginia, and Belfast, Northern Ireland. The rise of the LPOs and the emerging global supply chain for legal services is discussed in Chapter 13 of this volume.

F. Global Law Firms

Although India does not yet have global law firms of its own, a number of global players are actively trying to serve the Indian market. Notwithstanding the fact that under the Advocates Act only Indian citizens are legally permitted to practice law within the country, a number of foreign law firms are actively engaged in representing foreign multinational corporations and Indian corporations in both transactions and disputes. These foreign firms either do their work on a “fly in, fly out” basis – working from offices in Hong Kong, Singapore, London, or New York and then flying in to consult with clients or close deals – or by affiliating with an Indian firm who can perform the local parts

of the work. These latter relationships, however, have tended to prove quite unstable. Chapters 3 and 10 explore these alliances and why several have not succeeded.⁴³

Finally, the Big Four accounting firms are also active in India, bringing their brand of multidisciplinary practice and offering globally integrated business solutions to all kinds of firms operating in India. With this typology in mind, we now turn our attention to the individual chapters.

Notes

- 1 For a discussion of commercial activities in ancient India c. 1500 BCE–c. 1200 CE, see Giles 1923; McCrindle 1960; Das 1980; Thaplyal 1996; Kenoyer 1997. For a discussion of the period 1200–1750 AD, see Raychoudhuri et al. 1982; Arasaratnam 1986; Gopal 1986; Das Gupta 2001. For GDP, see Tomlinson 2003; Maddison 2006.
- 2 Lawyers (those with legal training) did not normally appear on behalf of claimants. These lawyers were more likely to be the decision makers or perhaps the experts to whom the decision maker may refer a matter (e.g., a *mufti*) (Cleveland and Bunton 2013).
- 3 Supreme courts were established in the presidencies of Bengal, Madras, and Bombay under Royal Charters in 1773, 1801, and 1823, respectively. These courts were to apply English law (common law and statute law) that was introduced into these settlements by the Charter of George I in the year 1726 (Home Intelligence 1927; Sturman 2012).
- 4 The Bengal Regulation VII of 1793 also regulated legal fees and appointments of government pleaders among other matters (Schmitthener 1968–1969; Dutt-Majumdar 1974). One of the more important sets of rules were contained in Regulation XXVIII of 1814, which addressed licensing and disciplining of the nonbarrister legal professionals (e.g., *vakils*).
- 5 Though, even prior to taking this formal step, the British Crown was actively involved in overseeing Indian affairs through the Company (Cain and Hopkins 1993; Lawson 1993).
- 6 The Legal Practitioners Act of 1879 (Act XVIII of 1879) contained further details on these various categories.
- 7 This would eventually happen with the enactment of the Advocates Act, 1961, which abolished the distinctions between different classes of legal practitioners and entitled only one class of legal practitioners, namely, advocates, to practice in the courts of India.
- 8 Litigators tended to specialize in particular courts where familiarity with the judge or justices was important (e.g., face time), although specialization in specific areas of law was not that critical.
- 9 For example, eleven out of sixteen presidents of the Indian National Congress between 1885 and 1909 were lawyers (Mukherjee 2010).
- 10 Gandhi studied at University College, London and as a barrister at Inner Temple. Nehru studied at Trinity College, Cambridge for his honors degree and then proceeded to study law for two years at the Inns of Court School of Law (Inner Temple) and was admitted to the English Bar in 1912. Patel studied at Middle

- Temple Inn in London after having practiced as an advocate in India. Jinnah was trained as a barrister at Lincoln's Inn in London. Ambedkar completed graduate work at Columbia University and doctoral work at the London School of Economics while also completing the bar exam at Gray's Inn.
- 11 The Indian Bar Council's Act of 1926 (Act XXXVIII of 1926) was also important because it established the bar councils (one created by each high court), which were responsible for legal education and matters related to admitting individuals to the practice of law and its regulation.
 - 12 For an introduction to India's independence movement, see Bandyopadhyay 2004.
 - 13 India faced the Herculean task of initiating economic development of a country afflicted with large-scale poverty, low per-capita income, food scarcity, capital deficiency, low social overhead capital, and abysmal levels of technological and industrial development (Tomlinson 2003, 101; Bandyopadhyay 2004, 133).
 - 14 Although the establishment of the first National Law Schools (in Bangalore in 1987) and accompanying reforms were significant, we defer discussion of it until the next section because the vast majority of national law schools were established after the liberalization program began in 1991.
 - 15 There were some new law firms formed, but they were narrowly focused on specialized areas (e.g., Parekh & Company, specializing in litigation; Nishith Desai Associates, specializing in tax).
 - 16 Prior to Independence, the court of final appeal for India was the judicial committee of the Privy Council in London.
 - 17 Substantial scholarship explores the increasing role of the Supreme Court within India and how it is considered one of the most independent and activist supreme courts in the world (Baxi 1987; Sathe 2002; Shankar and Mehta 2008). In particular, the genesis of public interest litigation (which relaxes standing rules for initiating certain suits), for example, *S.P. Gupta v. Union of India*, AIR 1982 SC 149) and the response of the court during the emergency have generated substantial scholarship (Cunningham 1987; Guha 2007; Mehta 2007; Deva 2009).
 - 18 It is worth noting that the delays have only been worsened by an increasing tendency of government departments to litigate issues rather than resolve them with the citizens directly. Indeed, recent studies indicate that the government is the largest and most frequent litigant in the Indian courts. See National Legal Mission to Reduce Average Pendency Time from 15 Years to 3 Years, 2009. A partial explanation for this might be that a court decision provides greater legitimacy and perhaps political "cover" (Khanna 2015).
 - 19 For more on this, see Supreme Court of India Rules available at: <http://llbl.webs.com/Files/rulespdf.pdf>.
 - 20 The process of designating senior advocates has recently become the subject of a public interest litigation (PIL) filed in the Supreme Court of India (Ganz 2015a).
 - 21 Senior advocates (and most litigating advocates in India) do not charge on an hourly basis, but rather they charge an "appearance" fee.
 - 22 This appears to re-create, in part, the multiple categories of litigators that the 1961 Act seemed to abolish.
 - 23 The average rate of economic growth of India in the two decades preceding the 1991 economic reforms was merely 3.5 percent (Basu 2004; Kotwal et al. 2011; Ministry of Finance 2011; World Bank 2012).

- 24 Galanter and Rekhi argue that these large law firms emerged because their multi-speciality practices provided one-stop shopping for the kinds of commercial matters relevant to India at the time, the ability to pool resources and specializations to provide complex legal advice, and the ability to combine senior and junior talent in a potentially symbiotic relationship (Galanter and Rekhi 1996).
- 25 The top corporate Indian law firms are routinely roped in to advise on important domestic and cross border business deals, including a number of multibillion-dollar deals that often employ a consortium of foreign and domestic law firms (*India Business Law Journal* 2013).
- 26 The agreements come with various monikers: best friends agreement, exclusive/nonexclusive referral relationship, tie-ups, etc. Though a number of high profile tie-ups between Indian and foreign firms ended in breakups (e.g., AZB–Clifford Chance, Trilegal–Allen & Overy, TTA–Linklaters), many new tie-ups have appeared recently, such as J. Sagar–DLA Piper, Ashurst–Indian Law Partners (ILP); Beachcroft–Khaitan, Jayakar Sud–Vohra; and Lex Forska Solutions LLP–Shah Peerally Law Group PC).
- 27 The top US law firm by revenue earned US\$2.4 billion in this period, more than the entire Indian commercial market (*AmLaw 100* 2013).
- 28 India data is derived from RSG Top 40 Indian Law Firms (RSG Consulting 2012). US data is derived from the *AmLaw 100* 2012 dataset.
- 29 A CFO might have considered hiring attorneys from law firms to work in-house, but in the early days of globalization the pay might not have been comparable to working at a law firm and law firm attorneys may have thought that working in-house could send poor signals about their quality.
- 30 Litigating on behalf of the government provided one with excellent experience and contacts to branch out into private practice (as it does in developed countries as well).
- 31 The BCI considered this to be significant, kick-starting “the next level of evolution in legal education in the country” (Bar Council of India 2010).
- 32 The acronym BRICS for Brazil, Russia, India, China, and South Africa was coined by Jim O’Neill, the chief economist of Goldman Sachs (O’Neill 2001).
- 33 Amarchand & Mangaldas & Suresh A. Shroff was India’s largest law firm in 2014 with more than 600 attorneys, even though it had fewer than thirty attorneys in 1991, and AZB, with more than 250 attorneys, came into its current form only in 2004. Amarchand has morphed again in 2015 after the matriarch of the family passed away and the firm split into two firms – Shardul Amarchand Mangaldas and Cyril Amarchand Mangaldas – both with aggressive expansion plans. For more, see Chapter 3 of this volume.
- 34 India did not have any organization representing the collective interests of law firms until the Society of Indian Law Firms (SILF) was formed in 2000. It now represents more than one hundred corporate law firms (Krishnan 2010).
- 35 The in-house counsel is better suited for this role than most CFOs (who understand business but not necessarily the shifting regulatory structures) and outside law firms (who appreciate legal issues but do not present with firm-specific knowledge and skills).
- 36 One can envision in-house departments taking on a more strategic role as the legal and regulatory issues blend with the business ones in a shifting global environment.

- 37 Some top senior advocates have begun to offer their services in arbitration as has a newer breed of lawyer who also focuses on trade law services (Ganz 2013).
- 38 This aspect of the Indian legal profession has been widely studied. For an overview of the traditional organization of legal services in India (Galanter 1968–1969; Schmitthener 1968–1969).
- 39 Starting salaries at most of the top law firms have increased dramatically in the last decade (as have increases in salaries for more senior associates) – all of which contributes to increased interest in the legal profession.
- 40 Often the employees have studied or worked in the United States or United Kingdom.
- 41 For example, according to RSG data on the split of work between international and domestic clients, the proportion of domestic clients of Kochhar is 70% and Wadia Ghandy & Co 60% (RSG Consulting 2015).
- 42 Senior advocates often employ several “juniors” or trainees in their chambers.
- 43 The UK firms are the most active in the Indian market, but the US firms are showing increasing interest, as are firms from Australia, Canada, and Singapore.

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