

# **COMPARING LAW FIRMS IN THE UNITED STATES AND INDIA: AN INDIAN LAWYER'S PERSPECTIVE**

**Shikhil Suri**

Law firms in the United States and India have traditionally not had substantial interaction. Historically, there were more sustained exchanges between Indian and British firms. However, recently, improving ties and a strengthening of bilateral relationship between India and the U.S., has led to the parallel development of ties between Indian and U.S. law firms.

Indian law is largely derived from British Commonwealth law, though the Constitution of India has derived elements from the U.S. Constitution as well. Clearly, as trade between the two countries increases, and the bilateral relationship expands to span various sectors, better and stronger ties between law firms of both countries will become inevitable. U.S. and Indian law firms have much to learn from each other, and would benefit from a greater understanding of each other.

In this brief study, I compare and contrast the organization, structure, size and the functioning of law firms in both countries. The general conclusions that can be drawn are that 1) Indian law firms can learn from U.S. firms in the fields of structure, organization and the use of technology for increased efficiency, and 2) deeper ties and an improving bilateral relationship between the two countries are likely to necessitate greater coordination and exchange between firms in both countries.

## **Organization of Firms**

Law firms are organized in a variety of ways, depending on the jurisdiction in which the firm practices. Common arrangements include *sole proprietorship*, *General partnership*, *Professional corporations*, *Limited Liability Company (LLC)*, *Professional association* (which operates similarly to a professional corporation or a limited liability company) and *Limited Liability Partnership (LLP)*, in which the attorney-owners are called “partners” or “shareholders”, but are not personally liable to third party creditors of the law firm, except in certain limited circumstances.

Starting in the latter half of the 20<sup>th</sup> century, law firms in the United States and most other developed countries cast off “ethical” restrictions to sole proprietorships and general partnerships and moved to today’s predominant entity organized as some form of professional associations or LLP’s, providing a “corporate shield” to attorney-owners. In most U.S. jurisdictions, law firms either by commercial standards or legal requirements carry substantial policies of professional liability (malpractice) insurance. In contrast, law firms in India remain subject to “ethical restriction” (now obsolete in the U.S.) restricting them to the general partnership model, exposing the attorney-owners to unlimited personal liability. At the same time as refusing to limit attorney-owner liability, strangely the Indian Partnership Act of 1932 limits the number of attorney-owners, permitting no more than 20 partners. Looking at the growth of law firms globally, Indian professionals, including accountants and lawyers (through their respective professional associations) have been pressing for the introduction of LLP’s to achieve a level playing field with their counterparts in western countries. In fact recently, Limited Liability

Partnership Bill, 2006, has been introduced in the Indian Parliament, providing for LLP form of a body corporate.

## **Structure of Firms**

Many large law firms have moved to a two-tiered partnership model, with equity and non-equity partners. In India law firms follow a similar model, with the only difference being that becoming a partner could take many more years in view of the provision of a maximum of twenty partners in a firm.

In the United States, many large and midsize firms have attorneys with the job titles of “counsel”, “special counsel” or “of counsel.” These attorneys are employees of the firm like associates, although some firms have an independent contractual relationship with their “of counsel.” But unlike associates, and more like partners, they generally have their own clients, manage their own cases, and supervise associates. The concepts of “counsel,” “of counsel” etc. are not found in Indian law firms.

## **Size**

Law firms range widely in size. The smallest law firms are solo practitioners. In the United States, there are also many small firms (2 to 50 lawyers) and midsize firms (50 to 200 lawyers). The largest law firms have more than 1,000 lawyers. These firms have offices on several continents, bill \$750 per hour or higher, and have a high ratio of support staff per attorney. In India the concept of such large law firms is relatively new and the largest firms (which are few in number) would have around 100 attorneys.

## **Working of a law firm**

Though in general the working of a law firm in America and India is similar, there are some aspects in which they do differ. Indian law firms do not have paralegals to assist attorneys. A paralegal is a person qualified through education, training or work experience to perform substantive legal work that requires knowledge of legal concepts and is customarily, but not exclusively, performed by a lawyer, including assisting lawyers in documentation, presentation, research, investigation, preparation for hearings, trials, closings, and corporate meetings. Instead the new graduates and sometimes the attorneys themselves in India end up doing what a paralegal would do here in the United States. Clearly, Indian law firms would greatly benefit by introducing the concept of paralegals in order to reduce client costs and increase efficiency.

Another important functional difference concerns the “Retainer Agreement” American law firms enter into with their clients. This agreement puts into writing the terms and conditions under which the law firm provides legal services. When well drafted, it leaves no ambiguity as to the scope of the work to be performed or the fees to be charged. In India, usually the lawyers tell the clients upfront as to how they would be charging fees, whether it would be hourly or transactional etc. but do not enter into a Retainer Agreement.

Under certain circumstances lawyers in the United States are also allowed to charge a fee for the reciprocal referrals of clients by and between a lawyer or law firm and a non-legal professional or non-legal professional service firm. This is not permitted in India.

Also, lawyers in the United States are allowed to charge a contingency fee for the work undertaken by them, which again is not permitted in India. In certain cases it makes sense for the

client to have such an arrangement as an option: for example, a client has a genuine money claim but cannot afford to pay the fees of a good attorney, in that event a contingency arrangement would be ideal. Another example would be class action law suits where a litigant may find the claim too low to be viable enough to pursue but when there are thousands of litigants having the same claim they might require a class adjudication and class actions work on contingency basis.

Another notable thing I would want to highlight is the commitment of law firms in the United States to pro-bono work, which is highly commendable and is something which their counterparts in India should pick up.

## **Working of the Legal System**

The courts in India are plagued by backlogs and a lawsuit would generally not reach trial before 10-15 years from the date of filing. As an illustration, before starting my internship in the U.S., I was assisting a senior attorney in a trial for a law suit filed in the year 1986. Indian litigants present a sharp contrast with litigants in the United States who are sometimes outraged if it takes 12-18 months for a case to reach trial. In fact I had the opportunity to attend a trial in the Minnesota District Court, which got over in a span of two days. In India, a trial would usually take weeks to complete.

## **Specialization**

Due to the overwhelming complexity of the law today, lawyers in the United States tend to be highly specialized. Full service law firms have departments specializing in every type of legal work. In India, this trend of specializing in a particular field is still catching on.

In large cities in India like Delhi, Mumbai, Kolkatta, Chennai, it is not uncommon to see lawyers following the “dual system” under which the solicitor or the attorney takes care of the preparation of the case and the presentation and the arguments in Court are made by a lawyer who is called a “Counsel” (Counsel in India is similar to a “Barrister” in the U.K.)

The American system of licensing attorneys on a state-by-state basis is very different from the Indian system, where once you are licensed to practice you can practice in any of the states within India. Lawyers in India do not sit for any “Bar Exam” –they are licensed to practice as soon as they graduate from law school.

## **Technology**

The use of computers in depositions, client meetings, and the courtroom and the use of software for accounting, time and billing are uncommon for an Indian firm. The concept of e-filing as adopted in Federal Courts, is gaining popularity in India as well. The Supreme Court of India has recently introduced the concept of an electronic filing system. This trend is likely to be replicated in lower levels of the Indian judicial system in the coming years.

## **Advertising and Marketing Legal Services**

Responding to an increasingly competitive marketplace for legal services American law firms are marketing in a variety of ways, including solicitation and advertising and marketing techniques such as websites, brochures, client newsletters and other direct mail, and presentations to potential client groups. While advertising and marketing of legal services is highly regulated in the U.S., it is entirely prohibited in India by the present Professional Conduct

Rules. This is in sharp contrast to law firms and lawyers in the U.S. who are able to market their legal services. In fact attorneys in India were sent “show cause” notices because their names appeared in an international directory for lawyers.

Having experienced both systems I believe attorney advertising may help the client make an informed selection.

## **Conclusion**

With the recent boom in the Indian economy and the growth of the legal profession and firm culture, Indian law firms must pick up the finer points of firm practice from their counter parts in the United States and the United Kingdom in order to compete at the global level. Various global law firms are looking to set up shop in India. The main obstacle is that foreign law firms are not allowed to practice in India and thus cannot set up full-fledged law offices catering to requirements of companies and individuals. What U.S. and Indian law firms can do is set up liaison offices with a view to increase interaction. However India, as a founding member of WTO’s General Agreement on Trade in Services (GATS), is likely to permit foreign law firms to establish offices in India within the next few years. The objective of GATS is to facilitate free flow of services across the world and Indian law firms would certainly have a lot to contribute and learn from freer exchange and greater collaboration with foreign law firms.

## **ACKNOWLEDGEMENT**

I feel that what makes a place is its “people” and I would like to say that the people at Mansfield Tanick & Cohen are simply great and I greatly enjoyed my stay at the firm and would like to thank everybody at Mansfield Tanick & Cohen for making my stay enjoyable. The partners, associates and staff are, without exception, approachable, amiable and down to earth. There is a strong sense of collegiality and the office certainly does not lack good humor. The camaraderie amongst the attorneys helps them effectively cater to the varying needs of their clients. The firm of Mansfield Tanick & Cohen is not hierarchical in nature, which contributes to the professional growth of young attorneys. I am very impressed by the team based culture and the quality of services provided by the firm to its clients. I would also like to thank the association of Lawyers Associated Worldwide (LAW) for making the link with the firm of Mansfield Tanick & Cohen and making this internship possible.

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**Shikhil Suri is an attorney licensed to practice in India working with the oldest and one of the leading law firms of India, M/s. Mulla & Mulla & Craigie Blunt & Caroe. He was visiting the law firm of Mansfield Tanick & Cohen from August to October of 2006.**