

# FROM PROFESSIONAL RESPONSIBILITY TO THE “BUSINESS OF LAW”: REGULATING THE ETHICAL IMPLICATIONS OF LEGAL PROCESS OUTSOURCING

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*The global business environment is increasingly concerned with reducing cost and increasing efficiency and legal process outsourcing (‘LPO’) is proving to be the perfect vehicle to achieve this. India has emerged as the most favourable destination amongst legal outsourcers as its developing economy, convenient time-zone, and large population of English-speaking and common law trained lawyers create unmatched cost incentives. Furthermore, LPO services are no longer restricted to providing administrative and support services as their role has expanded to include research, legislative tracking and analysis, and document drafting. Despite the promising growth exhibited by the LPO sector, this paper seeks to explore the future prospects of the LPO firms, in terms of regulation, due to the host of legal and ethical concerns generated by legal outsourcing.*

## I. INTRODUCTION

The growth of LPO as a model reflects the increasing corporatization of the legal profession. This has raised some significant questions on the role of ethics and professional responsibility in the business of practising law.<sup>1</sup> This paper does not intend to pass any value judgment on the practice of legal outsourcing, but it merely attempts to address the potential ethical issues which may arise as a result of such a practice.

Outsourcing has long been employed as a business strategy to increase efficiency by maximizing profitability and gaining competitive

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<sup>1</sup> Aaron R. Harmon, *The Ethics of Legal Process Outsourcing—Is the Practice of Law a “Noble Profession,” or is it Just Another Business?*, 13 J. TECH. L. & POL’Y 63 (2008); SHASHI SHEKHAR PANDEY, *THE LAW AND PRACTICE OF LEGAL PROCESS OUTSOURCING* 19-20 (2009). In the recent case of A.K. Balaji v. Government of India, W.P. No. 5614 of 2010 (Madras High Court, February 21, 2012), it was argued that the legal profession is considered as a noble profession, intended to serve society, and it should not be treated as a business venture.

advantages.<sup>2</sup> This concept of outsourcing or rather offshore outsourcing refers to delegating work to a more efficient and cost-effective service provider located overseas.<sup>3</sup> With economic globalization and advancements in communication and information technology,<sup>4</sup> the practice of outsourcing has been adopted by most industry sectors worldwide.<sup>5</sup> Initially, it was limited to the more general business and information technology outsourcing.<sup>6</sup> In recent years, however, there has been a transition from “service-oriented, labour-intensive outsourcing to value-added outsourcing” which has emerged in the form of knowledge process outsourcing.<sup>7</sup> Legal outsourcing is a specialized form of knowledge outsourcing,<sup>8</sup> and this has been an inevitable outcome of the aggressive competition in the legal services sector.<sup>9</sup> Legal practitioners and law firms are increasingly resorting to outsourcing due to the constant pressure of providing cost-efficient services in order to remain competitive.<sup>10</sup> This fixation with cutting costs and driving productivity clearly lends a corporate character to legal services, thereby, signalling commercialization of the legal profession.<sup>11</sup> In fact, the recent economic slowdown has been a major boost for legal outsourcing.<sup>12</sup> Economic pressures are increasingly bringing legal costs under the corporate

<sup>2</sup> Alexandra Hanson, *Legal Process Outsourcing to India: So Hot Right Now!*, 62 S.M.U. L. REV. 1890 (2009); Harmon, *supra* note 1, 48.

<sup>3</sup> Brandon James Fischer, *Outsourcing Legal Services, In-Sourcing Ethical Issues: An Examination of the Ethical Considerations Arising from the Practice of Outsourcing Legal Services Abroad*, 16 SW. J. INT'L L. 455 (2010); Joshua A. Bachrach, *Offshore Legal Outsourcing and Risk Management: Proposing Prospective Limitation of Liability Agreements Under Model Rule 1.8(h)*, 21 GEO. J. LEGAL ETHICS 631 (2008); Sejal Patel, *Is Legal Outsourcing Up To The Bar? A Re-evaluation of Current Legal Outsourcing Regulation*, 35 J. LEGAL PROF. 81 (2010).

<sup>4</sup> Keith Woffinden, *Surfing the Next Wave of Outsourcing: The Ethics of Sending Domestic Legal Work to Foreign Countries Under New York City Opinion 2006-3*, 2007 BYU L. REV. 484 (2007); Lee A. Patterson III, *Outsourcing of Legal Services: A Brief Survey of the Practice and the Minimal Impact Of Protectionist Legislation*, 7 RICH. J. GLOBAL L. & BUS. 178 (2008). See generally Laurel S. Terry, *The Legal World is Flat: Globalization and its Effect on Lawyers Practicing in Non-Global Law Firms*, 28 NW J. INT'L L. & BUS. 527 (2008).

<sup>5</sup> Fischer, *supra* note 3, 452.

<sup>6</sup> Cassandra Burke Robertson, *A Collaborative Model of Offshore Legal Outsourcing*, 43 ARIZ. ST. L.J. 129 (2011).

<sup>7</sup> Courtney I. Schultz, *Legal Offshoring: A Cost-Benefit Analysis*, 35 J. CORP. L. 642 (2010).

<sup>8</sup> Robertson, *supra* note 6, 131.

<sup>9</sup> Milton C. Regan, Jr. & Palmer T. Heenan, *Supply Chains and Porous Boundaries: The Disaggregation of Legal Services*, 78 FORDHAM L. REV. 2139 (2010).

<sup>10</sup> Fischer, *supra* note 3, 458.

<sup>11</sup> Carlo D'Angelo, *Overseas Legal Outsourcing and the American Legal Profession: Friend or “Flattener”?*, 14 TEX. WESLEYAN L. REV. 182 (2008).

<sup>12</sup> Alison M. Kadzik, *The Current Trend to Outsource Legal Work Abroad and the Ethical Issues Related to Such Practices*, 19 GEO. J. LEGAL ETHICS 731 (2006); *The Growth of Legal Outsourcing: Passage to India*, THE ECONOMIST (Delhi) June 24, 2010, available at <http://www.economist.com/node/16439006> (Last visited on January 27, 2012); Jack Diggie, *The Future of Legal Offshoring*, September 2009, available at <http://www.omic-partners.com/articles/The%20future-of-legal-offshoring-Legal-FD-Sept-09.pdf> (Last visited on January 27, 2012).

radar, compelling firms to take the outsourcing route.<sup>13</sup> This suggests a growing nexus between the legal sector and international economic climate.<sup>14</sup>

The legal services market is further embracing change with the introduction of Alternative Business Structures ('ABS') in countries like the UK and Australia. Traditionally, ownership of law firms had been restricted to lawyers, but the Legal Services Act of the UK has marked the entry of ABS which permits ownership and management by lawyers and non-lawyers as well as provision of legal and non-legal services by the same entity.<sup>15</sup> This would open doors for banks, insurance companies and other corporate entities to establish ABS firms and offer integrated legal and associated services.<sup>16</sup> With the emergence of ABS, it is expected that such business models would further drive growth in the legal outsourcing industry.<sup>17</sup> Thus, ABS and LPO would revolutionise the delivery of legal services as they would be considered far more commercially viable options.

The business-oriented approach of the legal profession has been sufficiently emphasized. While this paper does not seek to comment on the suitability of the changing nature of the profession, it endeavours to question the role of ethics and professional values, which lie at the core of the legal profession, amid increasing commercial considerations. The paper looks into the various legal and ethical concerns that may arise due to legal outsourcing. It proceeds to assess the existing regulations tackling the ethical problems of outsourcing. It primarily examines the rules and guidelines governing outsourcing in the US and India. This paper only delves into the US and Indian position as the US is leading in the consumption of outsourced legal services<sup>18</sup> and India

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<sup>13</sup> Bernard A. Burk & David McGowan, *Big but Brittle: Economic Perspectives on the Future of the Law Firm in the New Economy*, 2011 COLUM. BUS. L. REV. 28 (2011); Bob Gogel, *Outsourcing the Latest Legal Trend*, THE AUSTRALIAN, October 28, 2011, available at <http://www.integreon.com/phpapp/wordpress/wp-content/uploads/2011/10/Outsourcing-the-latest-legal-trend-The-Australian.pdf> (Last visited on January 27, 2012).

<sup>14</sup> Laurel S. Terry *et al.*, *Transnational Legal Practice*, 43 INT'L LAW. 943 (2009).

<sup>15</sup> See Legal Services Board, *Research Note on the Legal Services Market*, August 2011, available at [http://www.legalservicesboard.org.uk/news\\_publications/latest\\_news/pdf/research\\_note\\_on\\_the\\_legal\\_services\\_market.pdf](http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/research_note_on_the_legal_services_market.pdf) (Last visited on January 27, 2012).

<sup>16</sup> THE LAW SOCIETY OF BRITISH COLUMBIA, REPORT ON THE ALTERNATIVE BUSINESS STRUCTURES IN THE LEGAL PROFESSION: PRELIMINARY DISCUSSION AND RECOMMENDATIONS (2011), available at <http://www.lawsociety.bc.ca/docs/publications/reports/AlternativeBusinessStructures.pdf> (Last visited on January 27, 2012).

<sup>17</sup> Mark Ross, *Legal Process Outsourcing in the New Legal Services Landscape*, June 30, 2011, available at <http://www.outsourcemagazine.co.uk/articles/item/3984-legal-process-outsourcing-in-the-new-legal-services-landscape> (Last visited on January 27, 2012); Diggle, *supra* note 12; KPO Consultants, *Nurturing the Seeds of Profits in the Fast-Growing LPO Industry*, February 14, 2011, available at <http://globalpoconference.com/uk/component/lyftenbloggie/2011/02/14/21-nurturing-the-seeds-of-profits-in-the-fast-growing-lpo-industry.html> (Last visited on January 27, 2012).

<sup>18</sup> Kara D. Romagnino, *Nearshore Alternative: Latin America's Potential in the Offshore Legal Process Outsourcing Marketplace*, 42 INTER-AM. L. REV. 369 (2011).

is the most popular destination for legal outsourcing.<sup>19</sup> From the perspective of regulation, the US and India are representative of two stark positions, where the country which outsources the work has made maximum effort to have regulations specifically directed at such a practice, while the other country to which work is outsourced has no policy in place to minimise the fallouts of outsourcing. This paper argues that the current regulatory framework is insufficient to deal with the ethical implications of legal outsourcing and would call for more cooperation between the countries involved in creating an effective regulatory mechanism.

Part-II of the paper examines the factors that have led to the rise of the LPO sector in India as well as the shift in the nature of services provided by LPO firms. Since LPO firms are increasingly performing higher-level legal work such as research and drafting, which involves greater access to client information, ethical issues such as client confidentiality and data protection assume more importance. Part-III describes the various legal and ethical issues, such as client confidentiality, conflicts of interest, lack of supervision and requirement of disclosure, stemming from legal outsourcing. Part-IV evaluates the existing regulatory framework and finds it to be seriously lacking with respect to tackling the potential ethical problems. Part-V explores possible regulatory options for legal outsourcing in the future and suggests international harmonization in this sector. Part-VI concludes.

## II. THE GROWTH STORY: CHANGE IN THE NATURE OF LEGAL OUTSOURCING

Legal outsourcing traces back to 1995 when Bickel and Brewer, a litigation firm in Dallas, US, opened a subsidiary in Hyderabad, India to perform basic support functions.<sup>20</sup> With the advent of globalization and technological development, access to information has been simplified and it has further facilitated distribution of work that can be performed effectively irrespective of the location.<sup>21</sup> This has led to a boom in the legal outsourcing industry. The revenue of LPO firms in India was predicted to increase to \$440 million in 2010, from \$146 million in 2006, and is expected to soar to \$1.1 billion by 2014.<sup>22</sup>

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<sup>19</sup> Brian Miller, *The Ethical Implications of Legal Outsourcing*, 32 J. LEGAL PROF. 260 (2008); Patterson, *supra* note 4, 186; Hanson, *supra* note 2, 1891.

<sup>20</sup> Jayanth K. Krishnan, *Outsourcing and the Globalizing Legal Profession*, 48 WM. & MARY L. REV. 2201 (2007); Harmon, *supra* note 1, 53; Patterson, *supra* note 4, 182; Woffinden, *supra* note 4, 486.

<sup>21</sup> Jose A. Arambulo, *O Where, O Where Has My Legal Job Gone?: Examining The Realities of "Offshoring" Legal Work and Why States can Regulate the Practice Despite Congress' Broad Power Under the Foreign Commerce Clause*, 38 SW. L. REV. 202 (2008).

<sup>22</sup> Heather Timmons, *Outsourcing to India Draws Western Lawyers*, NEW YORK TIMES, August 4, 2010, available at [http://www.nytimes.com/2010/08/05/business/global/05legal.html?\\_r=1&pagewanted=1](http://www.nytimes.com/2010/08/05/business/global/05legal.html?_r=1&pagewanted=1) (Last visited on January 28, 2012).

Legal outsourcing has become particularly attractive due to the “cost-savings, convenience and efficiency” derived from it.<sup>23</sup> India has emerged as the most popular destination for outsourcing.<sup>24</sup> India enjoys many advantages, foremost of which are the significantly lower costs due to the considerably lower prevailing wage rate.<sup>25</sup> It also has a substantially large educated, English-speaking workforce.<sup>26</sup> Furthermore, India’s legal system is based on British common law, thereby receiving preference from countries like the US and the UK for outsourced work.<sup>27</sup> Another major factor is India’s time zone. The time difference enables Indian lawyers to perform work overnight for US law firms. This results in round-the-clock working hours, thus “capturing time efficiencies.”<sup>28</sup> The Indian government also provides financial benefits and tax incentives to legal outsourcers.<sup>29</sup> Thus, the cost-efficiency and productivity resulting from legal outsourcing suggest that it would only further grow in the future<sup>30</sup> and hence, it would have to conform to the ethical responsibilities which are intrinsic to the legal profession.

The issue of ethics is further intensified with, not only the quantum of work outsourced which is rapidly increasing, but further due to the change in the kind of work performed by LPO firms. The nature of work performed by LPO firms, which was earlier limited to legal support services, has expanded to include more “sophisticated” work.<sup>31</sup> Initially, LPO firms were only dealing with clerical and administrative work, such as proofreading, typing, word processing, document review, and scanning, coding and indexing documents. In addition to these “mundane but nonetheless time-intensive tasks,”<sup>32</sup> LPO firms are expanding their practice to include work which is higher up in the value chain. The “higher-level” or “complex” legal work includes legal research, drafting of contracts, litigation documents and trademark and patent applications. For instance, an LPO firm drafted a brief for a US Supreme Court

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<sup>23</sup> Kadzik, *supra* note 12, 731; Hanson, *supra* note 2, 1893; Arambulo, *supra* note 21, 199.

<sup>24</sup> Darya V. Pollak, “I’m Calling My Lawyer... In India!”: *Ethical Issues in International Legal Outsourcing*, 11 UCLA J. INT’L L. & FOREIGN AFF. 104 (2006); Robertson, *supra* note 6, 134; Miller, *supra* note 19.

<sup>25</sup> John W. Anderson, *The Virtual Law Firm*, 23 DEL. LAW. 36-37 (2005) as cited in Patterson, *supra* note 4, 186; Krishnan, *supra* note 20, 2205.

<sup>26</sup> Cynthia Cotts & Liane Kufchock, *Jones Day, Kirkland Send Work to India to Cut Costs (Update 2)*, BLOOMBERG, August 21, 2007, available at <http://www.bloomberg.com/lapps/news?pid=newsarchive&sid=akN.rUGvG.5M> as cited in Bachrach, *supra* note 3, 634; Krishnan, *supra* note 20, 2210.

<sup>27</sup> Miller, *supra* note 19, 264; Romagnino, *supra* note 18, 387.

<sup>28</sup> Fischer, *supra* note 3, 460; Patterson, *supra* note 4, 186-187.

<sup>29</sup> Krishnan, *supra* note 20, 2209; Bachrach, *supra* note 3, 634.

<sup>30</sup> Robertson, *supra* note 6, 127.

<sup>31</sup> Chris Vena, *More Than Best Friends: Expansion of Global Law Firms into the Indian Legal Market*, 31 NW. J. INT’L L. & BUS. 202 (2011); Patel, *supra* note 3, 83.

<sup>32</sup> Anthony Lin, *Legal Outsourcing to India is Growing, but Still Confronts Fundamental Issues*, NEW YORK LAW JOURNAL 1 (2008).

case concerning the Fifth Amendment's due process clause.<sup>33</sup> Another notable example involved an LPO firm drafting a successful motion for summary judgment, which resulted in a significant award for an American law firm.<sup>34</sup>

While the skill-intensive, value-added work performed by LPO firms is proving to be a great boost to legal outsourcing, it must also be borne in mind that when LPO firms are involved in such work, there is ready access to client information<sup>35</sup> which raises concerns of confidentiality of information and the difficulty associated with maintaining sufficiently high levels of data security when transferring information overseas.<sup>36</sup> There are also apprehensions as to the competence of LPO firms and the quality of work product, which is greatly amplified when it relates to such work which requires legal knowledge, skill and thoroughness.<sup>37</sup> Therefore, as the work relegated to outsourcing moves higher up in the value chain, it becomes even more crucial to recognize the ethical implications generated by it.

### III. LEGAL AND ETHICAL CONCERNS ARISING FROM OUTSOURCING

While legal work can be outsourced, no comparison can be drawn with other kinds of outsourcing due to the distinctive nature of the lawyer-client relationship. This fiduciary relationship between the lawyer and the client raises some important ethical issues with respect to outsourcing. This section shall elaborately discuss the various legal and ethical problems associated with legal outsourcing. It must be kept in mind that this part solely focuses on the ethical issues which may surface, though LPO firms are working towards implementing measures to minimize such risks which will be examined in Part-V of this paper.

#### A. CLIENT CONFIDENTIALITY

Privileged communication and confidentiality of information are integral to a lawyer-client relationship. The purpose behind the doctrine of client confidentiality is to cultivate trust which is the foundation of the client-lawyer relationship. It thereby encourages the client to seek legal assistance and to communicate frankly with the lawyer irrespective of the incriminating nature

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<sup>33</sup> Daniel Brook, *Made in India: Are Your Lawyers in New York or New Delhi?*, LEGAL AFFAIRS, May/June 2005, available at <http://www.legalaffairs.org/issuesMay-June-2005/scenebrook-mayjun05.msp> as cited in Hanson, *supra* note 2, 1893; Miller, *supra* note 19, 262.

<sup>34</sup> The Law Report, *Outsourcing Legal Services (Transcript)*, ABC Radio National, February 21, 2006, available at <http://www.abc.net.au/radionational/programs/lawreport/outsourcing-legal-services/3302592> (Last visited on March 3, 2012).

<sup>35</sup> Arambulo, *supra* note 21, 202.

<sup>36</sup> Pollak, *supra* note 24, 124.

<sup>37</sup> Fischer, *supra* note 3, 467.

of the subject matter. The information enables the lawyer, on the other hand, to provide effective representation or legal counsel to the client.

With the advent of legal outsourcing, the number of parties using the client's information has increased manifold and the information is no longer confined to the client and the lawyer or even a set of lawyers.<sup>38</sup> Though lawyers are permitted to share confidential information pertaining to the legal work with their employees to the extent they can ensure that the employees do not disseminate the confidential information;<sup>39</sup> however, in the case of outsourcing this is dependent on the extent of control and supervision the outsourcing lawyer exercises on the lawyer to whom the work is outsourced.<sup>40</sup> There may also be a threat of exposure of client information as LPO firms may have relationships with adverse parties,<sup>41</sup> which may seriously jeopardise the interests of the client.

There is also a related problem of data security. When information is transferred overseas, there is increased risk of electronic data theft.<sup>42</sup> This is further compounded by the fact that most jurisdictions do not have data protection laws in place, especially when dealing with trans-border data flows.<sup>43</sup> This highlights an urgent need to guard against the dangers of sending sensitive legal information overseas.

## B. CONFLICT OF INTEREST

The underlying principle behind avoiding conflict of interest is to ensure a lawyer's loyalty and independent judgment with respect to each client.<sup>44</sup> This implies that a lawyer cannot represent a client when one client is directly adverse to another or there is a significant risk that the representation of one client will be materially limited by the lawyer's responsibilities to another client.<sup>45</sup> This problem is heightened in case of legal outsourcing as a number of different firms utilize the same LPO firm or third party vendor to perform legal research or other tasks.<sup>46</sup> Since these LPO firms or vendors serve numerous clients at any given time, there is a possibility that an LPO firm could be aiding two adversaries in the same matter, creating a conflict of interest.<sup>47</sup> This is

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<sup>38</sup> See generally Patterson, *supra* note 4.

<sup>39</sup> Woffinden, *supra* note 4, 486.

<sup>40</sup> The issue of supervision would be further discussed in Part III.C of the article.

<sup>41</sup> Conflicts of interest are another major ethical concern associated with outsourcing, which would be elaborately examined in Part III.B of the article. See Arambulo, *supra* note 21, 205.

<sup>42</sup> *Id.*

<sup>43</sup> Carlo D'Angelo, *Overseas Legal Outsourcing and the American Legal Profession: Friend or "Flattener"?*, 14 TEX. WESLEYAN L. REV. 178 (2008).

<sup>44</sup> Romagnino, *supra* note 18, 385.

<sup>45</sup> *Id.*

<sup>46</sup> Woffinden, *supra* note 4, 500.

<sup>47</sup> Patel, *supra* note 3, 83.

further aggravated due to the limited number of competent vendors available to outsource. These limited number of LPO firms receive majority of the assignments from the multiple firms abroad, thus resulting in a conflict of interest, more often than not.

Another major problem surfacing from outsourcing is the difficulty in the detection of conflicts of interest. Due to the multiple levels of sharing confidential client information, it becomes practically impossible to ascertain at which point the conflict of interest is occurring.<sup>48</sup> Further, the extended geographical distance between the parties makes it very difficult for the party to identify the problem and such instances mostly go unreported.<sup>49</sup> Thus, resolving conflicts of interests is particularly complex in the case of legal outsourcing.

### C. LACK OF SUPERVISION

Every lawyer owes a duty to provide competent representation to clients. Accordingly, unauthorized practice of law is prohibited which implies that a lawyer who is not licensed cannot practise law in a particular jurisdiction. The rationale behind this is to ensure trained and competent individuals render legal services to the public.<sup>50</sup> Although the definition of “practice of law” varies by jurisdiction,<sup>51</sup> the delegation of tasks to non-lawyers has been an accepted aspect of legal representation.<sup>52</sup> There must, however, be adequate supervision of those performing the delegated work to ensure competent representation of the client.

With outsourcing, concerns are raised as to how such supervision of foreign lawyers would be carried out.<sup>53</sup> Apart from the geographical distance and difficulty of physical supervision, additional factors such as language barriers, differences in time zones, and inadequate communication channels may further hinder reasonable supervision over LPO firms.<sup>54</sup> Thus, important questions crop up as to what would be the most effective or appropriate way to supervise and who should regulate the sufficiency of the supervision.<sup>55</sup>

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<sup>48</sup> See generally Arambulo, *supra* note 21.

<sup>49</sup> See Pollak, *supra* note 24, 99.

<sup>50</sup> Woffinden, *supra* note 4, 496; Spivak v. Sachs, 211 N.E.2d 329, 331 (N.Y. 1965) as cited in Arambulo, *supra* note 21, 205.

<sup>51</sup> Mark L. Tuft, *Offshoring Legal Services: An Ethical Perspective on Outsourcing Abroad*, 717 PLI LITIG. & ADMIN. PRAC COURSE HANDBOOK SERIES 104 (2005) as cited in Woffinden, *supra* note 4, 496.

<sup>52</sup> Arambulo, *supra* note 21, 205.

<sup>53</sup> Helen Coster, *Briefed in Bangalore, First, Call Centers. Then, Back Office Operations. Now, Legal Services Are Moving Offshore. Will India's Lawyers Help Reshape the U.S. Legal Market?*, Am. Law. 98 (2004) as cited in Patel, *supra* note 3, 92.

<sup>54</sup> Patel, *id.*

<sup>55</sup> Arambulo, *supra* note 21, 207.

Adequate supervision is also imperative for the reason that doubts are raised on LPO firms' competency and quality of work. Hence, legal outsourcing seriously lacks some form of a quality control mechanism to ensure that services are rendered competently to the client.<sup>56</sup>

#### *D. REQUIREMENT OF DISCLOSURE AND APPROPRIATE BILLING*

Employing the outsourcing model raises a plethora of questions relating to disclosure.<sup>57</sup> Whether a firm must disclose that it uses outsourced lawyers generally or whether it has to disclose this information for each specific project and client involved? Does the client consent need to be received prior to the use of an outsourced lawyer? Further, whether the disclosure should include details of the compensation arrangement between the hiring firm and LPO firm? These questions are crucial to the lawyer-client relationship and yet, there is no one, single appropriate answer to them and may vary from situation to situation.

A client may have reservations to the use of LPO firms, especially when it involves sharing of confidential information or may not have confidence in the competency of such firms. If the lawyer conceals the use of the practice of outsourcing, it would certainly amount to a breach of the client's trust by the lawyer. There exists an ambiguity as to what should happen in a case where the client objects to the use of LPO firms, but the lawyer would like to go ahead with it asserting that he assumes full responsibility of the work. This is a major potential ethical problem which may arise in the future.

A problem of disclosure may further arise with respect to billing for the legal work. The lawyer and client enter into a commercial transaction for performing legal work. In such a transaction, the client has a justified interest in knowing the nature of the work he is being charged for.<sup>58</sup> Since a substantial amount is given to the LPO firm for its services, a question arises as to how the amount should be accounted for – whether it should be revealed to the client or simply be included in the category of miscellaneous expenses.<sup>59</sup> It is true that a lawyer is not allowed to charge unreasonable fees<sup>60</sup> and it would be unethical to charge a higher fee by not disclosing the use of outsourcing to the client. While it may seem obvious that lawyers should be transparent with the client, ques-

<sup>56</sup> Steven C. Bennett, *The Ethics of Legal Outsourcing*, 36 N. KY. L. REV. 484 (2009), available at [http://www.jonesday.com/files/Publication/223fd394-0a43-45dc-8fef-51f7ee1a8420/Presentation/PublicationAttachment/f4468417-d8af-4e38-a6e3-5b48911e3dfa/Bennett-The\\_Ethics\\_of\\_Legal\\_Outsourcing.pdf](http://www.jonesday.com/files/Publication/223fd394-0a43-45dc-8fef-51f7ee1a8420/Presentation/PublicationAttachment/f4468417-d8af-4e38-a6e3-5b48911e3dfa/Bennett-The_Ethics_of_Legal_Outsourcing.pdf) (Last visited on January 30, 2012).

<sup>57</sup> Pollak, *supra* note 24, 131.

<sup>58</sup> Krishnan, *supra* note 20, 2189.

<sup>59</sup> See generally Gene M. Grossman & Elhanan Helpman, *Outsourcing in a Global Economy*, 72 THE REVIEW OF ECONOMIC STUDIES 135 (2005).

<sup>60</sup> Bennett, *supra* note 56, 487.

tions may continue to arise with respect to disclosure. This part clearly demonstrates that legal outsourcing may produce some serious ethical ramifications which necessitate regulation.

#### IV. EVALUATION OF THE EXISTING REGULATORY FRAMEWORK

Despite the tremendous growth in outsourcing coupled with the emergence of potential ethical issues, barely any regulatory attempts have been made by any country. Even most bar associations across the world have remained silent on the practice of outsourcing. Countries are, however, increasingly recognizing the possible issues that may crop up and thus making efforts to tackle them. For instance, the Solicitors Regulation Authority in the UK has recently introduced a regulation<sup>61</sup> in October 2011, including a new Code of Conduct,<sup>62</sup> which, apart from other professional obligations, also addresses various issues pertaining to outsourcing practices, such as client confidentiality and disclosure.<sup>63</sup> Since there is a plethora of work outsourced from various law firms in the US to Indian LPO firms, this part would use the US and India as an example to look into the efficacy of existing regulations to minimise the ethical issues associated with outsourcing. The US is the only country where outsourcing has been specifically addressed by the American Bar Association and a handful of state bar associations. This part shall outline the present US position and Indian position on the issue and would also briefly delve into the applicability of the General Agreement on Trade in Services ('GATS') to legal outsourcing.

##### A. POSITION IN US

There has been no legislation relating to legal outsourcing in the US<sup>64</sup> yet, as previously mentioned, ethics opinions have been released by the

<sup>61</sup> The Solicitors Regulation Authority has implemented outcome-focused regulation which departs from a rules-based approach to one that focuses on high-level outcomes governing practice and the quality of outcomes for clients. See The Law Society, *Outsourcing*, October 13, 2011, available at <http://www.lawsociety.org.uk/productsandservices/practicenotes/outsourcing/5044.article> (Last visited on February 6, 2012).

<sup>62</sup> The Code of Conduct came into effect on December 23, 2011.

<sup>63</sup> See Solicitors Regulation Authority, *SRA Code of Conduct 2011*, available at <http://www.sra.org.uk/solicitors/handbook/code/content.page> (Last visited on February 6, 2012).

<sup>64</sup> A legislation to prohibit legal outsourcing was introduced in the State of Connecticut in January, 2011. The proposed bill sought to include unlicensed lawyers who are engaged in drafting, reviewing or analyzing documents for clients in the state and advising clients on the status of law of the state within the ambit of 'unauthorized practice of law.' The proposed legislation, however, failed. See Debra Cassens Weiss, *Goal of Conn. Bill is to Protect Lawyer Jobs by Deeming Offshore Legal Work UPL*, January 20, 2011, available at [http://www.abajournal.com/news/article/goal\\_of\\_ct\\_bill\\_is\\_to\\_protect\\_lawyer\\_jobs\\_by\\_deeming\\_offshore\\_legal\\_work\\_u/](http://www.abajournal.com/news/article/goal_of_ct_bill_is_to_protect_lawyer_jobs_by_deeming_offshore_legal_work_u/) (Last visited on March 23, 2012); *Why Connecticut Shouldn't Ban Legal Process Offshoring*, January 19, 2011, available at <http://legalresearchandwritingpro.com/>

American Bar Association ('ABA') and a limited number of state bar associations.<sup>65</sup> It must be taken into account that the opinions of state and local bar associations, while enforceable by state laws if states so choose, are not binding.<sup>66</sup> The opinions concur on the issue that lawyers may ethically outsource legal work provided that the outsourcing lawyer remains ultimately responsible for the work and exercises supervisory responsibilities as required under the existing ethics rules.<sup>67</sup>

In the US, the practice of law is dependent on admission to the bar of a particular state and hence, a lawyer has to be licensed to practice in a particular state. Accordingly, the ABA and state ethics rules require a non-lawyer (or unlicensed lawyer) to be adequately supervised.<sup>68</sup> The opinions have extended this requirement of supervision to legal outsourcing as well. The ABA opinion on legal outsourcing clearly states that lawyers are obliged to exercise 'direct supervisory authority' over other lawyers irrespective of whether the other lawyers are directly affiliated to the supervising lawyer's firm.<sup>69</sup> The New York City Bar Committee, which issued the first formal ethics opinion on the practice of legal outsourcing, also emphasizes on 'rigorous supervision' over the outsourced lawyer.<sup>70</sup> It also suggests certain means by which the duty to supervise can be discharged, such as, obtaining background information, conducting reference checks and interviewing the outsourced lawyer, and further, communicating with the LPO firm (or outsourced lawyer) during an assignment to ensure that he understands and carries out the assignment in accordance

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blog/2011/01/19/why-connecticut-shouldnt-ban-legal-process-offshoring/ (Last visited on March 23, 2012); Bar & Bench News Network, *US State introduces Bill to stop law firms from off-shoring work to Indian LPOs*, February 3, 2011, available at <http://barandbench.com/brief/2/1271/us-state-introduces-bill-to-stop-law-firms-from-off-shoring-work-to-indian-lpos> (Last visited on March 23, 2012).

<sup>65</sup> The paper discusses the ABA Opinion as well as the ethics opinions released by bar associations in New York, Florida, North Carolina, Los Angeles County and San Diego County. See *infra* text accompanying notes 68-80. It has not examined the opinions of the Ohio Supreme Court Board of Commissioners on Grievances and Discipline and the Colorado Bar Association as they are largely similar to the former opinions. See Ohio Supreme Court Board of Commissioners on Grievances and Discipline, Formal Opinion 2009-6 (2009); Colorado Bar Association Formal Opinion 121 (2009).

<sup>66</sup> Patel, *supra* note 3, 90.

<sup>67</sup> Mark L. Tuft, *Supervising Offshore Outsourcing Of Legal Services In A Global Environment: Re-Examining Current Ethical Standards*, 43 AKRON L. REV. 825-826 (2010).

<sup>68</sup> WILLIAM BURNHAM, INTRODUCTION TO THE LAW AND LEGAL SYSTEM OF THE UNITED STATES 135 (2006) as cited in Patel, *supra* note 3, 91.

<sup>69</sup> American Bar Association, Standing Committee on Ethics and Professional Responsibility, Formal Opinion 08-451 (2008) (The ABA opinion stated: "We do not believe that the drafters of the Model Rules intended to restrict the application of Rule 5. 1(b) to the supervision of lawyers within 'firms' as defined in Rule 1.0(c). A contrary interpretation would lead to the anomalous result that lawyers who outsource have a lower standard of care when supervising outsourced lawyers than they have with respect to lawyers within their own firm."). See also Tuft, *supra* note 65.

<sup>70</sup> The Association of the Bar of the City of New York Committee on Professional and Judicial Ethics, Formal Opinion 2006-3 (2006).

with the outsourcing lawyer's expectations.<sup>71</sup> Similarly, even the Los Angeles County Bar Association<sup>72</sup> and San Diego County Bar Association<sup>73</sup> recognised the lawyer has a duty to act competently which includes the duty to supervise.<sup>74</sup> The duty of supervision has also been echoed by the Florida<sup>75</sup> and North Carolina<sup>76</sup> state bar associations. Thus, the bar associations are in agreement that the ultimate responsibility shall lie with the outsourcing lawyer and he is obliged to exercise supervision over the LPO firm carrying out the work.

With respect to client confidentiality and consent, the ABA opinion calls for the outsourcing lawyer to "recognize and minimize the risk that any outside service provider may inadvertently – or perhaps even advertently – reveal client confidential information to adverse parties or to others who are not entitled to access."<sup>77</sup> It also states that the outsourcing lawyer has to abide by the rule<sup>78</sup> of not revealing any information relating to the representation of the client, unless the client gives informed consent and implied authorization of disclosure of such information is limited to within the firm, and does not extend to outside entities.<sup>79</sup> The Florida Bar Association recommends that the outsourcing lawyer should restrict the LPO firm's access to only the information which is considered necessary to complete the work. Similarly, the North Carolina and New York Bar Associations requires client consent, when the outsourcing assignment entails disclosure of client's information to the LPO firm. The Los Angeles and San Diego opinions permit sharing of client information with the LPO firm provided they ensure that client confidentiality is maintained. Yet, the requirement of client consent only arises where outsourcing constitutes a "significant development" to the case, although the meaning of "significant development" is yet to be elaborated.<sup>80</sup>

The ABA and state bar opinions also stress on the responsibility of the outsourcing lawyer to avoid conflicts of interest. The ABA opinion places the responsibility on the outsourcing lawyer to verify that the LPO firm "does not also do work for adversaries of their clients on the same or substantially related matters."<sup>81</sup> While the Los Angeles, San Diego and Florida opinions state that the outsourcing lawyer must ensure non-existence of conflicts of

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<sup>71</sup> *Id.*

<sup>72</sup> Los Angeles County Bar Association Professional Responsibility and Ethics Committee, Formal Opinion 518 (2006).

<sup>73</sup> San Diego County Bar Association Legal Ethics Committee, Formal Opinion 2007-1 (2007).

<sup>74</sup> California Rules of Professional Conduct, Rule 3-110.

<sup>75</sup> Florida State Bar Association Committee on Professional Ethics, Proposed Advisory, Opinion 07-2 (2007).

<sup>76</sup> North Carolina State Bar, Formal Opinion 12 (2008).

<sup>77</sup> ABA Opinion, *supra* note 69.

<sup>78</sup> American Bar Association, Model Rules of Professional Conduct, Rule 1.6.

<sup>79</sup> ABA Opinion, *supra* note 69.

<sup>80</sup> Patel, *supra* note 3, 95.

<sup>81</sup> ABA Bar Opinion, *supra* note 69.

interests, the New York and North Carolina opinions call for establishment of conflict-checking procedures.

Finally, the opinions also address transparency of billing measures. The ABA and New York opinion provide that the outsourced services should be billed at cost and in addition a “reasonable allocation of cost of supervising those services” or a “reasonable allocation of overhead expenses” associated with outsourcing, respectively. The Florida opinion states that a client can be charged for outsourcing services, unless the charge would normally be covered as overhead. The San Diego and North Carolina opinions do not examine the issue of billing.

An overview of the opinions of the various bar associations in the US demonstrates the importance attached to ethics in the legal profession. Further, the US is the only country where ethical considerations in legal outsourcing have been elaborated to this extent. As has been aptly pointed out, however, there are two major gaps in the existing legal framework of the US.<sup>82</sup> Firstly, these opinions merely constitute ethical guidelines which may or may not be enforced. Secondly, a majority of the other countries have not examined the ethical implications of outsourcing, leading to uncertainty in the legal position. Hence, while the issue of legal outsourcing has comparatively received much more attention in the US, there is still scope for development in the legal regime governing the practice of legal outsourcing.

## *B. POSITION IN INDIA*

In stark contrast to the US, there are no specific rules or guidelines concerning legal outsourcing in India. This is particularly startling given the existing size and expected growth of the LPO practice in the country.<sup>83</sup> The legal profession in India is governed by the Advocates Act, 1961, which applies only to professionals engaged in the practice of law. Although the Bombay High Court has recognized that the practice of law includes litigious as well as non-litigious matters,<sup>84</sup> the applicability of the Advocates Act and the Bar Council of India Rules (‘BCI Rules’) to LPO firms is questionable as they are engaged in the work of foreign clientele. The Advocates Act does not, however, differentiate among lawyers on the ground of law in which they practice. Accordingly, the activities of the LPO firms cannot be left unregulated on the

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<sup>82</sup> Patel, *supra* note 3, 91.

<sup>83</sup> See *supra* text accompanying note 22.

<sup>84</sup> Lawyers Collective v. Bar Council of India, (2010) 112 Bom LR 32.

ground that the Advocates Act is silent on the issue.<sup>85</sup> In view of this, LPO firms must conform to the BCI Rules.<sup>86</sup>

According to the BCI Rules, an advocate is prohibited from abusing or taking advantage of the confidence reposed in him by his client.<sup>87</sup> With respect to conflicts of interest, it requires an advocate to “make all such full and frank disclosures to his client relating to his connection with the parties and any interest in or about the controversy as are likely to affect his client’s judgment in either engaging him or continuing the engagement.”<sup>88</sup> There are also certain provisions relating to billing in the BCI Rules. These, however, have limited applicability in the case of legal outsourcing as the client is directly associated with the outsourcing lawyer and not with the LPO firm. Thus, not only are specific regulations addressing legal outsourcing lacking in India, but the existing rules are also insufficient to tackle the ethical implications arising from this practice.

This legitimacy of the practice of LPO firms in India has also been briefly discussed in a recent decision of the Madras High Court in *A.K. Balaji v. Government of India*,<sup>89</sup> where the petitioner had filed a case against 31 foreign law firms from the US and the UK, including an LPO firm, challenging the entry of such firms in India. The Court, referring to LPO firms as BPO companies, allowed them to operate so long as they are not engaged in practising law.<sup>90</sup> As the judgment permitted foreign law firms to advise clients on foreign law (on a temporary/fly-in-fly-out basis), LPO firms can also continue their operation provided that they are not engaged in the practice of domestic law. While the judgment implicitly recognized that practice of foreign law is not governed under the Advocates Act, in the concluding paragraph it observed that if LPO firms are found violating the provisions of the Act, the Bar Council of India can take appropriate action against them.<sup>91</sup>

<sup>85</sup> See generally Kabeer Shrivastava & Rajesh Simhan, *Foreign law firms debarred from practicing in India*, available at [http://www.indialawjournal.com/volume3/issue\\_1/article\\_by\\_kabeer.html](http://www.indialawjournal.com/volume3/issue_1/article_by_kabeer.html) (Last visited on January 24, 2012).

<sup>86</sup> See The Advocates Act, 1961, § 49(1)(c) read with the proviso provided thereto.

<sup>87</sup> Bar Council of India Rules, Rules Governing Advocates, Part VI, Standards of Professional Conduct and Etiquette, Rule 24.

<sup>88</sup> *Id.*, Rule 14.

<sup>89</sup> Balaji *supra* note 1.

<sup>90</sup> The LPO firm had argued that “it is not at all practising law in India. It is not licensed to and does not practice law in any jurisdiction in the world, much less in India. It is a BPO company...” The Court in the end held that the services named by the LPO firm do not come within the purview of the Advocates Act, 1961 or the Bar Council of India Rules. See Balaji, *supra* note 1, ¶¶ 9, 62.

<sup>91</sup> *Id.*, ¶ 62.

### C. APPLICABILITY OF GATS

The General Agreement on Trade in Services ('GATS')<sup>92</sup> of 1994 is a treaty initiated by the World Trade Organization to promote open trade for services typically provided by offshore outsourcing.<sup>93</sup> Legal services are recognized as one of the professional services recognized under the business services category in GATS. GATS requires "regulatory measures, such as admission, licensing, and discipline measures, be administered in a reasonable, objective, and impartial manner and that qualification requirements be not more burdensome than necessary to ensure the quality of the service."<sup>94</sup> GATS, however, has limited applicability in regulating ethical issues generated from legal outsourcing as firstly, although all WTO members are signatories, all countries do not recognize legal services as a service covered by GATS.<sup>95</sup> For instance, India has not made any commitment in the legal services sector.<sup>96</sup> Secondly, the underlying purpose of GATS is to ensure that countries refrain from adopting restrictive measures which would hamper trade in legal services<sup>97</sup> and not regulating the ethical concerns associated with legal outsourcing. Further, GATS envisages domestic regulation,<sup>98</sup> such as licensing requirements, which differ from country to country. Hence, it does not require a consistency in standards for outsourcing lawyers and LPO firms (provided that the regulations are not unnecessarily restrictive), as they would be regulated by their respective countries.

## V. FUTURE OF LEGAL OUTSOURCING: MOVING FROM MARKET-BASED SOLUTIONS TO INTERNATIONAL HARMONIZATION

The above discussion clearly points towards the insufficiency, if not absence, of a regulatory framework in dealing with ethical problems emanating from legal outsourcing. This is becoming further problematic due to

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<sup>92</sup> General Agreement on Trade in Services, 33 I.L.M. 28 (1994).

<sup>93</sup> Colleen Walsh Schultz, *To Offshore Or Not To Offshore: Which Nations Will Win A Disproportionate Share Of The Economic Value Generated From The Globalization Of White-Collar Jobs?*, 29 HOUS. J. INT'L L. 250 (2006).

<sup>94</sup> Laurel S. Terry, *GATS' Applicability to Transnational Lawyering and its Potential Impact on U.S. State Regulation of Lawyers*, 34 VAND. J. TRANSNAT'L L. 997 (2001) as cited in Pollak, *supra* note 24, 111.

<sup>95</sup> The provisions of GATS are only applicable to legal services in the case of countries that listed legal services in their Schedule of Specific Commitments. See Pollak, *supra* note 24, 110.

<sup>96</sup> SHASHI SHEKHAR PANDEY, *THE LAW AND PRACTICE OF LEGAL PROCESS OUTSOURCING* 22 (2009).

<sup>97</sup> Laurel S. Terry, *A Case Study of the Hybrid Model for Facilitating Cross-Border Legal Practice: The Agreement Between the American Bar Association and the Brussels Bars*, 21 FORDHAM INT'L L.J. 1382, 1384 (1998) as cited in Pollak, *supra* note 24, 111.

<sup>98</sup> General Agreement on Trade in Services, 33 I.L.M. 28 (1994), Art. VI.

the rapid growth of the LPO industry.<sup>99</sup> This has also been validated by the recent acquisitions of Pangea3 and CPA Global by Thomas Reuters and Cinven respectively. Such consolidation is considered natural in a growing market and further, signals market acceptance of the LPO sector.<sup>100</sup> As legal outsourcing is here to stay, it has to be necessarily considered as part of the legal profession.<sup>101</sup> This makes it imperative to create a place for ethical considerations in legal outsourcing.

From the previous section, it can be gathered that the US and to some extent the UK are the only countries that have specifically addressed these problems. Some authors have opined that it is sufficient for each state bar association to release an opinion and set ethical codes on legal outsourcing to resolve the ethical issues which are cropping up.<sup>102</sup> This would, however, not suffice as despite the fact that the ethics opinions have emphasized the need for outsourced legal services to comply with the ethical duties, they barely provided any guidance on how these duties can be met.<sup>103</sup> Also, they are completely silent on which rules should the LPO firms (or outsourced lawyers) be bound by. If the LPO firms (or outsourced lawyers) are bound by their respective country's regulations, it would create disparity of standards<sup>104</sup> and may also result in imposition of lenient penalties to outsourced lawyers for ethical violations, which would reduce their incentive to comply with ethical duties and professional responsibilities. Further, holding the outsourcing lawyer entirely responsible for the violation of any ethical and professional obligations will have the effect of deterring the practice of offshore outsourcing.<sup>105</sup> This reflects a need to evolve a more effective regulatory mechanism to deal with the ethical implications of legal outsourcing.

In order to ensure that legal outsourcing is not hampered by the perception of ethical risks associated with such a practice, market-based forms of regulation are developing to indicate the importance given to ethical obligations by outsourcing lawyers as well as LPO firms. LPO firms are working towards improving quality control mechanisms by including additional levels of review, organising training programmes and creating teams consisting of both domestic and foreign lawyers.<sup>106</sup> LPO providers have also implemented globally recognized processes and certifications, such as Six Sigma, ISO 27001, and

<sup>99</sup> The ValueNotes, Forrester and Nasscom studies have predicted increasing growth of the LPO sector, however, projections as to the rate of the growth differ. See Harmon, *supra* note 1, 58-61.

<sup>100</sup> Mark Ross, *The LPO Industry Begins to Consolidate*, January 10, 2011, available at <http://www.outsourcemagazine.co.uk/articles/item/3704-the-lpo-industry-begins-to-consolidate> (Last visited on February 19, 2012).

<sup>101</sup> Robertson, *supra* note 6, 127.

<sup>102</sup> Arambulo, *supra* note 21, 219; Miller, *supra* note 19, 271.

<sup>103</sup> Robertson, *supra* note 6, 142.

<sup>104</sup> Pollak, *supra* note 24, 124.

<sup>105</sup> Arambulo, *supra* note 21, 216.

<sup>106</sup> Robertson, *supra* note 6, 142.

ISO 9001.<sup>107</sup> Another effective method of enforcing ethical standards on LPO firms has been through contractual agreements, as has been aptly remarked, “Going to a service provider offshore, you have to replace that gap-filler with contract.”<sup>108</sup> Outsourcing lawyers include duties of confidentiality, checking for conflicts of interest within the outsourcing agreements and require the LPO providers to comply with those duties.<sup>109</sup> LPO firms are also implementing stringent security measures such as confidentiality agreements with employees, not providing for USB ports or CD drives on work computers, restricting Internet access, having biometric access points to the office, and special software to monitor processing of data and information, to ensure data security and confidentiality. To improve supervision over LPO firms, which is difficult primarily due to the geographical distance, law firms are opening satellite compliance offices<sup>110</sup> or LPO providers themselves are attempting to offer onshore/offshore solutions by expanding their operations to “near-shore” locations.<sup>111</sup> There have also been initiatives to come up with a standardized certification test, which could ensure that outsourced lawyers (LPO providers) have at least a baseline level of competence.<sup>112</sup>

While these self-regulatory mechanisms may prove to minimize the ethical concerns stemming from legal outsourcing, there are several issues with such a kind of regulation. Since these mechanisms depend largely on the willingness of the firms themselves, many of them may not choose to develop such procedures (due to cost and time constraints), while continuing to engage in legal outsourcing. Even contracts to ensure ethics compliance may be individualized and “a result of a compromise between the corporation (firm) and the LPO, and might not be as concerned with following ethics guidelines that

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<sup>107</sup> Deloitte, *The Resurgence of Corporate Legal Process Outsourcing: Leveraging a New and Improved Legal Support Business Model*, available at [http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/IMOs/Shared%20Services/US\\_SDT\\_Resurgence%20of%20Corporate%20Legal%20Process%20Outsourcing\\_WEB\\_113011.pdf](http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/IMOs/Shared%20Services/US_SDT_Resurgence%20of%20Corporate%20Legal%20Process%20Outsourcing_WEB_113011.pdf) (Last visited on February 19, 2012).

<sup>108</sup> Anthony Lin, *Legal Outsourcing to India is Growing, but Still Confronts Fundamental Issues*, NEW YORK LAW JOURNAL 1 (2008); Patel, *supra* note 3, 102.

<sup>109</sup> Woffinden, *supra* note 4, 517; Arambulo, *supra* note 21, 215.

<sup>110</sup> “One such firm that has ventured into this solution is Clifford Chance, a major U.S. law firm. In 2007, Clifford Chance formed a Global Shared Service Center in New Delhi, India as part of an approach that includes a ‘mixture of onshoring, offshoring and outsourcing.’ The Center allows the Firm to consolidate its global functions and gives the firm more control because it uses its own facilities and standard of technology, as well as power over ‘recruitment, motivation, training, language, and maintaining the feel of one firm.’ The advantages to Clifford Chance’s Global Shared Service Center are that it gives the Firm control over the legal work being there, as well as a way to channel its own resources efficiently.” See Patel, *supra* note 3, 102.

<sup>111</sup> Deloitte, *supra* note 105.

<sup>112</sup> Mark Ross *et al.*, *Legal Process Outsourcing: 2007 And Beyond*, January/February 2008, available at <http://www.prismlegal.com/index.php?option=content&task=view&id=129> (Last visited on February 19, 2012); Schultz, *supra* note 7, 660.

are weakly enforced as they are with making a profit.”<sup>113</sup> Thus, these market-based regulatory strategies and service level agreements may certainly be practical but not the most suitable means to regulate the ethical issues arising from legal outsourcing.

By now, it is apparent that the regulation of legal outsourcing is extremely complex owing to its international character.<sup>114</sup> The difficulty arises due to the “absence of any regulatory guidelines either from destinations where the legal work emanates from or at locations where it is executed.”<sup>115</sup> This implies that any regulatory mechanism should take into account compliance from both locations. This would also ensure that in spite of the fact that the outsourcing lawyer may have to bear complete responsibility, the LPO firm (outsourced lawyer) would also have to abide by the ethical guidelines, and further, it could possibly eliminate discrepancies in the ethical standards by which both sets of lawyers are bound. The only appropriate method through which this can possibly be implemented is international harmonization. International treaty regimes have been acknowledged to play the most fundamental role in responding to the challenges of globalization and increased economic integration, due to their binding and enforceable character.<sup>116</sup> The development of an international treaty framework can be considered for legal outsourcing as these ethical and professional obligations can be adopted on a global scale.<sup>117</sup> Even if all countries do not participate in such an exercise, at least those heavily involved in the practice of legal outsourcing, such as the US, the UK and India, can come together to lay down certain ethical standards, such as client confidentiality, duty of disclosure and client consent, and these can be further developed and enforced at the domestic level. This would ensure that there is a basic level of consistency in standards across countries and both the parties (outsourcing lawyers and LPO firms) have to fulfil ethical and professional obligations. It is acknowledged that regulatory harmonization and treaty frameworks require a great amount of international cooperation<sup>118</sup> and hence, this may not be the most feasible solution. In light of the various issues with respect to legal outsourcing, however, this would certainly be the most appropriate and effective strategy.

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<sup>113</sup> William Greider, *The Establishment Rethinks Globalization*, THE NATION, April 30, 2007, available at <http://www.thenation.com/article/establishment-rethinks-globalization.com> as cited in Patel, *supra* note 3, 103.

<sup>114</sup> See Pollak, *supra* note 24, 105.

<sup>115</sup> Mrunal Dattatraya Buva & Tania Sebastian, *Is there Need of Regulatory Framework in LPO: Challenges before India* PL MARCH S-36 (2011).

<sup>116</sup> Daniel Kalderimis, *Is Transnational Law Eclipsing International Law?* in MAKING TRANSNATIONAL LAW WORK IN A GLOBAL ECONOMY 99-100, 103 (2010).

<sup>117</sup> Justin Kent Holcombe, *Solutions for Regulating Offshore Outsourcing in the Service Sector: Using the Law, Market, International Mechanisms, and Collective Organizations as Building Blocks*, 7 U. PA. J. LAB. & EMP. L. 603 (2005).

<sup>118</sup> See Andrew T. Guzman, *Introduction - International Regulatory Harmonization*, 3 CHI. J. INT'L L. 271 (2002).

## VI. CONCLUSION

While consideration of ethical problems of legal outsourcing may be simple, from the regulatory standpoint, it poses a serious dilemma. The ethical concerns will be further fuelled with growth in the quantum of work as well as shift towards value-added work outsourced. This reflects the need for evolving a regulatory framework which can minimize the possible ethical violations that may ensue from the practice of legal outsourcing. In the absence of any regulatory mechanism at present, it is feared that this would receive attention only when a serious malpractice occurs.<sup>119</sup> While market-based solutions are emerging, they may not be fully equipped to deal with such problems. Hence, regulatory harmonization is proposed. It is conceded that this may remain a theoretical solution due to its practical impossibility. With the involvement of government bodies and various stakeholders, however, if harmonization is realized, it may prove to be the most effective means of finding a place of ethical and professional obligations in the increasingly commercial practice of legal outsourcing.

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<sup>119</sup> Buva & Sebastian, *supra* note 115.

