

Handbook on Designing Socially Responsible Law Firms in India



Foreword by
Bobby V Reddy

Edited by
Siddharth Peter de Souza

Essays by
Varsha Aithala
Francine Adityani
John Gallagher
Shruti Khanijow
Siddharth Peter de Souza



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C/o JusAdd Innovation Lab LLP

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U.P., India

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FOREWORD

Many years ago, a client once told me a joke: “A little girl was at the cemetery with her mother. The girl asked her mother ‘Do they ever bury two people in the same grave?’ The mother replied, ‘Of course not, why do you ask that?’ The little girl responded, ‘Because written on that tombstone are the words: ‘Here lies a lawyer and an honest man.’”

Although I laughed at the time, the words have stuck with me. Clearly the perception of lawyers amongst the general public did not tally with the ideological image of lawyers that I had in my own mind when I started my career. I had always viewed lawyers, whether criminal defence lawyers, human rights lawyers, police prosecutors or commercial lawyers in large law firms, as the defenders of justice and the advocates of integrity and ethics. As my career progressed, I often pondered whether my notion of the legal profession was too quixotic to be relevant in a modern world dominated by big business and where success is often measured in terms of short-term financial gain. However, I truly believe that the ambition to build a successful legal practice is not mutually exclusive with the concept of social responsibility. In relation to law firms specifically, ultimately, the salient and lingering question is: “What is the purpose of a law firm?” Is it merely a facilitator of revenue generation and client service, or should we expect more in terms of it having a public profile and responsibility to society? This book provides a persuasive argument in favour of the latter.

The Indian context to this book is pertinent. The growth in India’s economy, generally, has been astonishing over the last ten years. The legal profession in India has grown commensurately with the expanding levels of business in the country. Such exponential growth presents both opportunities and challenges: Indian law firms have found themselves part of a dynamic and sprawling global environment; talent has become more mobile and international than ever before; and competition materialises from both local and foreign sources. Throughout all of this, the nascent stages of corporate social responsibility, community focus and societal contribution have emerged. It is vital that Indian law firms are not left behind in an increasingly fast-moving and progressive market-place.

The conundrum for Indian law firms, as well as for law firms around the globe, is how to marry the quest for greater revenue and profits with a more holistic concept of the wider role of the law firm in society. It is important that law firms do not lose sight of this more laudable goal. Besides the moral implications, there is also a strong business case. This can manifest itself in a variety of ways. For example, practising in an ethical manner in accordance with high business standards enhances reputation. Additionally, environmentally focused schemes can save costs in the long-term, and the best talent will seek organisations that implement flexible and conducive working schemes. Furthermore, enhancing diversity can lead to a trailblazing mosaic of opinions and skills, thereby creating innovation and vitality. Most importantly from a business perspective,

forward-thinking clients are now demanding such qualities from their law firms.

So what can be done? In this book, Justice Adda and the Cambridge Pro Bono Project have set-out the results of their extensive, wide-ranging study of the literature on this subject and the initiatives of law firms around the world, as well as evidence from a survey of major Indian law firms. This culminates in a practical and thought-provoking checklist which provides an invaluable framework and guide for Indian, and other, law firms to continue their journeys towards social responsibility. The breadth of elements that the authors have attributed to the concept of social responsibility is striking. In the first instance, law firms must comply with the fundamentals, and therefore create a culture of ethical behaviour. This means that a law firm must ensure that its lawyers comply not only with all aspects of legislative, anti-money laundering and anti-corruption requirements, but also with the ethical requirements of professional governing bodies, such as the Bar Council of India, including in relation to confidentiality and conflicts of interest. This not only ensures that law firms act, in all instances, in the best interests of their clients, but also enhances the reputation of the law firms and the legal profession in general. However, it is just as imperative that law firms comply with the spirit of the rules and do not merely prescriptively follow provisions on a “tick-the-box” basis. Being ethical does not just entail doing what is legal, but also doing what is right. The authors also note that it is more important than ever for law firms to be cognisant of a long-term horizon. I have myself seen a number of high profile, and once prestigious, law firms in the UK and US collapse as a result of years of mismanagement where short-term partner drawings have been prioritised over creating a sustainable law firm, fit-for-purpose in a constantly changing legal market. As the authors point out, if a law

firm desires to attract the best talent going forwards, it must apply enlightened work-life balance policies, and integrate a working environment with highly-developed philosophies of diversity, inclusiveness and equality. Training and development must be ingrained throughout all aspects of the firm, rather than being reduced to isolated instances in order to satisfy mandatory continuing professional development requirements. Crucially, with technological advances starting to turn the legal profession on its head, law firms will only be able to traverse the future disruptions to the profession with cogent succession planning policies and business plans that can adapt to an evolving environment.

Appositely, the authors note the reality that law firms do not operate in isolation, and are part of a spiralling network of relationships. The impact that law firms can have on the broader community is considerable. By expanding pro bono practices, reducing barriers to justice, initiating community programmes, and committing to environmental and energy conservation, law firms can have a positive influence on society, particularly with the economies of scale that can be generated by a critical mass of the largest law firms acting in a collaborative manner. With this context in mind, law firms can also pressure other organisations with which they conduct business to follow equally responsible practices, in much the same way that numerous clients are beginning to pressure the law firms with which they engage.

I whole-heartedly commend the authors on an important, admirable and meritorious piece of work. Hopefully, through the application of the checklist, a culture of social responsibility within individual law firms and the Indian market generally can be developed, which will be essential in garnering real progress. Mirroring the consensus

that is now being pursued throughout the wider business world, a law firm must establish a clear purpose. In accordance with that purpose, it must also operate within a set of values and principles to such an extent that they are eventually embedded within the very fibre of the organisation. Since values and principles are meaningless unless an organisation lives by them, social responsibility can only be achieved with the appropriate “tone from the top”, and it is incumbent upon partners of law firms to lead by example. By embracing

such a culture, each and every law firm in India has the potential to become “the socially responsible law firm”. Perhaps one day, unlike the belief of the little girl at the cemetery, that lawyer could also have been an honest man.

— Bobby V Reddy
Lecturer in Company Law and Corporate
Governance, University of Cambridge
Fellow, Churchill College, Cambridge
Former partner, Latham & Watkins LLP

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CHAPTER 1: INTRODUCTION: DESIGNING SOCIALLY RESPONSIBLE LAW FIRMS IN INDIA

SETTING THE CONTEXT

The legal profession in India has witnessed a disruptive year, with the biggest law firm¹ splitting up into two equally strong firms and a number of high profile moves across the industry by senior partners and teams.² Despite the volatility in the industry, in 2016, Indian firms completed Mergers and Acquisition deals worth \$64.5 billion as compared to \$33.9 billion in the previous year³ and also continued to aggressively hire new graduates from the leading law schools.⁴

With global aspirations and liberalization of markets, these firms operate in a constantly developing reality where the nature of the work changes from providing client centered legal services to strategic consulting, and also policy advice for governments. As organizations they are required to adapt to new entrants and diversified competition, government regulation with

its political and economic implications, market preferences as well as obligations as agents that contribute to the development of law and social change.

The role of the law firm in India is maturing into a multi-faceted organization with roles as diverse as being a critical economic agent, an important employer and an actor that shapes and promotes policy. As these firms become increasingly institutionalized and embedded in the legal landscape of the country it is vital to also recognize the role of the firm to the community at large. The Society for Indian Law firms, a collective of India's top corporate law firms reflect this sentiment in their mission where, among other things, they call for providing legal aid and assistance to persons in need, protecting human rights, and promoting reforms in law that support the social and economic needs of people.⁵

However, building a socially responsible practice is a conversation that is still at its very nascent stages in India. In a recent profile by the 2016 Trust Law Index,⁶ data from only four Indian firms was made available, which indicated a lack of an entrenched culture of pro bono work among firms both in terms of systematizing it in the practice but also in terms of communicating progress to a wider public. As a result, there is a pressing need to evolve a more holistic solution. This can only be achieved through closer engagement

¹ Kian Ganz 'Shroff Brothers to Split Amarchand Mangaldas into Two by 1 April - Livemint' <<http://www.livemint.com/Companies/ttck1HPNqLXJ1VoH2ZJCJK/Shroff-brothers-to-split-Amarchand-Mangaldas-into-two-by-1-A.html>> accessed 18 July, 2017.

² Kian Ganz, 'Revealed: The 17 Law Firms with the Greatest Partner Turnover in the Last 4 Years (after Cataclysmic 2016)' <<http://www.legallyindia.com/law-firms/revealed-the-17-law-firms-with-the-greatest-partner-turnover-in-the-last-4-years-20160627-7755>>.

³ Aditya A.K., 'Mergermarket M&A Tables: The Indian Legal Market Recorded Its Highest Ever Activity in 2016' <<https://barandbench.com/mergermarket-ma-tables-indian-legal-market-recorded-highest-ever-activity-2016/>>.

⁴ Kian Ganz, 'Day Zeros: Demand from Amarchands Divided Offsets Drop in 2017 Recruitments from Others [via Mint]' <<http://www.legallyindia.com/lawschools/day-zeros-demand-from-amarchands-divided-offsets-drop-in-2017-recruitments-from-others-via-mint-20160412-7439>>.

⁵ 'SILF: Mission & Goals' <<http://www.silf.org.in/3/Mission-and-Goals.htm>> accessed 18 August, 2017.

⁶ Thomson Reuters Foundation, '2016 TrustLaw Index of Pro Bono' <http://news.trust.org/spotlight/2016_TrustLaw_Index_of_Pro_Bono/?tab=data>.<http://news.trust.org/spotlight/2016_TrustLaw_Index_of_Pro_Bono/?tab=data>.

between the suppliers and demanders of legal services, and a review of the particular challenges before each constituency.

Through this handbook, *Justice Adda* and the *Cambridge Pro Bono Project* explore the role of law firms in India in the wake of the globalization of competition, market consolidation of law firms, and the technological impact on legal practice. Through these lenses, an attempt is made to situate its growth as a pivotal institution in the delivery of legal services and for the realization of access to justice. In this regard, it is crucial to understand the approach of firms through their immediate spheres of influence. This will help ascertain the opportunities for them to contribute to meeting barriers to justice. A key consideration at the outset would be to explore how to dissect the social responsibility of a law firm. Is social responsibility a symbolic enterprise? Is it a value that is inherent or a normative concept that should be aspired towards? Should firms build operations in order to have strong social impact? Should they institutionalize a culture of social responsibility or is it a more informal constituent of the firm's ethos? Who are firms socially responsible to? Does the legal profession as a whole provide a space for firms to engage in more social projects? Does the regulatory authority mandate a culture of social responsibility? Does social responsibility make economic sense in a competitive market? How do firms balance economic efficiencies and the common good and ethical conflicts arising in cases?

These are questions that have formed the basis for the formulation of this handbook. They have been critical in visualizing how to understand the decision-making processes of firms, the challenges of their context and the perspectives of different actors that have to be considered to provide a concrete framework and assessment of a way forward.

THE PRESUMPTION AND NECESSITY OF IDEALISM

In order to address some of these questions, it is perhaps fruitful to reflect a little on the profession and the idealism, commonly presumed integral to it. This will enable one to draw links between the idea of social justice and social responsibility and steps to allow for a re-engagement of practice and of performing public service geared towards the common good.

Upon his elevation as Chief Justice of the High Court of Jammu and Kashmir, Justice B.D. Ahmed remarked, "What are we judges and lawyers here for? Ultimately beyond the fees and the salaries and the career progression and the fame, our lives ought to be and are fashioned by the unending quest for justice"⁷. His words echo the sentiments of Justice Michael Kirby a former Judge of the High Court of Australia, who cautioned lawyers to never lose their fundamental impetus for joining the profession, 'The righting of wrongs. The redress of discrimination. The protection of the underdog. Upholding the law against the strong and the powerful. Is this not why we were all, one day long ago, attracted to the law? We must make sure that we do not lose our direction and forget that original impulse.'⁸ These statements speak to a bigger project, one beyond the everyday practice of law, with its challenges and rewards. It could be criticized as romanticizing the profession but equally it could be seen as a call to action particularly considering the influence, power, and impact that the ecosystem of the profession can have on life and living.

In invoking the idealism of the profession both judges speak to ideal of the 'lawyer statesman',

⁷ Nalini Sharma, 'May the Force Be with You! Justice Badar Durrez Ahmed Bids Farewell to Delhi HC [Read Speech]' <<https://barandbench.com/justice-badar-durrez-ahmed-delhi-hc-farewell/>>.

⁸ Michael Kirby, 'Law Firms and Justice in Australia' <http://www.hcourt.gov.au/assets/publications/speeches/former-justices/kirbyj/kirbyj_award.htm> .

firstly as one who is deeply committed to the public interest as well as the interests of the private client, secondly as someone who goes beyond the technical considerations of a case to offer moral and humane support, and thirdly as one who considers herself committed to being a member and leader of civil society.⁹ This is premised on the belief of ‘lawyering as a public profession’ where skill sets are used as a tool to help society as a whole and by transcending the focus purely on client service.¹⁰ In their reflections on the ‘Alternative Law Forum’, a social justice organization, Narrain and Thiruvengadam argue that such alternative lawyering, conceptualized as a tool for social engineering, connects the law as a profession with ideas of morality, and it is only when the law dynamically engages with issues that confront social and political aspects of everyday life, can its potential truly be realized.¹¹ Kronman, in his seminal work,¹² lamented about the lost lawyer and loss of idealism. He argued that it was in decline for several reasons, including the corporatization of work into a result-oriented business, and the bureaucratization of courts. These factors, coupled with the structure of law schools, with their focus on employability, and with the emphasis on revenue generating work, have resulted in the difficulties of building sustainability in practices with a commitment to public service. It is this difficulty, Quigley argues, that causes justice to become a ‘counter-cultural value’ to the legal profession, where those who engage in social justice lawyering are those who end up ‘swimming upstream’.¹³

⁹ Anthony T. Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (Harvard University Press 1995).

¹⁰ Stuart Scheingold and Austin Sarat, *Something To Believe In: Politics, Professionalism and Cause Lawyering* (Stanford University Press 2004).

¹¹ Arvind Narrain and Arun K. Thiruvengadam, ‘Social Justice Lawyering and the Meaning of Indian Constitutionalism: A Case Study of Alternative Law Forum’ (2013) 31 *Wisconsin International Law Journal*.

¹² Anthony T. Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (Harvard University Press 1995).

¹³ William Quigley, ‘Letter to a Law Student Interested in Social Justice’ 1 *DePaul J. for Soc. Just.* 7.

How can such a trend be reversed? Is it pragmatic for lawyers to maintain their original impulses? What are the challenges with continuing such a commitment in the institution of law firms? Is it possible to implement structural changes that make it sustainable for law firms to engage in social justice practice? How does one re-engineer the profession to make the delivery of justice a basic commitment?

The challenge for fulfilling a sense of idealism is not just asking what is legal, but more crucially, what is right.¹⁴ Heineman in the context of a General Counsel argues that ‘in aspiring to be a lawyer statesman, the General Counsel, and inside lawyers, must be skilled in asking “what ought to be” questions; in articulating systematic and constructive options that expose and explore the value tensions inherent in most decisions’¹⁵. This call to investigate and examine the long term and broader implications of the work, beyond the immediate benefits of projects and clients, requires a more holistic and deliberative approach in confronting question of social impact and responsibility.

Law firms, and their lawyers, have a key role to play in fulfilling such idealism, by meeting the disparities of finance, power, opportunity and knowledge rampant in the legal system. Katzman argues that it is not from a sense of charity, in which lawyers must work with their specialized knowledge and training for a public good, ‘but rather one of professional responsibility, reinforced by the terms under which the state has granted to the profession effective control of the legal system’.¹⁶ The institutional power that emerges through this control, shapes the profession, and in turn demands accountability and

¹⁴ Ben Heineman ‘The General Counsel as Lawyer-Statesman’ <https://clp.law.harvard.edu/assets/General_Counsel_as_Lawyer-Statesman.pdf> accessed 18 June, 2017.

¹⁵ *Ibid.*

¹⁶ Robert A. Katzmann, *The Law Firm and the Public Good* (Brookings Institution 1995).

connected values of legitimacy, transparency and responsiveness.

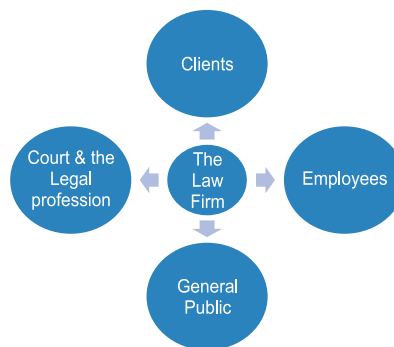
However, in reality, this contractual relationship is rarely dialectical because the demands of price, profitability and financial sustainability drive the functioning of most large law firms and individual practices over their responsibilities to the profession at large.

LOCATING ACCESS TO JUSTICE GAPS

The Supreme Court of India articulated that ‘access to justice’ is a facet of the right of life guaranteed under Article 21 as well as part of the guarantee contained in Article 14 of the Constitution.¹⁷ A recent policy of the Government of India, has acknowledged that there is a need for a greater participation in the delivery of pro bono services by the legal community, which otherwise, ‘remains more of an adhoc, individualized practice lacking an institutional structure’.¹⁸ It has proposed to set up a directory and incentive structures for encouraging pro bono. This policy and others such as “Tele-a Law” which is legal aid via videoconferencing is recognition that dealing with access to justice requires innovation and thinking beyond the traditional structures of the legal aid authorities.

Before presenting a framework through which law firms can promote access to justice through their social responsibility, it becomes important to locate how firms can meet gaps that exist within the ecosystem in which they operate.

Identifying the ways in which a firm can contribute, requires exploring the symbolic, spatial, knowledge and financial dimensions manifested in the ability of people to seek and obtain a remedy to the variety of common justice problems.¹⁹ To this end we started to identify which stakeholders the firm and its operations directly impact and thereafter used this as a starting point to map out the expectations and responsibilities to these different actors. For the purposes of this handbook, these parties included the clients of the firm, the employees who work at the firm, the court, regulators and the legal profession at large and finally the general public and the community who are impacted by their work. Each of these parties operate in different contexts, and the internal and external logics of the firm determine play a crucial role in terms of how to engage with each party.



In terms of the paying clients, justice gaps can emerge when the firms lack an embedded ethical criteria or a professional code of conduct, which lead to poor accountability and transparency in its practices. This can impede the fairness of the relationship with the client and also lead to conflicts of interest. Similarly from the perspective of the court, regulators and the profession, there is an expectation that firms will meet standards of

¹⁷ ‘Access to Justice is a Fundamental Right Guaranteed under Articles 14 & 21 of Constitution: SC Constitution Bench’ <<http://www.livellaw.in/access-justice-fundamental-right-guaranteed-article-14-21-constitution-sc-constitution-bench/>> accessed 18 August, 2017.

¹⁸ ‘Pro Bono Services by Advocates’ <<http://serviceonline.gov.in/serviceLinkHome.html?serviceToken=GENPsEvOYR546>> accessed 18 August, 2017.

¹⁹ UNDP, ‘Programming for Justice: Access for All – A Practitioner’s Guide to a Human-Right-Based Approach to Access to Justice.’ <Programming for Justice: Access for All – A Practitioner’s Guide to a Human-Right-Based approach to Access to Justice. Bangkok: UNDP>.

integrity, probity and fairness in exercise of their responsibility to these institutions and in terms of their commitment to further justice. With respect to employees, gaps can emerge in terms of hiring and payment policies, staff development opportunities, anti-harassment mechanisms and firms must address these in order to build inclusive working environments. For the general public the gaps can emerge through the sustainability and the environmental implications of the firm's business practice, the social and political implications of the cases that the firm takes on and the monetary implications of engaging in litigation with uncertainties of its outcomes.

Many of these challenges emerge from inequalities endemic to India's social systems, as B.R. Ambedkar remarked in his final speech to the Constituent Assembly:

*"On 26th of January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequalities ... How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life?"*²⁰

These concerns remain central to the building of India's constitutional democracy and require challenging structural inequalities that create barriers to equal access and to the opportunity to live a flourishing life. As firms increase in influence, profitability and importance, the obligations to build a rights based society apply horizontally also to them.

EXPLORING SOCIAL RESPONSIBILITY

In the context of this handbook, Corporate Social Responsibility (CSR) can be understood as the strategies that are employed in building business, social and human capital in a manner that brings

²⁰ 'Constituent Assembly of India Volume XI' <<http://parliamentofindia.nic.in/ls/debates/vol11p11.htm>>.

value and positive impact to the community. Two primary reasons for engaging in CSR include firstly a moral case of giving back to the community by appreciating the public nature of the profession, and secondly a business case which acknowledges not only the potential benefits for the brand and reputation of the firm, the professional development of the lawyers,²¹ but also as a form of appeal to future employees.²² Firms see themselves as being part of a 'responsible revolution', where they partake in having a positive force to create value to the people impacted by their work.²³ Doing so not only helps them build better businesses but also prevents them from obsolescence and irrelevance given the expectations of the community. Firms thus recognize that as financial and social aspects of work become increasingly intertwined, they have an opportunity to influence not just individuals but the larger economy through a series of initiatives, whether pro bono, market-based solutions to social problems or charitable giving, all designed for greater impact.²⁴

Many big law firms in the United States and United Kingdom address these factors and employ a broad and ambitious approach towards CSR. For DLA Piper, this includes protocols for how they treat employees, advise clients, approach the environment and commit to community.²⁵ Baker Mckenzie similarly integrates its pro bono, diversity and inclusion practices and

²¹ Brian Murray, 'The Importance of Pro Bono Work in Professional Development' (2009) 23 *The Journal of Trial Practice Committee*.

²² Yoann Kassi-Vivier and others, 'Demonstrating the Business Value of Pro Bono Service' <https://www.taprootfoundation.org/sites/default/files/imce/Taproot-Business-Value-2016_CC.pdf>.

²³ Tim Sanders, *Saving the World at Work* (Crown Business 2008).

²⁴ Sarah Murray, 'Legal Profession Takes up Social Responsibility' (*Financial Times*, 4 December 2014) <<https://www.ft.com/content/8e2efa36-6a85-11e4-bfb4-00144feabdc0>> accessed 26 August 2017.

²⁵ 'Pro Bono | DLA Piper Global Law Firm' (*DLA Piper*) <<https://www.dlapiper.com/en/asiapacific/focus/probono/pro-bono>>.

sustainability as part of its CSR²⁶ while Allen and Overy in their approach to CSR focus on building a pro bono and community investment program, a global charity partnership, a focus on diversity and inclusion at the workplace, a management of environmental impact along with guidelines on working with suppliers.²⁷

These approaches suggest an inclusive approach to CSR, one designed to address different actors in the community through multiple lenses, however, often there is a preference of symbolism over substance. In their study on large law firms, Vaughan, Thomas and Young found it difficult to ascertain whether commitments to CSR 'were a result of dedication by those firms to the principles of CSR, or simply a knee jerk reaction to the implementation of CSR strategies by their competitors'²⁸ In their study of over 100 law firms in England and Wales, they found that though a majority of firms mentioned that they had CSR activities, few explained the rationale and motivations for why they were engaged in such work.

In order to understand the context in which law firms operate in India, as well as the types of innovations and challenges they face, we conducted an anonymous survey with firms at different stages of growth and varying sizes to understand what they felt were important and pressing aspects that drove their CSR strategies. The Cambridge Pro Bono Project Survey on a Socially Responsible Law Firm ("CPP Survey") approached fifty seven law firms. These included large law firms with over 250 lawyers in their

team, mid-sized firms with over 100 lawyers and finally small law firms with less than 100 lawyers in their team. The firms that participated in this survey are engaged in a wide spectrum of legal practice including, corporate, commercial, financing, litigation, intellectual property, real estate, technology and private client work and are registered in most instances as partnerships. These included law firms in large cities like New Delhi, Mumbai, Bangalore and Chennai. Of the twelve law firms that responded, 50% of these firms are full service law firms with several lawyers working as part of their team. However, we also had several firms who were smaller in scale and capacity. The survey reflects different approaches by the law firms in terms of their ability to innovate, capacity to adopt best practices as well as resources to invest in building a strong social component to their work. In the survey, the questions addressed the importance of professional conduct, the urgency of sustainability practices, the institutional focus on workplace equality and the responsibility of community driven solutions. The survey results suggested that smaller and mid-size law firms are open to innovative and flexible working structures in order to promote increased lawyer engagement in the firm and unlike the traditional 'big' law firms, there is an attempt to create institutional structures insulated from family or individual ownership, management and governance control. Pro bono practice, a key aspect of being socially responsible, is slowly but steadily gaining ground. Pro bono in India, at least conceptually, now extends beyond serving needy individuals to providing legal services to the social sector (*viz* non-profits and social entrepreneurs) thereby accelerating the pace of 'social good'

Another integral element of social responsibility of the firm is its sustainability quotient. Our survey however indicates that, at the moment, this is perhaps an onerous responsibility to place on firms, particularly given the developing nature of this concept in India, in areas where alternative options may not be available to Indian law firms.

²⁶ 'Corporate Social Responsibility | About Us | Baker McKenzie' <<http://www.bakermckenzie.com/en/aboutus/corporate-social-responsibility>>.

²⁷ 'Corporate Social Responsibility at Allen and Overy' <[http://www.allenoverly.com/Site CollectionDocuments/CR-2016.pdf](http://www.allenoverly.com/Site%20CollectionDocuments/CR-2016.pdf)>.

²⁸ Steven Vaughan, Linden Thomas and Alastair Young, 'Large Law Firms and Corporate Social Responsibility' <<http://www.birmingham.ac.uk/Documents/college-artslaw/law/research/bham-law-spotlight-corporate-social-responsibility.pdf>>.

It remains, however, a useful examination of how the firms must improve their external policies if they are to keep pace with some of the sustainability leaders in countries such as the UK and the US.

All law firms which responded to our survey show great emphasis on ethical practices, including to always acting in a respected and dignified manner, to prioritise client's interest, to avoid any possible conflicts arising from differing interests and to uphold and keep confidential any communications towards and from their client. This may in part be owing to the exalted position of lawyers' duties – towards the court, the client and the bar that the practice of law requires. The standards of professional conduct imposed by the Bar Council of India also incorporate ethical values and considerations that lawyers must take into account in the course of their legal profession and thus, extend to the law firms which provide a platform to service clients in need of legal services.

We thus concluded that in the context of this handbook, social responsibility requires untangling two distinct elements, firstly the internal aspects of running a law firm and the steps required to build an inclusive and sustainable working environment and secondly the external and community-oriented factors, to which a pro bono practice is central.



APPROACH OF THE HANDBOOK

This handbook adopts the following fundamental principles while designing models for socially responsible law firms. The first is to approach CSR as a proactive exercise whereby firms work at understanding the needs of the actors around them by taking measures which are empathetic to these needs rather than reactive and based on steps taken by competitors. The second principle involves viewing CSR as an aspirational project where firms account for the long-term implications of their work over short-term benefits, because they are institutions that have a deep impact on the economy, people and planet. The third principle is driven by a need to approach CSR as a collaborative exercise, engaging with community approaches, embracing the shared economy and understanding how to work together with other institutions such as legal aid groups and regulatory authorities. Finally, the fourth principle is to understand the continuous learning potential in CSR by responding to internal demands and external expectations, as well as undertaking comparative learning from best practices, technologies and approaches of law firms in other jurisdictions.

STRUCTURE AND USE OF THE HANDBOOK

In the following chapters, we concentrate on broad indicators of social responsibility at a law firm – institutional efficiency and community objectives. These chapters are structured in a manner wherein questions around internal welfare, sustainability, pro bono involvement and ethical practices are unpacked and broken down to present, holistically, the different dimensions that a law firm is required to address both as an important institution and as a critical member of the larger community. Based on qualitative research primarily carried out through surveys, the next chapter discusses the current state of play in India, draws on international comparisons and

presents the different elements of social responsibility that require to be addressed by the law firm. In the subsequent chapter, after laying out the different elements, the handbook attempts to also focus on practical elements required to construct a socially responsible law firm by providing simple tools, strategies, and best practices that Indian law firms can use to renew their practices accordingly.

This handbook thus attempts to understand Indian law firm's intentions, recognise the impediments they face in realising these intentions and finally, provide ideas and solutions to assist them in their path towards being a socially responsible organisation.

CHAPTER 2: ELEMENTS OF A SOCIALLY RESPONSIBLE LAW FIRM

A. THE LAW FIRM AS AN INSTITUTION

2.1. INCLUSIVE WORKING ENVIRONMENT

- Globalisation is leading to rapid evolution of modes of legal service delivery around the world. To keep pace with demands of international clients, Indian firms will be required to align their operations with international best practices of inclusive working.
- It is the ethical responsibility of law firms to provide a diverse, open and non-discriminatory working environment, with fair and transparent policies and practices of recruitment, retention, remuneration and recognition of merit. These also make sound commercial sense for the business of the law firm.
- Balanced work-life reflects fair treatment and respect for individuals by a law firm. It is also a business imperative of the firm due to its direct impact on improving employee productivity and performance.
- There is growing recognition in the Indian legal profession of the value addition provided by a well-trained body of associates. Indian law firms can benefit greatly from systematising and formalising their internal processes being guided by initiatives successfully implemented by law firms around the world.

SCOPE

In this sub-chapter, we analyse the interaction between a firm's internal processes and its ethical responsibilities. A law firm's treatment of its staff (both fee-earning and support teams) is reflective of how it values their contribution to its success.

Globally, law firms have adopted various staff policies based on their business requirements and legal or regulatory requirements of the jurisdictions in which they practice. We limit our review to policies and practices that law practitioners and legal academics consider essential to build a socially responsible and ethical law firm from the perspective of the well-being of the law firm's staff and its clients, since client satisfaction and the firm's ability to retain highly skilled lawyers are key drivers for its success.

Our main source of information on existing policies and practices of Indian law firms is derived from the results of an anonymous survey we conducted which is set out in Annexure 2. Fifty-seven firms were contacted and twelve law firms responded to the survey. The questionnaire we used sought to gauge the present state of affairs of corporate law firms in India. It comprised of both fact-based and opinion-based questions and was designed to gain an in-depth knowledge about various internal as well as community-based activities of the law firms surveyed. Relying on the qualitative research primarily carried out through the survey, we then describe and compare best practices of international law firms. In Chapter 4, we suggest best practices that Indian law firms may wish to explore further, based on the international experience.

The Law Society of England & Wales (“**Law Society**”), in its report on ‘The Future of Legal Services’ (the “**Future Report**”),²⁹ highlights that one of the key changes to the legal services market (in the UK) is the increase in the number of niche firms. As more providers enter the market, confusion around choice grows and only firms or solicitors who can reach out to help consumers and clearly understand their issues and options will be able to do better. The report predicts that by 2020, clients paying for legal services will expect these services to be responsive, personalised and transparent. With a greater choice of providers, the Future Report suggests that understanding how consumers are changing is key for firms if they are to meet the needs of current and future generations of clients.³⁰

Consumers of legal services are increasingly shopping around for price and only agreeing to pay legal fees if they see law firms add value. Firms need to continuously keep their workforce motivated to be able to serve client needs better. Employee satisfaction can be measured using broad measures like professional progress, range of work and personal autonomy, income, confidence and level of support, future plans and quality of life etc. Better treatment of law firm employees will have a “knock-on effect on employee relations within the firm, which can reduce absenteeism by enhancing employee attachment to or engagement with the firm and have a positive effect on productivity”.³¹ The importance of strong internal policies in a law firm

is not simply for social reasons, but has a strong economic basis too.³² While discussing opportunities for the Law Society to make a real difference in the likely legal landscape in 2020, the Future Report cites that “if a business is not reinventing itself to adapt to changing market conditions then it is highly likely it will go into decline or be taken over by those that are better adapted to the new environment.”³³ This statement is no less true for law firms than for any business.

A recent report for the Solicitors Regulatory Authority (“**SRA**”) and the Legal Services Board (“**LSB**”) based on a survey of around 1500 organisations in England & Wales examined innovation among legal service providers.³⁴ “Innovation” was defined as both development of new or improved services and new or improved ways of delivering legal services – i.e. adding value to businesses and service users. Some key findings of the survey were that: (i) solicitors were, on an average, more innovative than other regulated legal service organisations in terms of managerial and organisational changes; (ii) about 40% of the providers have implemented practical steps to promote development of new ideas; and (iii) major effects of innovation are extension in service range,

²⁹ Law Society of England & Wales, ‘Future of Legal Services’, (Law Society of England & Wales, January 2016), <<http://www.lawsociety.org.uk/news/stories/future-of-legal-services/>>, accessed 21 January, 2017.

³⁰ *Ibid.* at 42.

³¹ Law Society of England & Wales, ‘Diversity and inclusion in law firms – the business case’, (Law Society of England & Wales, 2016) <<http://www.lawsociety.org.uk/support-services/practice-management/diversity-inclusion/diversity-and-inclusion-in-law-firms-the-business-case/>> accessed 22 February, 2017 at 13.

³² For instance, firms that do not support an employee to stay and return to work will, at the minimum, suffer opportunity costs of losing talented, knowledgeable staff, of replacement, recruitment, and training new staff. According to the Diversity Study, there are indirect ‘soft’ costs of replacing staff which add to the overall costs, including lower levels of productivity – both of new staff who may have less knowledge and experience and require training to achieve desired levels of productivity, and of existing staff affected by the low morale, and the costs involved in possible poorer client service by such new staff; Law Society of England & Wales, ‘Diversity and inclusion in small law firms – the business case’, (Law Society of England & Wales) <<http://www.sra.org.uk/solicitors/diversity-toolkit/diversity-toolkit.page>> accessed 24 February, 2017.

³³ Richard Devlin, ‘Bend or Break: Enhancing the Responsibilities of Law Societies’, (2015) 38 *Man. L.J.* 119.

³⁴ Enterprise Research Centre, Warwick Business School, OMB Research Ltd., University College Cork, ‘Innovation in legal services’, (Enterprise Research Centre, July 2015) <<https://www.sra.org.uk/sra/how-we-work/reports.page#innovation>> accessed 14 February, 2017.

improvement of quality, attracting new clients and improved tailoring of services.³⁵ The report concluded that innovation in legal services has ‘a rather specific character’ of being ‘closed’. New ideas and new services are generated on an ‘incremental’ basis, within the organisations themselves and are rarely radical in nature.³⁶ The LSB believes that a diverse legal workforce will better lend itself to innovation, better meet consumers’ legal needs and limit wasted talent.³⁷

Businesses and institutions are testing ingenuity of legal professionals. According to a study conducted by Financial Times with RSG Consulting in 2016 (“**FT 2016 Survey**”),³⁸ lawyers are responding to changes in the business world through unusual strategic alliances, new types of firms and changing the nature of legal advice and its manner of delivery.

For Indian law firms to continue to be relevant in this rapidly innovating and increasingly global sector, they will need to adopt strategic measures to become responsive organisations. Since there is no one formula to attract, retain and motivate all employees within an organisation, and these strategic measures will require new modes of behaviour, they will need to start from within the firm.

As the profile of India’s population, in particular of Indian law firms’ client base and of their present and potential workforce, is changing, diversity, inclusiveness, fair recruitment, welfare, training and remuneration practices of law firms become significantly important, and it is critical to begin addressing these issues.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Legal Services Board, ‘Encouraging a diverse workforce’ (Legal Services Board, February 2017) Decision Document <http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/20170215/2017_Encouraging_A_Diverse_Workforce.pdf> accessed 21 February, 2017.

³⁸ Financial Times, ‘Innovative Lawyers 2016’, (Financial Times, 6 October, 2016) 11th edn. <<https://www.ft.com/reports/innovative-lawyers>> accessed 21 February, 2017.

A. Diversity and Inclusion:

The legal profession does not, in general, have a culture of overall diversity and inclusiveness (not even limited to gender diversity). To demonstrate this using recent data from the UK, according to the Law Society’s Diversity Report (2016), although more women now join the profession (up to 48% of solicitors), only 28.8% of law firm partners are women. 56.7% of Black and Minority Ethnic (BAME) solicitors are women. Only 11.1% of partners of law firms come from BAME backgrounds and over 50% of solicitors are the first generation in their family to attend university, however, there are strong entry barriers in the profession for people with disabilities.³⁹ The Law Society conducted a diversity survey on practice certificate holders in 2015 which indicated that 47.1% of the holders were Christian, 35.4% had no religion, 3.8% were Muslim, 2.3% were Jewish, 1.9% were Hindu, 1.5% were Sikh followed by 0.9% of those practising Buddhism. The survey also reported that 94.6% of certificate holders were estimated to be heterosexual/straight, 2.6% were either gay, lesbians, bisexual or other (1.4% were gay men, 0.7% were gay women, 0.4% were bisexual and 0.1% other), 2.8% preferred not to reveal this information. These findings are broadly consistent with official statistics and representative of UK population for 2015.⁴⁰ However, there is still some way to go for the diversity of the UK population to be fully reflected in more senior positions in law firms.

Even though comparative data is not available for Indian law firms, this breakdown of diversity information is very informative since it shows how the legal profession reflects the overall composition of society.

³⁹ The Law Society of England & Wales, ‘Diversity Profile of the Solicitors’ Profession 2015’, (Law Society, October 2016) <<https://www.lawsociety.org.uk/about-us/documents/diversity-report-october-2016/>> accessed 22 February, 2017.

⁴⁰ Ibid.

There are various ‘strands of diversity’ in a law firm – gender, disability, ethnicity, age, sexual orientation, religion or belief, socio-economic background and caring responsibilities.⁴¹ In the Indian corporate sector, diversity at the workplace is considered extremely important. Indian companies have made a head start in implementing diversity policies which cover the various strands of diversity mentioned above and support systems with the aim to create a level playing field between employees. For instance, Tata Consultancy Services and Wipro have specific policies to cater to their employees with disability. GE India’s diversity policy includes recruitment from particular diverse colleges. It regularly conducts groom and nurture sessions for its diverse workforce. KPMG India conducts diversity audits with special focus on gender composition of the workforce and has internal committees within its human resources team to administer these policies.⁴² Industry organisations like NASSCOM organise annual diversity summits and grant awards of excellence to recognise and promote companies that have adopted and implemented policies and practices to promote diversity and have enabled inclusion of their employees to contribute to success of their enterprise.⁴³

Of the participants to the CPP Survey one Indian law firm specifically mentioned the importance it places on anti-discrimination, diversity and inclusiveness, which it said, is reflected, among other things, in that a majority of its partners are women. But it does not have written policies on

this, given the small size of the firm. The larger Indian law firms mentioned that they have specific policy(ies) on diversity, which are administered by their human resources departments.

With demographic change, diversity is essential for law firms who want to attract clients, meet their needs and recruit and retain the best people. A diverse workforce is best equipped to service diverse clients due to its different talents, approaches to problem solving, viewpoints, skills and varied knowledge.⁴⁴ Whelan & Ziv quote the law department of Lucent Technologies Limited in saying that diversity provides the company with “a competitive advantage through high quality, cost-effective law services”.⁴⁵

Law firms in the UK are increasingly being asked by corporate clients to provide details of their workforce diversity statistics and for some clients, an overview of their firm’s initiatives to improve diversity on a quarterly basis.⁴⁶ This is because clients want to make sure that law firms match their commitments to inclusive practices.⁴⁷ According to the study conducted by the Law Society (“**Diversity Study**”)⁴⁸, there is a strong business case for improving diversity and inclusion measures in small law firms, including: (i) meeting legal and regulatory equality requirements and avoiding costly claims of discrimination or regulatory action against the firm; (ii) access to a wider recruitment pool due to reputation for equality and fairness; (iii) retention of staff and benefit to the firm of their experience and investment in training; (iv) flexible and responsive workforce; (v) longer retention of key talent; (vi) improved efficiency and return on investment; and (vii) positive

⁴¹ Ibid.

⁴² Ishani Duttgupta, ‘Indian companies started to believe in diversity of workforce’ (The Economic Times, 12 September, 2010) <<http://economictimes.indiatimes.com/magazines/sunday-et/business/indian-companies-started-to-believe-in-diversity-of-workforce/articleshow/6538780.cms>> accessed 22 February, 2017.

⁴³ PricewaterhouseCoopers Private Limited, ‘Making Diversity Work: Key Trends and practices in the Indian IT-BPM industry’ (March 2016) Report for NASSCOM <<https://www.pwc.in/assets/pdfs/publications/2016/making-diversity-work-key-trends-and-practices-in-the-indian-it-bpm-industry.pdf>> accessed 22 February, 2017.

⁴⁴ Law Society of England & Wales, supra n. 31 at 6.

⁴⁵ Lawyers for One America, <http://www.lfoa.org/barnone/barnone_declaration_corp.html> accessed 4 January, 2017 in Christopher J. Whelan & Neta Ziv, ‘Law Firm Ethics in the Shadow of Corporate Social Responsibility’, (2012) Georgetown Journal of Legal Ethics 6, 7.

⁴⁶ Law Society of England & Wales, supra n. 31 at 6.

⁴⁷ Ibid. at 6.

⁴⁸ Law Society of England & Wales, supra n. 32.

impact on environment, productivity and firm's reputation.⁴⁹ So, diversity is not just about doing the right thing, it is also an important economic argument.

Delivery of legal services is now increasingly multi-jurisdictional. Indian law firms with ambitions of becoming globally integrated law practices, will need to rapidly align themselves with these ideals and essential practices.

The Legal Service Act 2007 (UK) aims at encouraging an 'independent, strong, diverse and effective legal profession'.⁵⁰ Pursuant to the regulatory requirement of legal practices as "employers" under the Equality Act 2010 (UK), the Law Society designed the "Diversity and Inclusion Charter" to help signatories meet their commitment to diversity and social mobility in their workforce. The charter has a set of protocols, such as the reporting and monitoring protocol which helps signatories to collect and record the diversity statistics of their workforce.

The Advocates Act, 1961⁵¹ empowers the Bar Council of India to prescribe standards of professional conduct and etiquette and set out duties of an advocate towards the court, clients, colleagues and opponents. It empowers the Bar Council of India and state bar councils to promote and support law reform. So long as the requirements of admission on a state's roll⁵² are satisfied, there is no specific prohibition on any person to be enrolled as an advocate. The existing regulatory framework does not specify measures to promote diversity and inclusiveness in legal practice and as a result, the practice does not truly reflect the

existing diversity of the Indian population. This disconnect came into focus recently when the Bar Council of India arbitrarily fixed a maximum age limit on students taking up law school entrance examinations – clearly discriminating between students on the basis of age. Whereas, this order has been successfully challenged,⁵³ there is much progress to be achieved. The Bar Council of India should recognise its role of ensuring high standards of ethical behaviour to be maintained by legal professionals.

Some headway has been made. 'Legally India', an Indian legal industry online journal, recently reported that the Bar Council of India proposed amendments to Advocates Act, 1961 to implement a separate set of practice rules for law firms regulating professional conduct of their lawyers.⁵⁴ This was reported on the basis of an internal memo which has not been published and the current status of the proposed reforms remains unclear. In any event, such piecemeal efforts may not really result in ensuring that the legal system does not exclude any community or group whose interests the law is meant to protect.

The SRA which regulates the solicitors in the UK identified the lack of a diverse legal profession as one of its priority risks.⁵⁵ It holds that

⁴⁹ Law Society of England & Wales, *supra* n. 32 at 3.

⁵⁰ Legal Services Board, 'Increasing Diversity and Social Mobility in the Legal Workforce: Transparency and evidence', (Legal Services Board, July 2011) <http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/decision_document_diversity_and_social_mobility_final.pdf> accessed 27 December, 2016.

⁵¹ Advocates Act, 1961, ss. 6, 7, 49(1)(c) read with Bar Council of India Rules, Chapter II Part VI.

⁵² Advocates Act, 1961, s. 24.

⁵³ 'All ages free to LLB again (without strings attached): SC stays BCI's age bar row for now (including revision)' (Legally India, 3 March, 2017) <<http://www.legallyindia.com/pre-law/all-ages-free-to-llb-again-sc-stays-bci-s-age-bar-for-now-20170303-8334>> accessed 5 March, 2017.

⁵⁴ 'Under LawCom pressure, BCI drafts huge bill to regulate deeper, harder, stronger with dominion over bar associations, youngsters, law firms' (Legally India, 12 October, 2016) <<http://www.legallyindia.com/the-bench-and-the-bar/under-fire-bci-comes-up-with-plan-to-regulate-deeper-harder-stronger-20161012-8029>> accessed 5 March, 2017; Draft of the proposed amendments at <<http://s3.documentcloud.org/documents/3125085/DRAFT-Advocates-Act-Amendment-September-2-9-2016-2.pdf>>.

⁵⁵ Solicitors Regulation Authority, 'Diversity: Why this risk matters' <<https://www.sra.org.uk/risk/outlook/priority-risks/diversity.page>> accessed 21 January, 2017; SRA Case Studies on impact of lack of diversity, Solicitors Regulation Authority, 'Case Studies: Lack of diverse and representative profession' <<https://www.sra.org.uk/>>

a strong and diverse legal market encourages: “(i) high standards – allowing the most talented people to become solicitors and progress in their careers; (ii) the effective administration of justice – a diversity of views and approaches supports an independent and effective justice system; and (iii) improved access to services – some people may be more likely to seek legal advice if they share some social or cultural characteristics with solicitors.”⁵⁶ Recognising the requirement of principle 9 of the Code of Conduct of the SRA Handbook (“**Code of Conduct**”) to “encourage equality of opportunity and respect for diversity”, the SRA now requires law firms to undertake diversity monitoring of their workforce.⁵⁷ This should inform their approach to recruitment, promotion and other workplace policies. All law practices regulated by the SRA are required to collect, report and publish, a summary of their staff diversity data, subject to compliance with data protection legislation on a biennial basis.⁵⁸ Using this data, the SRA ensures that a comprehensive evidence base about the diversity characteristics of the legal workforce is available from all legal practitioners in sole

practices, recognised bodies and alternative business structures (not in-house counsel, though). This also applies to consultants who have been or will be engaged on a contract for three months or longer, whether paid through invoices or through the pay roll. Where firms do not provide information requested by the SRA, it is considered a compliance issue and enforcement action will follow.⁵⁹

The SRA further recommends that firms (a) use the online SRA diversity tool⁶⁰ to compare the firm performance with other similar businesses – by region, type of firm, and other factors; (b) set external benchmarks to assess diversity performance; (c) explore other firms’ and other sectors’ practices for ideas of how diversity and inclusion can be improved, such as recruitment policies, social mobility initiatives and mentoring support for existing staff; and (d) if they are larger firms, they encourage staff support networks and set up links with national groups, such as the Black Solicitors’ Network, the Society of Asian Lawyers and Stonewall.

Similar initiatives are also being taken for diversity and inclusion in American law firms. Outside counsel guidelines in the US encourage *inter alia*, workplace diversity and flex-time requirements, according to Whelan & Ziv.⁶¹ The authors collected data from review of over twenty sets of outside counsel guidelines and interviews with in-house, outside lawyers and general counsel in

solicitors/code-of-conduct/guidance/case-study/lack-diversity.page> accessed 28 December, 2016.

⁵⁶ Ibid.

⁵⁷ Solicitors Regulation Authority, Code of Conduct, (Solicitors Regulation Authority 2011), Chapter 2 (Equality & Diversity) lists the following outcomes applicable to all legal service providers in England & Wales: “You must achieve these outcomes: (i) you do not discriminate unlawfully, or victimise or harass anyone, in the course of your professional dealings; (ii) you provide services to clients in a way that respects diversity; (iii) you make reasonable adjustments to ensure that disabled clients, employees or managers are not placed at a substantial disadvantage compared to those who are not disabled, and you do not pass on the costs of these adjustments to these disabled clients, employees or managers; (iv) your approach to recruitment and employment encourages equality of opportunity and respect for diversity; (v) complaints of discrimination are dealt with promptly, fairly, openly, and effectively; and (vi) you have appropriate arrangements in place to ensure that you monitor, report and, where appropriate, publish workforce diversity data” <<http://www.sra.org.uk/solicitors/handbook/code/part2/rule2/content.page>> accessed 12 January, 2017.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Solicitors Regulation Authority, ‘Workforce diversity data requirements’ <<https://www.sra.org.uk/solicitors/code-of-conduct/guidance/guidance/diversity-data-collection.page>> accessed 28 December, 2016. See **Annexure 1** for SRA’s example diversity questionnaire for English law firms.

⁶¹ Christopher J. Whelan & Neta Ziv, ‘Law Firm Ethics in the Shadow of Corporate Social Responsibility’, (October 2012) *Georgetown Journal of Legal Ethics* 6, 7 <<http://ssrn.com/abstract=2164615>> accessed 4 January, 2017. They quote various examples of corporations which have, as one of their stated objectives, enhancing diversity within their outside counsel firms. For e.g. AT&T Global Supplier Diversity Program, Lucent Technologies, Microsoft, General Motors, Bank of America, Wells Fargo Bank, Gap Inc. etc.

the US, UK and Israel, which led them to conclude that in-house lawyers play a significant role in ensuring compliance by outside counsel of their professional responsibility. These guidelines have arguably resulted in the diversity initiative being “the most institutionalised promotion of higher ethical standards”⁶². They cite examples of corporations such as Pacific Gas & Electric Company, Southern California Gas Company and San Diego Gas & Electric promote diversity in the law firms they engage through many methods such as, monitoring of their legal budget to ensure that a significant portion is utilised only on law firms which promote women & minority-owned initiatives, education and organising events to exchange ideas on promoting diversity, prescribing requirements that the outside law firms include women and lawyers of colour in their projects, follow regular reporting of overall minority lawyer statistics, provide a copy of the firm’s policy regarding diversity, answer questionnaires⁶³ and update in-house counsel on the progress made towards increasing diversity.

The international law firm CMS Cameron McKenna Nabarro Olswang LLP, actively promotes

⁶² Ibid.

⁶³ For instance, Whelan & Ziv quote the International Paper (IP) Company’s Counsel Retention Policy which asks its outside law firms, how many attorneys there are in the firm, and how many are women, African American, Hispanic, Native American, Asian Pacific, or Asian Indian, to describe its recent actions to increase diversity within the firm, including efforts to actively recruit women and minorities; to identify any women and minority partners and/or associates within the firm and to describe whether they have recently worked on International Paper matters, or would be qualified to do so; and finally, to state whether the firm has participated in diversity programs sponsored by the ABA, the National Bar Association, the Hispanic Bar Association, or other organizations, or has recently participated in any minority job fairs. Walmart Inc., measures outside law firms’ commitment to diversity by overall law firm demographics, demographics of the firm’s Walmart team, good-faith efforts exhibited by the firm, i.e. having an active diversity committee, implementing a diversity plan, attending and sponsoring diversity events, increasing efforts to develop and retain women and minority attorneys, investing in the future of the profession (e.g. pipeline efforts).

the InterLaw Diversity Forum, a network of law firms and legal organisations for lesbian, gay, bisexual and transgender (“LGBT”) individuals, lawyers and non-lawyers, with more than 1000 members, 70 law firms and 40 organisations. The purpose of the forum is to encourage LGBT diversity and inclusion in the legal sector.⁶⁴ It aims to create ‘an environment where employees can reach their fullest potential without regard to sexual orientation’ and provides best practice diversity advice for professional service firms.⁶⁵

Similarly, Pinsent Masons LLP has a strong network to ‘support the welfare and interests of its LGBT staff, to promote diversity and greater understanding of LGBT perspective on issues such as marriage and parenting’. It works with clients to ‘develop their policies, diversity networks and employee champions’. It encourages the Stonewall education programme to mentor trainees. The firm’s multi-faith group, hosts several external and firm-wide events to appreciate the diverse faiths and religious identities represented in the firm. Firm staff are actively encouraged to ‘share their experiences with each other’ and with the firm management and to ‘support their colleagues to address any issues’ they may face. The firm recognises that ‘developing diversity networks with its clients and suppliers is a great way to add value to the [client] relationship, work in true partnership and demonstrate [its] commitment to diversity’.⁶⁶

Measures being taken by English and American law firms to strengthen their commitment to diversity is a useful example to Indian law firms that they do not need to wait for the regulatory framework to catch up with reality. Indian law firms can act as catalysts for change through their own initiative, by taking the first step of making

⁶⁴ Ibid.

⁶⁵ <<http://interlawdiversityforum.org/interlaw/about/>> accessed 21 February, 2017.

⁶⁶ <<http://graduate.pinsentmasons.com/our-culture/our-commitment-to-diversity/>> accessed 21 February, 2017.

information on their current diversity practices publicly available.

B. Women-specific initiatives:

In India, the emergence of premier national law schools has resulted in the growth and success of women lawyers in Indian law firms. Research shows that women are being made partners in the bigger Indian law firms more regularly.⁶⁷ Senior Indian women lawyers in such firms do not feel that gender is a particular hindrance in their professional progress.⁶⁸ In the CPP Survey, most of the respondents mentioned that in their firms/practices, women are not discriminated against men in terms of pay, promotion etc. and in fact, reported a better female to male gender ratio in their workforce.

Ballakrishnen conducted several interviews with women lawyers in senior positions in larger Indian corporate law firms where the interviewees mentioned that their clients preferred a female partner or senior associate on matters because according to these clients, it ensured quality as women are regarded by them as being more hard-working, dedicated, reliable and better overall.⁶⁹

Ballakrishnen suggests that this could be due in part to the social and cultural standing of the women in question.⁷⁰ She explains that individual characteristics and interaction dynamics of these female lawyers are essential. She believes that the increasing success of women in senior positions in Indian law firms could be due to (i) gender hostility in the greater legal profession, i.e. that unlike in a traditional litigator role where gender would be relevant, large law firms are gender egalitarian professional spaces; and (ii) structural characteristics of large law firms are generally conducive to the construction of new gender neutral hierarchies.⁷¹ This could also be due to the difference in treatment of women in other professions in India.

Contrast this with the experience of Indian women lawyers in pure advocacy/litigation firms, where the traditional male hierarchical structure is strong.⁷²

Nevertheless, women in Indian law firms (whether transactional or advocacy practices) find decisions relating to marriage, family and children to be barriers to their entry and success at work.⁷³ These include, lack of flexible hours,

practices and an advocate is permitted to accept a client's brief and represent the client before courts.

⁶⁷ Swethaa Ballakrishnen, 'Why is Gender a Form of Diversity? Rising Advantages for Women in Global Indian Law Firms', (2013) 20 *Ind. J. Global Legal Stud.* 1261. In one of India's top law firms, 9 of 13 partners (70%) promoted in 2012 were women (Legally India, 5 May, 2012) <<http://www.legallyindia.com/law-firms/amarchand-promotes-13-partners-70-women-in-boon-to-corporate-comp-lit-20120505-2795>> accessed 5 March, 2017. Another top-tier Indian law firm had 50% women partners as on June 2016, 'Update', (Legally India, 9 June, 2016) <<http://www.legallyindia.com/law-firms/s-r-promotes-3-to-partner-nls-nalsar-ils-20160609-7696>> accessed 6 March 2017.

⁶⁸ Pallavi Saluja, 'Women's Day Special: Pallavi Shroff, Dina Wadia, Vineetha M.G., Indu Malhotra and Pratibha Singh on Women and the Legal Profession', (Bar & Bench, 7 March, 2014) <<http://barandbench.com/womens-day-special-pallavi-shroff-dina-wadia-vineetha-mg-indu-malhotra-and-pratibha/>> accessed 5 January, 2017.

⁶⁹ Ballakrishnen, *supra* n. 67 at 1279; Note that unlike in the UK, in India, there are no separate solicitor and barrister

⁷⁰ Ballakrishnen, *supra* n. 67 at 1268-1272. Ballakrishnen observes that a typical larger law firm lawyer, "is not just successful; she is also the inheritor of certain types of social and cultural capital. She usually goes to a certain kind of English-speaking high school, graduates from a national law school, and comes from a highly educated and/or professionally well-connected family."

⁷¹ For further analysis on this, see Ballakrishnen, *supra* n. 67 at 283-1284.

⁷² Ballakrishnen quotes the official statistics of the Supreme Court of India that in the Supreme Court, as of 2012, of the 294 lawyers promoted to senior advocates, 5 (or about 2%) have been women, as per official statistics of the SCI for 2013, among the 204 judges in 63 years, 5 (or less than 2.5%) have been women, as of 2013

We note that as of April 2016, of the 10,003 advocates-on-record in the Supreme Court, less than 10% are women <http://www.sci.nic.in/circular/aor_cc.pdf> accessed 5 January, 2017.

⁷³ For an international perspective, see Nicholas Bruch, 'Women in Big Law: Where Firms are Succeeding and Failing', (Palm Beach Daily Business Review, 18 July, 2016) Volume 62 Issue 196, accessed 14 January, 2017.

home-related barriers like pressure to start a family, lack of day care facilities, etc.⁷⁴ Such lawyers may quit the profession or join a “peel-off” law firm⁷⁵ which offers better institutional support for starting a family. According to a 2014 survey conducted by Community Business on the representation of women in the workplace in various regions of Asia (China, Hong Kong, India, Japan, Malaysia and Singapore), India is the worst performer for the switch in employment of women from junior to middle level positions, since many women leave employment for personal reasons, i.e. childbirth and care.⁷⁶ The recent amendments proposed to the Maternity Benefit Act, 1961 to promote greater protection for women during maternity may be a useful catalyst for change in the conditions of working mothers and caregivers in India.⁷⁷

In the United States, the American Bar Association (“ABA”) Commission on Women in the Profession conducted an impactful study in 2007-08 as a follow-up to their earlier study on the intersection of race and gender and its impact

⁷⁴ Ballakrishnen quotes the survey conducted by Sonal Makhija & Swagata Raha, ‘Challenges Faced By Women in the Legal Profession’, (Rainmaker, 2012) <<http://www.scribd.com/doc/102128508/Challenges-Faced-by-Indian-Women-Legal-Professionals-Full-Report>> accessed 22 January, 2017.

⁷⁵ Jayanth K. Krishnan, ‘Peel-Off Lawyers: Legal Professionals in India’s corporate law firm sector’, (National Law University of India Law School, 2013) Socio-Legal Review Vol. 9 <<http://ssrn.com/abstract=2151529>> accessed 5 January, 2017. Krishnan defines “peel-off” firms as those that emerged as a result of lawyers leaving a previous firm to establish a new entity.

⁷⁶ The Maternity Benefit (Amendment) Bill, 2016 proposed several welfare measures: increase maternity benefit from 12 to 26 weeks for two surviving children and 12 weeks for more than two children; 12 weeks’ maternity benefit to a ‘commissioning mother’ and ‘adopting mother’; facilitate ‘work from home’; mandatory provision of creche in an establishment having 50 or more employees. <<http://pib.nic.in/newsite/PrintRelease.aspx?relid=148712>> accessed 19 January, 2017.

⁷⁷ Gender Diversity Benchmark for Asia, (Community Business, 2014) <http://www.communitybusiness.org/library/News/2014/20141028_GDBA2014_PressRelease_India.pdf> accessed 6 January, 2017.

on women of colour in law firms in 2006.⁷⁸ This identified two sets of strategies that law firms will need to adopt to achieve sustained success with women of colour: (i) institutional changes in the way law firms are run; and (ii) empowerment of individual women of colour to build the support, skills, resources, and power to succeed in spite of the barriers that currently exist in law firms. ABA suggests that *inter alia*, law firms grow and sustain active outreach to women of colour through the firm’s recruiting efforts; develop concrete measurement tools through which progress can be tracked, analysed, and measured – specifically, for equitable and unbiased work allocation; develop various channels throughout the firm in which inclusive formal and informal networking can occur to foster greater dialogue between persons of varied backgrounds, ethnicities and races; build systems of self-advocacy into the attorney evaluation processes; ensure training for evaluation in an open, effective and unbiased manner; develop a succession planning strategy that includes senior associates and junior partners in key firm management committees; and create an effective diversity committee or similar leadership structure to ensure meaningful participation by firm leadership, clear strategic planning around diversity issues and adequate resources to effectively execute these strategies.

Whereas the focus of this study is on gender and race, its results are topical and relevant to an Indian law firm setting as well, given the comparability of the subject matter.

American firms are leading the way in implementing many of these strategies to the actual practice of law. Duanne Morris LLP, an American law firm based out of Philadelphia, PA, attaches

⁷⁸ American Bar Association Commission on Women in the Profession, ‘From Visible Invisibility to Visibly Successful: Success Strategies for Law Firms and Women of Color in Law Firms’, (Commission on Women in the Profession, American Bar Association, 2007-2008) <http://www.americanbar.org/content/dam/aba/marketing/women/visibleinvisibility_vs.authcheckdam.pdf> accessed 3 January, 2017.

importance to advancing women to equity partnership. It introduces high-potential attorneys to influential contacts, assigns them leadership training and education, and provides six months of business development coaching. DLA Piper LLP's "New Champions" sponsorship programme connects diverse, female and lesbian, gay, bisexual and transgender individuals with senior partners to provide career advice and assist them in charting the path to partnership.⁷⁹ At Minneapolis based Fredrikson & Byron, P.A., women chair 53% of practice areas, and the Glass Ceiling Task Force dismantles barriers to advancement and retention. In 2015, at least 68% of attorneys used flex-time, while 33% worked remotely at some point.

English firm Obelisk Law Limited promotes women's role in the law through various initiatives including its support to 'The 100 Years Project'. This is a unique history project supported by the Law Society and the Bar Council of England & Wales which highlights positive role models for women in law, deeper understanding of history to ensure a 'strong and equal future for women in the legal profession'.⁸⁰

Pinsent Masons LLP launched 'Project Sky' in 2014 aimed at removing barriers to women's progression. The ultimate goal was to ensure that women comprise 30% of the firm's partnership – the first milestone being to reach 25% by May 2018. Some of the main initiatives undertaken by the firm are 'more transparent career development, greater accessibility to flexible or agile working, more structured support around parental leave and training to help identify and address subconscious bias, requiring practice group heads to consider whether the gender balance of shortlists for promotion to various roles like partner, legal

director and senior associate positions reflect the composition of their teams.' The firm recognises that improving gender balance at partner and senior levels results in proper utilisation of talent available in the firm and ultimately leads to better working practices for all staff.⁸¹

European law firms are also innovating. Portugal's top ranked firm, VdA is being commended for its inclusive policies and 'ground-breaking' research analysing assumptions behind lack of gender diversity in the law.⁸²

The comparative analysis of American, English and European law firms serves two useful purposes – it highlights the lacunae in current practices in Indian law firms, and most importantly, provides practical guidance to assist firms to become more sensitive and supportive workspaces for women.

C. Recruitment and promotion practices:

Certain policies related to recruitment and talent retention in law firms could constitute forms of indirect discrimination.⁸³ The practice of selecting associates only from elite law schools may be promoted as 'sound recruitment policy' by law firms, but it is a form of indirect discrimination.⁸⁴ Fair

⁷⁹ Working Mother, 'The 2016 Working Mother & Flex-Time Lawyers 50 Best Law Firms for Women', (Working Mother, 11 July, 2016) <<http://www.workingmother.com/2016-working-mother-flex-time-lawyers-50-best-law-firms-women#page-3>> accessed 28 December, 2016.

⁸⁰ Spark 21, 'First Hundred Years', <<http://first100years.org.uk>> accessed 20 February, 2017.

⁸¹ Pinsent Masons LLP, 'Pinsent Masons launches 'Project Sky' to address gender balance at senior levels', (3 March, 2014) <<https://www.pinsentmasons.com/en/media/press-releases/2014/pinsent-masons-launches-project-sky-to-address-gender-balance-at-senior-levels/>>, accessed 21 February, 2017.

⁸² FT Survey, *supra* n. 38.

⁸³ Andrew Boon, Liz Duff & Michael Shiner, 'Career Paths and Choices in a Highly Differentiated Profession: The Position of Newly Qualified Solicitors', (July 2001) *The Modern Law Review* Vol. 64 No. 4, 563-594 <<http://heinonline.org/HOL/Page?handle=hein.journals/modlr64&collection=journals&id=577>> accessed 6 January, 2017.

⁸⁴ "The struggle...of the legal profession to ensure that selection is free of bias is largely concealed in the meticulous data compiled by the profession, which tends to show increasing numbers of female and ethnic minority practitioners. Academic literature, however, has warned of the risk of a continuing impact on access, and, significantly, on progression, of sex and gender, race

recruitment, retention and promotion policies are aspects of the diversity and inclusion obligations of law firms.

Legally India's salary survey of 2012 followed up in 2016 ("**Salary Surveys**") shows that tier one and tier two Indian law firms and some international law firms are lapping up law graduates from premier Indian law schools resulting in an unprecedented increase in salary levels for fresh associates.⁸⁵ Established law schools outperform lower ranked law schools and non-national law schools on campus recruitments from the 'big seven law firms' of India.⁸⁶ The perception is that "...other than just needing bodies to throw at legal work, finding the best national law school graduates is also a matter of prestige and branding for law firms".⁸⁷

and class. The production of an ever larger and more heterogeneous graduate body in law has therefore more clearly delineated substantial barriers to entry that are resistant to policy initiatives. These barriers become more significant with each stage of education and training and appear almost insurmountable around elite sectors of the profession where financial rewards are the greatest.", supra n. 57 at 2 and quoting R. Lee, 'Up or Out – Means or Ends? Staff Retention in Large Firms' in P. Thomas (ed.), 'Discriminating Lawyers' (London: Cavendish Publishing, 2000) at 185.

⁸⁵ Kian Ganz, 'LI Salary Survey Results (Part 2): How Much Do and Will Your Law Firm Batchmates Make?' (Legally India, 23 November, 2012) <<http://www.legallyindia.com/analysis/li-salary-survey-results-pt-2-how-much-do-a-will-your-law-firm-batchmates-make-20121123-3261>> accessed 16 February, 2017; '2016 Law Firm Salary Surveys Bonanza: Find Out If You Are Over or Under-Paid' (Legally India, 2016) <<http://www.legallyindia.com/law-firms/law-firm-salaries-2016-00011130-8145>> accessed 16 February, 2017.

⁸⁶ 'Day Zeros: Demand from Amarchands divided offsets drop in 2017 recruitments from others' (Legally India, 12 April, 2016) <<http://www.legallyindia.com/lawschools/day-zeros-demand-from-amarchands-divided-offsets-drop-in-2017-recruitments-from-others-via-mint-20160412-7439>> accessed 6 March, 2017; 'The choose your law school sessions: Recruitment performance through the ages', (Legally India, 21 May, 2016) <<http://www.legallyindia.com/lawschools/li-law-school-advisory-sessions-for-clat-takers-recruitment-performance-2016052>> accessed 6 March, 2017.

⁸⁷ Kian Ganz, 'Amarchand Delhi may hike to up to flat Rs 15 lakh – Salary war brews among top law firms' (Legally India, 8 April, 2015) <<http://www.legallyindia.com/law-firms/salary-war-brews-among-top-law-firms-update-amarchand-delhi-may-hike-to-up-to-flat-rs-15-lakh-20150408-5781>> accessed 16 February, 2017.

Another aspect of sound recruitment and professional progress is the emphasis placed on good attorney behaviour by Indian law firms. Majority of the participants to the CPP Survey (more than 82%) agreed with the importance of attorney behaviour for an ethical professional practice. This was generally understood to mean professional conduct of an attorney towards colleagues, counterparts and the client. A large Indian law firm stressed the importance it places on this and that compliance with this policy is dealt with effectively by its human resources team. Another large Indian law firm has implemented a "culture and values" code, which forms part of their lawyer induction programme and compliance with the code is measured as part of its periodic performance evaluation process. A mid-sized Indian law firm has a clearly set out "lawyers' competency framework" which provides detailed guidelines on what is expected of lawyers and the performance evaluation criteria. The firm has an "open and honest appraisal process" it takes very seriously, and an "open door policy and partners too are receptive to feedback and criticism". A participant emphasised the importance of recruiting "socially minded lawyers" and "inculcating a sense of socially responsibility in all recruits". A small size participant law firm mentioned that its size is consciously maintained to safeguard its ethos and ethic. It reiterates its expectations to its staff "at the hiring process...with regular interactions in the firm through 'all hands' [all stakeholders] meetings, social lunches, retreats etc." Its small size is helpful to observe "behaviour compliance" and for "one-on-one measurement".

During the "Entry to the Legal Profession" project, Boon, Duff & Shiner surveyed several law undergraduate students through their education, traineeship and post-qualification employment in law firms, chambers and those members not in

practice (the “**Entry Survey**”).⁸⁸ The surveys noted that segmentation on grounds of ethnicity and class began immediately in the early stages of training and qualification. They considered academic and work-related factors, including the type of firm or organisation and geographical location, salary differentials for trainees from ethnic minorities, the disabled and those who attended a new university to study their first degree or the legal practitioners course, to observe that these groups did not receive significantly higher salary increases in comparison with their white and non-disabled colleagues. They concluded that an individual’s earnings once qualified were strongly associated with his salary at the start of his training contract and this reflected both continuity between training and employment in the same firm and the general lack of movement between sectors and types of firms.⁸⁹

More recently, the Law Society’s procurement protocol requires signatory law firms to demonstrate their commitment to promoting equality by adopting practical measures in their role as suppliers of legal services. It requires clients (as partners to the protocol) to engage with such suppliers (law firms) who take active steps to follow good practice in recruiting, developing and managing staff that help to widen opportunities for minority and other under-represented groups.⁹⁰ There is no

similar requirement imposed by the Bar Council of India on Indian law firms.

The Law Society emphasises fair and transparent recruitment processes (both those used internally by the firm and those that are outsourced to recruitment agencies) which use inclusive language, supported by a formal and transparent process on promotion and progression within the firm as essential to the success of the firm.

According to FT 2016 Survey, top Irish law firm, A&L Goodbody has undergone a three-pronged engagement exercise to set out its brand identity among graduate recruits, employees and clients.⁹¹ Pinsent Masons LLP’s graduate recruitment brochure advertises the firm’s commitment to fair recruitment policies and diversity and inclusion. The firm’s multi-cultural network group works to raise ‘career aspirations’ among young adults, particularly from black and Asian communities by interacting with them, visiting partner schools, offering practical help with their CVs and college applications.⁹²

In India, despite several waves of reforms of the legal education system, barriers to entry into the legal profession continue to exist for talented individuals due to their socio-economic, ethnic or religious backgrounds. Lack of fairness and transparency in salary and promotion practices in law firms perpetuate the existing lack of diversity. This handbook endeavours to highlight instances of inclusive practices adopted by law firms in other jurisdictions to inform and guide Indian law firms serious about fostering an equal opportunity workplace.

⁸⁸ Ibid.

⁸⁹ Ibid. Particularly they note that there was a difference in treatment of women lawyers. During training, and on initial employment as a solicitor, there was no significant difference in the rate at which salaries increased between male and female lawyers. However, from the beginning of their training contract to the point at which they were 18 months to three years into their post-qualification careers, male solicitors’ earnings increased by an average of £17,850 to a salary of £31,000 and female solicitor’s earnings from £16,000 to a salary of £29,000 (*These amounts may have increased substantially now*).

⁹⁰ Law Society of England & Wales, ‘Statement of commitment to the Procurement Protocol’, <<https://www.lawsociety.org.uk/support-services/practice-management/diversity-inclusion/procurement-protocol/statement-of-commitment-to-procurement-protocol/>> accessed 27 December, 2016.

⁹¹ FT Survey, supra n. 38 at 10, 11; <http://www.algoodbody.com/Culture_and_Values> accessed 20 February, 2017.

⁹² ‘Our Commitment to Diversity’ <<https://graduate.pinsentmasons.com/our-culture/our-commitment-to-diversity/>> accessed 26 August 2017.

D. Employee pay structure:

Discrimination in pay practices between male and female employees goes against the principle of equal pay for work of equal value.

There is broad recognition among Indian law firms that it is “very important” that the gender pay gap in the legal profession is reduced. The Salary Surveys revealed that “while job mobility of lawyers has continued increasing, most lawyers have very little idea how much they could earn elsewhere. Many law firms have reasons to prefer keeping it that way.⁹³ The sample data did not clearly back the existence of overt gender discrimination, but recognised based on their survey response rates, that gender imbalance in the legal profession as a whole got more pronounced with seniority. It is instructive to note that the Salary Survey lacked sufficient data on senior lawyer salaries to detect discernible differences in salaries earned between men and women in top-tier corporate law firms in India.⁹⁴

A majority of the participants in the CPP Survey however do not see a gender pay gap in their firms. One respondent believes that the gender [pay] gap may be due to the “societal framework rather than due to the personal choice of the law firms”. Many respondents categorically mentioned that fee earning (including bonus payments) are based on performance only. A prominent large law firm noted that its female partners earn equal or more than their male counterparts due to this. A recently formed small size law firm aims to create a remuneration and performance evaluation policy soon. Two respondents to the CPP Survey pointed out that with some independent litigation practitioners and also “advocates of certain mindsets”, there is bias against women advocates, which is then reflected in their ability to grow in the profession.

⁹³ Kian Ganz, *supra* n. 2.

⁹⁴ *Ibid.*

Realising that employers are losing out on women’s academic achievements, experience, and talents, the UK government’s Equalities Office undertook a massive public consultation to seek views on the transparency proposals and broader questions about girls’ aspirations, women returning to work and older working women.⁹⁵ This led to implementing the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 in the UK (“**Gender Pay Regulations**”).

The Gender Pay Regulations require private and voluntary sector employers with 250 or more employees to publish gender pay information by April 5, 2018 and annually thereafter. This covers “relevant employees”, i.e. persons who ordinarily work in Great Britain and whose contract of employment is governed by UK legislation.⁹⁶ The employer is obliged to publish, annually, on its website, the difference between average hourly rate and bonus pay⁹⁷ paid to male and female employees, proportions of male and female employees who receive bonuses and relative proportions of male and female employees in each quartile pay band.⁹⁸ Failure to comply with these requirements will constitute an ‘unlawful act’ within the meaning of section 34 of the Equality Act 2006 (of UK), which empowers the Equality and Human Rights

⁹⁵ Government Equalities Office of the United Kingdom, ‘Closing the Gender Pay Gap’, Government Response (Government Equalities Office, February 2016) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/500087/Government_response_-_Closing_the_Gender_Pay_Gap.pdf> accessed 18 January, 2017.

⁹⁶ “Employment” is defined under section 83 of the Equality Act, 2010 (of the UK) to include employment under a contract of employment or apprenticeship or any other contract to personally do the work.

⁹⁷ The Gender Pay Regulations define “bonus pay” to include “money, vouchers, securities, securities options or interests in securities, profit sharing, productivity, performance, incentive or commission pay” and “ordinary pay” to include “basic pay, allowances, pay for piecework, pay for holiday, maternity, paternity, adoption, parental and shared parental leave, sick leave, special leave and shift premium pay”.

⁹⁸ The Equality Act 2010 (Gender Pay Gap Information) Regulations, 2017, regulations 8-13.

Commission to take enforcement action against the employer.⁹⁹

As mentioned above, salary and bonus-related decisions in Indian law firms are not transparent, and lawyers may even be contractually bound not to discuss their pay with their colleagues. Indian law firms are not required to provide details relating to associate pay to any regulator. While many associates do not perceive a gender pay differentiation in their own law firms, the factual basis of this perception can only be determined if comparative data on payments made by Indian law firms to their female and male lawyers is made available, similar to the practice under the Gender Pay Regulations of the UK.

E. Anti-Harassment and Discrimination:

An employer is obliged to provide a safe working environment. In the UK, harassment is defined as “unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual”. Harassment could be “related to a relevant protected characteristic, sexual harassment or less favourable treatment of a service user because they submit to or reject sexual harassment related to sex or gender reassignment”.¹⁰⁰

In India, the anti-sexual harassment law¹⁰¹ requires mandatory implementation of anti-sexual harassment policy in the workplace. Among other things, it obliges the employer to set up an ‘internal complaints committee’ at each office or branch of the organization employing at least

ten employees. However, recent data shows that 70% of working women (not limited to law) do not report workplace sexual harassment in India.¹⁰²

In relation to law firms, while some of the law firms which participated in the CPP Survey have a specific anti-sexual harassment policy in place, the smaller law firms do not yet have a clearly defined policy and some are in the process of drafting and implementing their policies. Irrespective of the size of the firm, monitoring compliance with the policy (where it exists) or with the legal requirement (where no written policy) is usually done through partners or management-level committees and the human resources staff of the firm.

The Equality Act 2010 (UK) imposes a duty on law firms as a service provider and an employer to ensure equality in employment and to prohibit discrimination, harassment and victimisation of employees and others on grounds of age, disability, gender reassignment, marriage/civil partnership, pregnancy and maternity, race, religion or belief and sex and sexual orientation, each of which is a “protected characteristic” under the Act.¹⁰³

Although protective equality legislation has been enacted, this has not been effective in reducing discrimination of lawyers. According to the annual statistics published by the Ministry of Justice on Employment Tribunals of the UK during 2012, sexual discrimination at workplace continues to be the most frequent type of discrimination claim lodged against employers.¹⁰⁴ The Entry

⁹⁹ Explanatory note to the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 <<http://www.legislation.gov.uk/ukdsi/2017/9780111152010>> accessed 18 January, 2017.

¹⁰⁰ The Equality Act, 2010, s. 26.

¹⁰¹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act and Rules, 2013.

¹⁰² Manisha Chachra, ‘70% working women do not report workplace harassment in India’ (Business Standard, 4 March, 2017) <http://www.business-standard.com/article/current-affairs/70-working-women-do-not-report-workplace-sexual-harassment-in-india-117030400227_1.html> accessed 8 March, 2017.

¹⁰³ The Equality Act, 2010, s. 4.

¹⁰⁴ Ministry of Justice, ‘Employment Tribunals and EAT Statistics 2011-12’, (Ministry of Justice, 20 September, 2012) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/218497/employment-trib-stats-april-march-2011-12.pdf> accessed 12 January, 2017.

Survey noted that the most common experiences of discrimination were colleagues acting in a difficult or hostile way, followed by the perception that they were employed on less favourable terms than others. Most frequently discrimination was attributed to a senior colleague at work but clients were responsible for 15% of the discrimination reported. Although most respondents experienced discrimination intermittently, 38% of the survey participants believed that discrimination was endemic in their organisation or firm.¹⁰⁵

In terms of the general mistreatment of lawyers, the key concern on harassment faced by lawyers is being unduly pressurised into working long hours in most cases, by a senior colleague at work, or to do certain kinds of work or tasks or being given difficult tasks with inadequate supervision. While ignoring the issue was the most popular option sought by respondents to the Entry Survey, certain respondents subject to harassment reported discussing with their perpetrator or seeking informal support like reporting to a member of staff of the law firm. The survey noted that incidents of bullying declined with the passage of time post-qualification.¹⁰⁶

There is a similar culture seen in some Indian law firms, exacerbated by the lack of accountability of senior partners, top-down structure and modelling of firms – being either family-based or kinship model or the personality-driven model. This can affect male and female associates alike¹⁰⁷ and may explain the consistently high levels of attrition seen in some top firms in the country.

¹⁰⁵ In the Entry Survey, 8% of respondents recorded adverse discrimination in work of which, 5% were men and 10% women. The most common reason given for the perceived discrimination was sex, followed by age, social class and background, ethnic origin, religion and sexual orientation.

¹⁰⁶ Boon et.al, supra n. 83 at 15, 16.

¹⁰⁷ 'Study reveals mobbing culture at law firms: How bosses cause tears and competition' (Legally India, 23 November, 2012) <<http://www.legallyindia.com/content/study-reveals-mobbing-culture-at-law-firms-how-bosses-cause-tears-a-competition-20121123-3262>> accessed 8 March, 2017.

F. Qualitative aspects of working environment:

Quality of working life is critical to attract and retain talented staff. Flexibility and freedom at work promotes creativity and innovation. According to a pioneering study on gender diversity in the Indian legal sector conducted on women lawyers in law firms, working in-house and litigators (the "**Gender Diversity Study**"), particularly for women employees, "inflexibility at the workplace could compel talented women to opt-out or slow down and could perpetrate the gender stereotype that women are primarily responsible for childcare."¹⁰⁸ The Gender Diversity Study highlights that for the majority, a healthy working environment and not the reputation of the employer is the key determinant in their decision to work for particular employer.¹⁰⁹ According to the Entry Survey, the culture of the firm is crucial to combining motherhood and work successfully and to the prospect of combining legal practice and a family for women solicitors. The respondents to their survey who were in firms where partners had children tended to feel better about being a working parent.¹¹⁰

A survey conducted by Vahura, the Indian legal talent management company, mentions

¹⁰⁸ Sonal Makhija, Swagata Raha, 'Gender Diversity in the Indian Legal Sector', (Rainmaker, 2012) <<https://www.scribd.com/document/102128508/Challenges-Faced-by-Indian-Women-Legal-Professionals-Full-Report>> accessed 6 January, 2017.

¹⁰⁹ Entry Survey, supra n. 105. In contrast with this view which is the prevailing thinking on this subject, in the Entry Survey, mothers interviewed by the authors indicated higher levels of satisfaction with their ability to balance work and family commitments compared with fathers. Also, assuming that children are the typical family commitment, it may be that firms are more tolerant of the needs of mothers than fathers or that mothers have joined, or stayed with firms sympathetic to their parenting needs. They also suggest that many women find greater acceptance and appreciation in their work roles than their domestic roles; See also, K.E. Hull, 'The Paradox of the Contented Female Lawyer' (2000) 33 Law and Society Review 687 <<https://www.jstor.org/stable/pdf/3115108.pdf>> accessed 11 January, 2017.

¹¹⁰ Boon et.al, supra n. 83 at 11.

that Indian law firms are now taking measures to retain women lawyers, especially those requiring flexible work options, for instance, after maternity leave.¹¹¹

A similar trend has been observed in the CPP Survey with a majority of Indian law practices surveyed (~55%) affirming that a flexible working policy is “important” to their practice. Many of the law firms surveyed perceive that such policies are determinant on the demands of the client, not of fee earners. A participant mentioned that it was “important to articulate the conditions to avail [flexible working] benefits”. A small size firm leads the pack by formalising its leave policy. A majority of the survey participants do not have a written policy on flexible working and the degree of flexibility provided varies across firms. Mostly, associates can work remotely provided timelines are met. Individual discretion is advised to be exercised depending on client demands. Compliance with this requirement is monitored by the administrative and human resources staff in some firms. A small sized law firm believes that a flexible work policy must contain “the ability to allow the attorneys to provide their best without the restrictions of a formal work environment”. The Law Society’s flexible working protocol presents a clear business case for flexible working, guidelines, checklists, case studies and practical tools to help law practices embed flexible working in the workplace¹¹². It recognises the English law requirement of flexible working hours, shared parental leave

and prevention of indirect discrimination which affects those with caring responsibilities.¹¹³

Several international law firms have recognised the critical importance of this and have successfully implemented several flexible working practices. Chicago-based Faegre Baker Daniels LLP offers “full-flex” routines to enable attorneys to work full time and adjust or reduce their hours when needed; sabbaticals and on and off-ramping are the other options provided to the attorneys.¹¹⁴ Arnold & Porter offers up to eighteen fully paid weeks of birth or adoption leave (plus \$10,000 in adoption aid) and subsidized childcare facilities.¹¹⁵ Herbert Smith Freehills LLP and Slaughter and May LLP have set up flexible working arrangements for partners and fee earners in their London offices.¹¹⁶ Linklaters LLP has sabbaticals after three and six years of service.¹¹⁷ A shared parental leave policy in Arthur Cox & Co allows fathers to take a portion of 26 weeks of maternity leave where mothers return to work within this period.¹¹⁸

DLA Piper LLP’s revamped human resources policies proved very successful. It adopted various measures like abandoning the traditional breakdown of time recorded by associates into ‘billable’ and ‘non-billable’ and instead listed time spent as ‘client time’ or ‘firm time’, and this way, making time spent on training lawyers is seen as an investment in the firm, and so acceptable. Performance

¹¹¹ Kunal Doley, ‘In India Inc too, women lawyers setting new bar’, (Financial Express, 6 March, 2016) <<http://www.financialexpress.com/india-news/in-india-inc-too-women-lawyers-setting-new-bar/220027/>> accessed 3 January, 2017. The article quotes a Vahura study suggesting that there is a steady rise in women lawyers’ listing in India from 12.5% in 2010 to 17.34% in 2015, as per Chambers & Partners ranking.

¹¹² Law Society of England & Wales, ‘Practice Note on Flexible Working’, (Law Society of England & Wales, August 14, 2015) <<http://www.lawsociety.org.uk/support-services/advice/practice-notes/flexible-working/>> accessed 16 January, 2017.

¹¹³ Children and Families Act, 2014 (of the UK) provides all employees with at least 26 weeks’ continuous service, the right to request flexible working, in terms of change to working hours, time or location, and parents to be able to share 50 out of 52 weeks of statutory maternity leave and 37 out of 39 weeks of statutory maternity pay.

¹¹⁴ Working Mother, supra n. 79; “Off-ramping” refers to the practice of re-entering the workforce after taking a career break usually to care for the family.

¹¹⁵ Ibid.

¹¹⁶ Natasha Burnel, ‘HSF and Slaughters expand flexible working schemes for London-based fee earners’, (The Lawyer, 23 March, 2015) <<https://www.thelawyer.com/issues/online-march-2015/hsf-and-slaughters-expand-flexible-working-schemes-for-london-based-fee-earners/>> accessed 16 January, 2017.

¹¹⁷ FT Survey, supra n. 38 at 23 accessed 21 February, 2017.

¹¹⁸ Ibid.

management targets were evaluated based on both client and firm time. It also initiated a holiday scheme, where its employees were given an extra two weeks' holiday for every three years they stayed with the firm.¹¹⁹

Swedish law firm Synch Advokat AB has moved away from partnership structure and hourly billing targets and made customer satisfaction its key performance indicator for all staff.¹²⁰ Similarly, English law firm, asb law LLP, reorganised its legal practice into sales and delivery teams with a bonus system measured on the basis of client satisfaction and not fees and billable hours.¹²¹

Similar to their initiatives in promoting diversity mentioned at 'A' above, legal departments of corporations promote balanced working policies in outside law firms they employ. Whelan and Ziv quote the example of Walmart Inc's "Outside Counsel Procedures" of 2010, which enable attorneys to work a flexible or reduced hours schedule, work from home or job share.¹²² Walmart picks its relationship partners from the

outside law firms they engage, being a total of five partners, of which, "one attorney of colo[u]r, one female attorney and one attorney who works on a flexible work schedule, provided the firm has one such attorney"¹²³. It provides that the relevant law firm must give its relationship partners, "origination credit" for all Walmart work coming into the firm. The CFO or managing partner of the law firm should then certify that such relationship partner has indeed received the origination credit, through what is termed the "origination credit certification" requirement. It recognises that this requirement increases the likelihood of it being recognised by the firm as an important client and that its relationship partner receiving credit should reflect that.¹²⁴ Whelan and Ziv quote a report¹²⁵ which estimates that in many firms, the proportion of origination credit allocated to the relevant relationship partner ranges from 20-25%, with some firms being up to 33%.

An important aspect of the quality of working life is management of work-related stress. The Law Society of the UK reports that in 2014, 96% of solicitors said they experienced negative stress, with 19% at 'severe' or 'extreme' levels. Workload and client expectations were identified as the most common causes of stress.¹²⁶ Providing

¹¹⁹ Quentin Reade, 'Law firm's revamped HR policies save GBP 2 m', (Personnel Today, 2002) 7, accessed 13 December, 2016.

¹²⁰ FT Survey, supra n. 38 at 11.

¹²¹ FT Survey, supra n. 38 at 18; <<http://www.asb-law.com/our-approach/management-structure>>, accessed February 20, 2017.

¹²² Walmart's then general counsel, Jeff Gearhart, makes the argument for flex working by stating that "...first, attrition rates in large law firms, even in good economic times, are upwards of 20% – more than double those in most industries. The loss of a talented associate or partner due to the absence of balanced work arrangements results in lost institutional knowledge from both a firm and client perspective. This is not only disruptive to the continuity of work, it is also expensive – both to the law firm losing the attorneys and to the clients to whom the firm passes on those costs. Moreover, the absence of flex-time arrangements have been shown to have seriously detrimental effect on the careers of women and minorities. In fact, minority female lawyers have the highest attrition rate of any group of lawyers and we are beginning to understand that a lack of work/life balance may play a major role for many of these attorneys" Jeff Gearhart, 'General Counsel's Message', (November 2009) 1 Walmart Legal News 1, quoted in Whelan & Ziv, supra n. 63 at 15, 16.

¹²³ Whelan & Ziv, supra n. 63 at 17, 18.

¹²⁴ Whelan & Ziv mention the California Minority Counsel Program of 2011 where, according to Walmart, its efforts have "translated to a shift of millions of dollars in legal business that was previously in the hands of white male partners to deserving women and minority partners" and that "Walmart was able to shift over \$60 million of outside counsel funds spent annually to the control of women and minority relationship partners in 2006 simply by taking over the process of selecting those relationship partners."

¹²⁵ Law Society of England & Wales, 'Solicitors Health and well-being: the Law Society's PC Holder Survey 2014' <<http://www.lawsociety.org.uk/support-services/research-trends/health-and-wellbeing-report-2014/>> accessed 8 March, 2017.

¹²⁶ Joan C. Williams & Veta T. Richardson, 'New Millennium, Same Glass Ceiling? The Impact of Law Firm Compensation Systems on Women' 33 (2010) (citing Joel A. Rose, 'Hallmarks of a Well Conceived Partner Compensation System', IOMA's Report on Compensation

pastoral care, in the form of employee assistance schemes or telephone helplines are reported to be some of the common methods of stress management adopted. The Law Society itself operates a pastoral care helpline to assist solicitors, their family and other law firm staff through difficult times in their work and personal lives.

Though no equivalent study of law firms in India is reported, it is generally perceived that the situation is similar. Given the direct impact of stress on staff health and corresponding increase of absenteeism and loss of productivity, this should be an important focus area for Indian law firms. Acknowledgment of work-related stress is the first step towards addressing the problem. Adopting similar measures as those being practised in the UK may lead to reduction in stress levels of lawyers working in Indian law firms and improve overall employee satisfaction.

G. Staff Development and Training:

Employees believe that professional learning and development termed “Continuing Professional Development (“CPD”) is essential for their job satisfaction and career advancement. CPD is not just about training programmes for meeting personal development goals of individual lawyers, but is an organisational attempt to improve and sharpen “human assets” of the enterprise, i.e. to retain talent in the firm.¹²⁷ As an internal talent development tool, it is key to the firm’s succession planning strategy. The content of CPD training varies across jurisdictions, mainly focussing on ethics, professionalism and practice management. Enforcement of compliance with this requirement also differs. For instance, while

Canada has mandatory CPD hours which lawyers are required to satisfy, the SRA requires solicitors and firms to sign an annual declaration pledging their commitment to CPD instead of the earlier 16-hour mandatory requirement.¹²⁸

In the CPP Survey, one large sized national law firm described its initiatives as comprising “continuous legal education programme and a learning and development team that delivers/manages the delivery of workshops and development programmes through the year. Competencies (as set out in [their] performance management system) that are identified as requiring development by a practice group are noted in the [firm’s] annual business plan and the annual learning and development programme is then developed accordingly”. Another large Indian law firm surveyed stressed on the importance of staff development for the firm. It organises seminars and modules on continuous legal education offered by partners and senior members of the firm. Its dedicated knowledge management team tracks and shares within the firm, the latest developments in the legal and regulatory areas.

This structure may not be most effective, since outcomes of measurements like attendance at conferences, participation in accredited courses, completing scheduled number of study hours for specific subjects etc. are not systematically measurable. Also, such efforts only evaluate development of technical/legal professional skills of the lawyers. The CPD initiatives at larger law firms may become a “tick-the-box” exercise for both the firms and the lawyers. To avoid this, it would be best to use bespoke, tailored programmes aimed at lawyers’ specific needs, to be provided to all lawyers of the firm, including partners.

Smaller or niche law practices show deeper understanding of staff development policies.

& Benefits For Law Offices 5 (2009)), quoted in Whelan & Ziv, *supra* n. 63 at 17.

¹²⁷ R. Donkin, ‘Heated debate over measurement and meaning: Whatever the arguments, professional practices are beginning to see good CPD as a recruitment and retention too’, (Financial Times, November 24, 2003) accessed 14 January, 2017.

¹²⁸ Kathleen Hall, ‘Annual Declaration replaces CPD hours’, (The Law Society Gazette, May 21, 2014) < <https://www.lawgazette.co.uk/law/annual-declaration-replaces-cpd-hours/5041355.article> > accessed 14 January, 2017.

One participant of the CPP Survey agreed and understood the importance of “investing in the long-term interests of all staff (including non-fee earners) as the only way to encourage retention and productivity.” Similar view was expressed by a law firm, which set out the following as necessary components of staff development policy: “training geared towards career development goals, ability to move practice areas or locations, periodic review and feedback and opportunities to take part in/give feedback on firm decisions”. Another added that “the policy should cover an all-round academic growth along with handling issues that may not be typical to the normal area of practice. There is an increasing inclination towards work life balance and extra-curricular activities. Employee happiness is very important in the firm.”

International law firms like Hogan Lovells International LLP have realised the value of innovation in human resources. FT 2016 Survey mentions the new leadership training model developed by the firm with the Said Business School, Oxford, designed to change mindsets and behaviour. The experiential programme includes modules on neuroscience and mindfulness, theatre and archetypes. The firm has also sought to introduce a “thinking environment” approach, developed by coach Nancy Kline, to support emerging leaders and encourage all staff. Graduates of the programme are asked to nurture new entrants. The firm is already seeing results - with better collaboration across offices and practice areas and ultimately a better experience for its clients.¹²⁹ Similarly, Bird & Bird LLP trained its personal assistants team to take up client relationship management roles.¹³⁰ Latham and Watkins LLP, the international law firm, which has developed a sophisticated training programme for its lawyers tailored to their various stages of development. This delivers more than enough qualifying credits for compliance with the mandatory continuing

¹²⁹ FT Survey, supra n. 38 at 23.

¹³⁰ Ibid.

legal education requirements in the various jurisdictions where it operates.¹³¹

The Futures Report of the Canadian Bar Association states that continuing professional development should be designed to meet lawyers’ needs through the stages of their careers and reflect identified and emerging client needs. It recommends that “legal regulators should adopt consistent outcome-based national standards for CPD. Research should be undertaken to measure any link between quantity or input-based CPD and competence.”¹³² It emphasises particular responsibility for law societies to develop resources to assist “smaller legal practices to get effective CPD plans in place” and “to encourage growth of service providers who can provide CPD easily and cost effectively”.¹³³

Academic discussions around the role that the Bar Council of India should play towards professional development of Indian lawyers are underway. Under the Legal Services Act, 2007¹³⁴ the National Legal Services Authority is required to develop programmes for clinical legal education and promote guidance and supervise the establishment and working of legal services clinics in universities, law colleges and other institutions, in consultation with the Bar Council of India.

Professor N.R. Madhava Menon, in a recent speech, emphasised that the Bar Council of India, as the statutory body having control over the law profession, should be responsible to ensure that lawyers have the minimum professional competence before they exercise the right to practice. It should permit lawyers to specialise and accredit them accordingly after proper training. For this,

¹³¹ Canadian Bar Association, ‘Futures: Transforming the Delivery of Legal Services in Canada, (Canadian Bar Association, August 2014), 63 <http://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf> accessed 14 January, 2017.

¹³² Ibid. at 63.

¹³³ Ibid.

¹³⁴ Legal Services Act, 2007 (of India), s. 4.

he suggests that state bar councils should set up continuing legal education centres by themselves or in association with law universities and leading law colleges and train the trainers to manage them on modern lines. He believes that unless continuing education programmes give lawyers the value addition required for specialised work in their respective areas of practice, it will not get acceptability and credibility. He mentions that trainers must have both theoretical and practical experience in the law as well as special training in designing and conducting advanced courses on continuing education.¹³⁵ He quotes the example of the Kerala State Bar Council which has established an academy for continuing legal education at Kochi with financial support from the MKN Trust and technical support from the IBA-CLE Centre of the National Law School of India University, Bangalore¹³⁶ and regularly holds residential training workshops for advocates and law teachers in different areas of legal practice. His goal is for similar continuing legal education institutes to be established under every state bar council.¹³⁷

In terms of the future, the Law Society believes that by 2020, it will have significantly altered the legal landscape of the UK by upholding professional values, ethics, standards and legal integrity, increasing the CPD offering and providing relevant and quality training, adopt a horizon scanning role to advise solicitors about developments and help them prepare for and embark on change in the market, and most importantly, offer public

education to build confidence among both consumers and providers and become the go-to point for consumers looking for help with legal issues.¹³⁸

Similar to these, some initiatives have been started in India by the Bar Council of India. The proposed Legal Practitioners Act has, as one of its core regulatory objects, encouraging an independent, strong, diverse and effective legal profession with ethical obligations and with a strong sense of duty towards the courts and tribunals where they appear.¹³⁹ A legal services board to be established under this legislation is tasked with the responsibility to work with the Bar Council of India to maintain and develop standards for the education and training of legal professionals. The proposed law will require ombudsmen to be appointed to deal with complaints against lawyers in relation to their professional conduct.

2.2. SUSTAINABILITY

- Sustainability occupies an increasingly central role in the business world, and law firms are no exception. It is vital that Indian firms are attuned to the latest developments worldwide, and ensure that their practices are in line with innovative firms across the globe.
- Important to this section is the understanding of what sustainability means in a commercial context, and combining policies that benefit the community with long-term economic gains for the firm. This requires a culture-change in certain firms, and a holistic approach when dealing with society, the environment and economic progress.

¹³⁵ Prachi Shrivastava, 'Prof Madhav Menon asks to split law courses, law unis to step up & more in DSNLU foundation day speech' (Legally India, 4 October, 2016) <<http://www.legallyindia.com/lawschools/prof-madhav-menon-asks-to-split-law-courses-law-unis-to-step-up-more-in-dsnlu-foundation-day-speech-20161004-8017>> accessed 16 February, 2017.

¹³⁶ Aditya A.K., 'Will Continuing Legal Education strengthen the legal profession in India?' (Bar & Bench, 20 January, 2016) <<http://barandbench.com/continuing-legal-education-strengthen-legal-profession/>> accessed 16 February 2017; See course curriculum at <<https://www.nls.ac.in/resources/year2016/ibacle2016.pdf>> accessed 16 February 2017.

¹³⁷ Prachi Shrivastava, *supra* n. 135.

¹³⁸ Law Society of England & Wales, *supra* n. 29.

¹³⁹ The Legal Practitioners (Regulation and Maintenance of Standards in Profession Protecting the Interest of Clients and Promoting the Rule of Law) Bill, 2010, ss. 3, 13.

- Energy conservation and waste management are key areas within the sustainability framework. It is important that Indian firms continue to develop their policies fully in this regard as ultimately these will relate them to cost reductions for the firm over time.
- It is critical that law firms try to impact upon sustainability policies outside their own operations. They will often have many business partnerships and supply contracts, and choosing progressive business partners is an excellent way to influence the wider business environment in which the law firm operates.

SCOPE

The aim of this sub-chapter is to focus on the sustainability side of a law firm's corporate social responsibility. The notion of 'sustainability', particularly in the context of a law firm, may at first seem like the kind of generic buzzword applied to a nebulous concept in an attempt by the firm to enhance public relations, while doing little in reality. This sub-chapter, with its four sections and subsequent recommendations in chapter 4, will seek to shed some light on the realities of sustainability, how it can be achieved in a corporate context, and how it will ultimately benefit Indian law firms.

It is useful in the introduction to give some sense of the competing notions of sustainability, in order to frame the entire discussion. The literature concerning this topic often overlaps with that specifically connected to global warming, carbon footprints and emissions, and these issues often become conflated with the idea of sustainability as a whole. These elements, of course, are encapsulated within the wider notion of sustainability, but they do not tell the full story. Sustainability in a corporate context is actually a far more

holistic approach than a mere attempt to introduce a compost heap in the front yard. According to Network for Business Sustainability, a sustainable business manages 'the triple bottom line – a process by which firms manage their financial, social, and environmental risks, obligations and opportunities'.¹⁴⁰ It is this marriage of business and societal goals to create a long-lasting and beneficial existence that goes right to the heart of 'sustainability' in a corporate context.

In terms of analysing how firms actually measure and control sustainability, there does not seem to be a uniform approach. This is made easier if the governing legal body actually establishes a framework for economic sustainability. For example, the American Bar Association has published a detailed outline of a model sustainability framework,¹⁴¹ and reports on industry leaders. In contrast, the Bar Council of India and the Indian National Bar Association does not have an equivalent publication. Recent evidence suggests it is beginning to introduce talks and seminars on the topic,¹⁴² but the general lack of coherence has made data more difficult to obtain for this sub-chapter.

The following sections of this sub-chapter relate to practical areas in which law firms might enhance their sustainability practices. The first section deals specifically with economic sustainability, discussing the key underpinnings and outlining how sustainability can ultimately benefit firms financially, as well as in a reputational

¹⁴⁰ Network for Business Sustainability <<http://nbs.net/about/what-is-business-sustainability/>> accessed 6 March, 2017.

¹⁴¹ American Bar Association, 'Law Firm Sustainability Framework', ABA SEER Sustainability Framework for Law Organisations Revision 17 (ABA, 2 December, 2010) <http://www.americanbar.org/groups/environment_energy_resources/public_service/model_law.html> accessed 22 February, 2017.

¹⁴² Conventus Law, 'Indian National Bar Association (INBA) celebrates 67th Constitution Day (9 December 2016)' <<http://www.conventuslaw.com/report/indian-national-bar-association-inba-celebrates>> accessed 22 February, 2017.

sense, over time. The second section deals with energy conservation and usage within firms, and discusses how costs can be cut while at the same time improving the local environment. The third section examines recycling, with particular focus on paper requirements, which remains integral to modern law firms in terms of public relations and reducing unnecessary office expenditure. The fourth section deals with the role of the law firm in the wider drive towards sustainability. This involves recognizing the futility of firms operating in isolation, and the necessity of influencing suppliers and partners with regard to their sustainability practices.

In the final section at Chapter 4, the handbook will conclude with a set of suggestions derived from the analysis in the first four sections. This will provide suggestions in terms of implementing sustainability regimes in Indian law firms, acknowledging that many of the most dynamic sustainability initiatives are currently found outside of the Indian market in a way that provides a roadmap for the future.

A. Economic Sustainability:

This section deals with the extent to which economic sustainability is emphasized within the firm. It will look at the foundations of what constitutes economic sustainability within a firm, and how the theoretical concepts manifest themselves in a corporate environment. It will then focus on how existing firms, particularly in the UK and the United States, have made sustainability a central feature of their operations.

Initially, it is vital to define economic sustainability to frame the subsequent discussion. Deborah Doane and Alex MacGillivray have defined it as ‘how companies stay in business’.¹⁴³ This simple definition is somewhat misleading, in the sense

¹⁴³ Deborah Doane and Alex MacGillivray, ‘The Economics of Staying in Business’ (New Economics Foundation, 2001) <<http://isites.harvard.edu/fs/docs/icb.topic140232.files/>

that economic sustainability is a concept that is intricately linked with not only internal business issues but also how the business contributes to social and environmental stability. It has been noted that no business operates within a vacuum, and emphasis has been placed upon the key role that a long-term and coherent business operation can play in benefitting all its stakeholders.¹⁴⁴ This is particularly the case as awareness of, and attention to, the externalities of business operations increases and the optics of ignoring these aspects of a business can be seriously detrimental to a firm’s survival prospects.

Economic sustainability typically involves a firm ensuring that it has a sensible approach across an array of business practices.¹⁴⁵ Firstly, a firm seeking to prolong its existence is required to ensure that prudent financial practices are employed by it. Increasingly, intangible assets must be safeguarded and managed in a sensible fashion. As social media and online communications continue to grow in prominence, branding and corporate reputation assumes greater importance than ever before. It will also involve the firm focusing on how it impacts the wider economy. In the case of law firms, this typically involves ancillary courier, transport and information technology business, but can include a wide variety of actors, both locally and further afield depending on the individual firm’s operations.¹⁴⁶ Finally, most firms will address the environmental and social impacts of their actions, which are increasingly inextricably linked to overall economic sustainability.¹⁴⁷ The key point here is that, while a firm’s environ-

RD_economic_sustain.pdf> accessed 17 December, 2016, 0.2.

¹⁴⁴ Ibid at 0.8.

¹⁴⁵ Thomas Dyllick and Katrin Muff, ‘Clarifying the meaning of Sustainable Business: Introducing a typology from business-as-usual to true business sustainability’ (2016) 2 *Organisation and Environment* 29.

¹⁴⁶ Aman Singh, ‘Why are Law Firms Stalling on Sustainability’ (Forbes, New York, 8 July 2010) <<https://www.forbes.com/sites/csr/2010/07/08/why-are-law-firms-stalling-on-sustainability/#2a475af2343c>>.

¹⁴⁷ Ibid.

mental and social policies have a greater impact upon its own business, it is likely to be some time before firms without real concern for externalities are unable to survive in the market. In this respect, the community or country in which a firm operates, and societal trends in those specific markets, will determine the emphasis placed on non-economic activities of the firm.

The CPP Survey reveals that law firms in India value, and increasingly understand, the nexus between sustainability and economic success. It is worth mentioning, however, that many respondents of the survey acknowledged the fact that this drive has been quite recent, without providing specific reasons for this, and have acknowledged that there is much room for improvement. Additionally, respondent firms attested to the fact that this nexus is often understood by managers but not always by the average employee. While no clear reason is given by the law firms for this occurrence, it is likely that management training and exposure incorporates wider economic principles in a way that basic training does not. This is certainly something which needs to be rectified if the entire firm is to move towards sustainability goals in a holistic manner.

The manner in which sustainability has played out in the UK offers an indication of a clear cultural challenge when trying to introduce long-term policies. Doane and MacGillivray have noted that prospective sustainability initiatives are highly contingent upon probable firm lifespans.¹⁴⁸ This detail is complicated further still by studies indicating that typical lifespans of firms differ not only depending on the nature of business undertaken, but also depending on the nationality of the firm. While law firms clearly have a healthier lease of life than firms within other industries, it is worth noting that sustainability initiatives usually take at least 10-15 years before any results become apparent.¹⁴⁹ Longevity of managerial

contracts will obviously determine to some extent the willingness of individuals to back sustainability policies that may be costlier in the short run. In the context of a law firm wherein managing partners are subject to short-term limits, there is a natural reluctance to prioritise sustainability.

In the same report, two manifestly different approaches to economic sustainability have been identified in the context of UK firms.¹⁵⁰ The first approach assumes that the impact the firm has on society significantly affects the firm's own economic sustainability. The benefits a successful firm might offer to a society are quite obvious, ranging from employment opportunities to taxation revenues. More difficult to discern is how a firm tangibly benefits from enhancing the community in a way that extends beyond enhanced public relations.

A report by Tuppen and Zadek has identified a number of ways in which an externality-focused business plan, taking into account the firm's impact on its wider environment, can contribute significantly to the firm's own economic sustainability.¹⁵¹ They argue that this kind of approach towards the surrounding community increases the likelihood of a continued supply of motivated and well-trained workers. An increase in local goodwill can often benefit the firm in terms of potential contracts and customers, as public concern for these issues becomes more prevalent. Clearly, this approach very much takes a long-term perspective, and is going to be more attractive to larger law firms with the ability to take the initial financial hit in the hope of these future benefits.

The second approach is the more traditional, short-term approach. It acknowledges that in highly pressurized corporate climates, such as the City of London, revenue streams, profits and returns on investment are the most pressing

¹⁴⁸ American Bar Association, *supra* n. 141 at 3.2.

¹⁴⁹ *Ibid.*

¹⁵⁰ *Ibid* at 3.3.

¹⁵¹ Chris Tuppen and Simon Zadek, 'Adding Values: The Economics of Sustainable Businesses, Occasional Paper' (2000, British Telecommunications, London).

concern for management structures. It is rare that they will look far beyond the present when implementing sustainability schemes. In essence, this approach acknowledges that with the highly pressurized churn of companies, and their short lifespans, there is often little room to take an economic sustainability approach that is likely to jeopardise the firm's financial position in the short run.¹⁵² This might be addressed with incentivised schemes, such as those that tie retired partner pension schemes to the ongoing performance of the firm.

Generally speaking, consensus exists over the notion that a firm's previous financial accounts have their limitations in terms of predicting ongoing economic sustainability. The United Nations Global Compact, the Global Sullivan Principles, the Global Reporting Initiative and the Balanced Score Card espouse the modern, more circum-spect approach, in different forms. They seek to look at a firm's economic strength in ways that extend beyond accounts-based data.

Taking the Global Reporting Initiative measures as an example, what becomes clear is the far wider focus required by firms seeking to predict and indicate to investors and stakeholders that their economic sustainability prospects are solid. In addition to the traditional financial yardsticks, it takes into account labour productivity levels and changes, performance of suppliers, economic impacts of the firm's goods and services, philanthropy and charitable donations within the community and taxation contributions.¹⁵³

The UN Global Compact has ten core principles, ranging over areas such as labour, human rights, the environment and corruption.¹⁵⁴ The idea is that, when followed, they benefit both

wider society and the firm's long-term economic prospects. The concepts used in measuring and managing sustainability are far more abstract and varied than simple financial accounting, but they are testament to the varied and more abstract concept of economic sustainability when compared with simply financial performance. One type of approach to spreading awareness involves speaking events and seminars, and this is starting to establish a foothold in the Indian law firm market. This bodes well, but it must become more widespread.¹⁵⁵ As Indian firms look to do this, they will also need to take into account the duration of management tenures, as this will directly impact the impetus for managing partners to implement long-term economic policies.

B. Energy Conservation:

This section deals with the extent to which energy conservation policies are becoming essential for law firms as they seek sustainability. It will discuss the theory behind prudent energy policies, and their role in prolonging the lifespan of law firms. It will then analyse practical ways in which energy conservation is currently being managed by innovative firms around the world, indicating how sustainability can be enhanced within Indian law firms.

The Legal Marketing Association offers an excellent overview of the rationale behind an efficient energy policy for commercial firms.¹⁵⁶ Once again, in a similar vein to previous sections of this handbook, progressive energy policies can generate a wave of positive publicity for the firm, which may well benefit the firm economically in

¹⁵² American Bar Association, *supra* n. 141 at 3.2.

¹⁵³ GRI, Global Reporting Standards <<https://www.globalreporting.org/standards>> accessed 2 February, 2017.

¹⁵⁴ UN Global Compact <<https://www.unglobalcompact.org/what-is-gc/mission/principles>> accessed 6 March, 2017.

¹⁵⁵ League Consulting, 'Law Firm Management & Profitability Workshop', (Legally India, 28 February, 2011) <<http://www.legallyindia.com/sponsored-posts/law-firm-management-a-profitability-workshop-by-legal-league-consulting-on-12-march-sponsored-20110228-1850>> accessed 22 February, 2017.

¹⁵⁶ Legal Marketing Association, <<http://www.legalmarketing.org/awards>> accessed 10 January, 2017.

terms of clients and customers. Additionally, there is often a clear correlation between energy management and energy costs reduction. Firms can quickly bring down heating and lighting bills simply through ensuring less and more prudent use. Finally, it ties in with the ‘altruistic’ element of environmental sustainability. This notion concerns situations that may not be monetarily beneficial to the individual firm, but that are widely seen as the ‘right thing to do’ in a moral sense.¹⁵⁷ As such, energy conservation is a particularly appealing part of firm sustainability.

Before delving into the minutiae of energy policy, it is worthwhile examining what the results of the CPP Survey reveal about Indian law firms’ views of this area. Unanimity seemed to exist in terms of acknowledging the area’s overall importance to sustainability. There was, however, some divergence in terms of which aspects of energy conservation were vital. Almost all survey participant law firms seem to have in place a proactive system of turning off appliances and ensuring electricity bills are minimized. One firm actually attested to the fact that a specific partner is assigned this task at the end of each day. It must be noted, however, that this is a somewhat simplistic approach to the issue of energy conservation. Where the firms were somewhat lacking was in terms of employee transportation. Walk-to-work, cycle days and carpooling rarely seem to be encouraged, and employees appear to be given a largely unfettered ability to use whichever form of transport they please. No clear responses were given in terms of existing policies that measure firms’ economic footprints.

For a firm that operates, or at least seeks to operate, in a more energy efficient manner, there are a myriad of options available depending on number of factors such as the firm’s geographical location, the climate in which it exists or even the size of the firm itself. The key in terms of energy management is encouraging widespread

¹⁵⁷ American Bar Association, supra n. 141, at 3.5.

cooperation from all members of the firm, and challenging existing energy cultures and practices which may be deeply ingrained within the firm. By its own nature, this area of sustainability is extremely dynamic and in a constant state of flux. To ensure they maximize the social and economic benefits of sustainable energy policies, firms must be prepared to stay up to date with developing technological improvements in the sector.

In existing energy conservation practices, reducing energy consumption, switching to green power and the purchasing of carbon offsets for the energy used have all become central themes.¹⁵⁸ Focusing on each of these separately is a useful way of examining innovations from global law firms, highlighting effective practices that might be beneficial in an Indian context.

In terms of reducing the amount of energy used, a conscious effort to switch off appliances enables the firm to make a significant contribution. Law firms in different countries are beginning to employ highly imaginative techniques designed to encourage the shutting down of appliances unless they are being used. Indeed, Stoel Rives LLP and Farella Braun and Martel LLP have made reducing electricity usage a contest between different floors of the firm’s office building.¹⁵⁹ Other firms have ensured their landlords have adjusted the HVAC (Heating, Ventilation and Air Conditioning) settings for their offices in a bid to minimize usage.¹⁶⁰ A more obvious means of increasing energy efficiency involves firms making the switch to more energy efficient appliances. Switching from outdated lighting equipment to compact fluorescent lighting is an example of a simple way in which firms can reduce energy usage.

¹⁵⁸ Ibid.

¹⁵⁹ Rachael Loper and Robert Loper, ‘How Green is My Law Firm’ (November 2008) Legal Marketing Association <http://www.bdlaw.com/assets/htmldocuments/How_Green_is_My_Law_Firm.pdf> accessed 10 January, 2017 at 8.

¹⁶⁰ Ibid. at 7.

An increasingly popular energy reduction trend within firms also concerns utilizing developing technologies, particularly in the context of transport. A number of firms are actively engaged in schemes to reduce the number of face-to-face meetings required as part of their business operations, meetings that naturally involve travel to and from different locations.¹⁶¹ Videoconferencing has become a popular alternative, and with Skype, FaceTime and a variety of other convenient calling platforms, it is a readily accessible alternative for law firms. Perhaps a slightly bolder approach involves utilizing this technology to increase the capacity of employees to work from home where possible. Stoel Rives LLP is a firm that has particularly encouraged this, with the aim of reducing transport costs and saving office power. Other firms are offering incentives to employees to alter their mode of transport to and from the office.¹⁶² DLA Piper LLP provides subsidies to employees who purchase hybrid cars. Carpooling, company bus services and bike to work schemes are all hugely effective ways of reducing the energy requirements of daily transport to and from the firm.¹⁶³

With regard to using green power, existing data indicates that law firms in particular have been slow on the uptake.¹⁶⁴ A noted exception has been in the tentative steps taken by some firms to avail of solar panels for some of their energy needs. Cooley Goodward LLP has received particular praise in this respect. In the case of Cooley Goodward LLP, it is estimated that 10% of their energy requirements are met by solar panels on their roof.¹⁶⁵ It is not difficult to imagine that firms in India would have the opportunity to achieve similar feats, particularly with a climate far more conducive to producing solar energy.

A final development in the field of energy sustainability that is worth mentioning, in spite of the controversy surrounding it, is the idea of firms purchasing carbon offsets. The idea consists of firms offsetting their carbon emissions by purchasing certificates from companies seeking to fund green projects. It typically involves projects such as reforestation, and in theory, the purchasing of the certificate should directly provide a portion of the revenue required to make the project possible. These Renewable Energy Certificates (“RECs” as they are widely known) have been criticized in so far as they allow firms to portray themselves as being concerned for their environment, while at the same time persisting with their own destructive behaviour.¹⁶⁶ In spite of this, it continues to prove a popular choice for a number of law firms wishing to, at least ostensibly, contribute to the cause of energy sustainability. For example, Beveridge and Diamond PC and Stoel Rives LLP uses RECs to offset 60% of their electricity usage.¹⁶⁷ Arnold & Porter Kaye Scholer LLP and Holland & Knight LLP use RECs to offset the entirety of their business travel.¹⁶⁸

This seemingly anomalous trend, of firms continuing to engage in environmentally detrimental activities while simultaneously purchasing RECs, may be uncomfortable for some. Nevertheless, it has clear advantages that are highly relevant for Indian firms. The market in India for these certificates is growing in strength, and is something on which law firms might seek to capitalise.¹⁶⁹ Crucially, it enables firms to demonstrate a commitment to a positive cause, and to benefit their community, even if they may not be ready to radically alter their own operating practices. In this sense, it might serve as a gateway option

¹⁶¹ Ibid. at 9.

¹⁶² Ibid.

¹⁶³ Ibid at 11.

¹⁶⁴ Ibid at 11.

¹⁶⁵ Ibid.

¹⁶⁶ REC Solar Holdings AS <<http://www.recgroup.com/en>> accessed 25 January, 2017.

¹⁶⁷ Loper and Loper, *supra* n. 159 at 12.

¹⁶⁸ Ibid.

¹⁶⁹ Renewable Energy Certificate Registry of India <<https://www.recregistryindia.nic.in/index.php/general/publics/faqs>> accessed 6 March, 2017.

for firms seeking to enhance their sustainability credentials.

C. Waste Reduction and Recycling:

In tandem with energy sustainability is the wider commitment of firms to waste and recycling. Recycling has become, and will continue to be, a public issue of great concern. In this regard, the same public relations benefits will be derived by firms who can prove they have prioritized it, the potential goodwill resonating with customers, employees and local communities alike. Additionally, a prudent policy that seeks to re-use and conserve office supplies and materials can hugely reduce unnecessary expenditure on the part of the firm. The key issue for firms is to stay ahead of this legislation, in order to escape penalties, and to ensure they reap the benefits in terms of costs, brand reputation and community goodwill that are integral to firm sustainability in the long run.

Indian law firms excel in this regard, according to the CPP Survey. The results indicate a clear awareness of leading waste management and recycling practices and a willingness to implement the practices. The firms that have not had systems in place previously have indicated a desire to introduce measures in the immediate future, although they did not provide specific timeframes for implementation. One notable trend was that law firms in India believe that there is not much waste produced, and as such, the task is relatively minor. While there is indeed less usage of materials in law firms when compared to large scale manufacturing firms, it remains significant. It is important that firms guard against complacency that may disrupt their progress.

In terms of distilling down this area of sustainability to its simplest form, firms must seek to recycle materials, use non-disposable products and reduce the use of paper and packaging where possible. It crucially involves close cooperation

with suppliers to the firm, in order to ensure that the firm can avail of the best and most up-to-date products. As an example, a number of firms have taken to ensuring that their office supplies are delivered in renewable plastic totes, and it has been noted that the interest of firms in products, such as recyclable containers and office equipment, has been the catalyst for a dynamic new range of re-usable products.¹⁷⁰

Kitchen and cooking utensils are another area in which sustainability can be enhanced with a number of common sense policies. Obviously, it makes sense for firms to purchase plates, cutlery and glassware that can be used time and again rather than constantly ordering disposable materials each time. Client meetings at law firms often require light refreshments to be on offer in the board room. A current trend involves using glasses and jugs rather than individual bottles of water or juice in these situations. Schwabe Williamson & Wyatt PC have taken an innovative approach in this regard. Upon realizing that their employees consumed large quantities of Starbucks coffee from a café on the office block, they decided to act. To avoid the employees continually disposing of large quantities of plastic cups, they provided Starbucks with a named mug on behalf of each employee that could be re-used time and again.¹⁷¹

Other international law firms have forged ahead with recycling policies that are often ahead of their own landlords. Indeed, Beveridge & Diamond PC's initiatives in their Baltimore office were credited with the landlord's decision to introduce building-wide recycling initiatives. In terms of recycling, ensuring that printing packages and ink cartridges can be used again has also taken a

¹⁷⁰ Ibid. at 9.

¹⁷¹ Carmen Calzacorta, "The Schwabe 'Cups to Go'" (Oregon State Bar Association, 2014) <<https://osbsustainablefuture.org/the-long-view-archives/home/section-newsletter/20114winter5calzacorta/>> accessed 5 February, 2017.

foothold within the legal industry.¹⁷² This is another example of an area wherein cooperating with the vendors of the firms' supplies can lead to tremendous results. It can be followed up by other simpler schemes too. The wider proliferation of recycling bins within firms can make a substantial difference. A number of global firms, such as Holland and Knight LLP, have taken it upon themselves to invest in what might be regarded as 'good-looking bins' in order to overcome the notion that recycling bins reduce the aesthetic appeal of hallways and conference rooms in which they are placed.¹⁷³ Alternatively, collection campaigns within offices are becoming increasingly popular for items such as mobile phones and eyeglasses.

The same principles apply to paper, the most important and voluminous material in the majority of law firms. Perhaps most surprising is the fact that paper reduction is the clearest area in which economic sustainability can be directly improved with a reduction in unnecessary expenditure. Implementing a policy of double-sided printing, which many firms still avoid, can lead to incalculable savings. Additionally, weening out a culture whereby everything requires printing out can make a significant difference.

This very much requires a cultural shift from the top down. A study of UK law firms by Epstein and Roy has noted how it is often the longest serving employees who are most intransigent when it comes to reducing their reliance on paper.¹⁷⁴ The law firms we surveyed in the CPP Survey were generally quite positive in their descriptions of existing paper-reduction policies, outlining how they seek to use emails and electronic copies of documents where possible. A telling feature was that those

firms that had policies in place made a point of noting the role of management in supporting and leading the shift towards a more sustainable policy, through direction and guidance of policy within the firm. It appears that management is most likely to react in areas such as this, where the benefits in terms of cost reduction are immediately noticeable for the firm. The challenge in terms of overall waste management and recycling is to encourage firm managers to appreciate benefits that may not accrue instantly, as management will often be the determining factor if a sustainability policy is to gain real traction within the firm.

D. External and Supply Chain Sustainability:

Of increasing importance in a firm's sustainability is the degree to which consistency of policy is established throughout the supply chain. The size and diversity of activities associated with major commercial law firms ensures they are extremely interconnected with other businesses, and this creates a wider responsibility when contemplating a firm's sustainability policies. It would be counter-productive for a large law firm to make advances in this regard internally, while simultaneously supporting and dealing with a litany of irresponsible third-party actors. Encouraging responsibility, and choosing business relationships in a discerning fashion, is now an integral part of the sustainability drive within the corporate sphere.

It would not make sense for law firms to choose their suppliers solely based on sustainability criteria. Often, there will be times when choice is limited, so they can only pursue supply chain policies where genuine scope for choice exists. There may, at times, be a limited number of paper suppliers locally that have the capacity to adequately meet the firm's needs. In such an instance, the presence of a boutique firm with exemplary sustainability practices will be of limited benefit, as its influence on suppliers will be more limited. Usually, however,

¹⁷² Janice Muclov, 'Ten Ways Law Firms Lose a Lot of Money' (Canadian Bar Association, 15 October 2014).

¹⁷³ David Danagher, 'Green is the New Black' <<https://www.linkedin.com/pulse/green-new-black-uk-law-firms-david-danagher>> accessed 5 February, 2017.

¹⁷⁴ Marc J. Epstein and Marie Jose Roy, 'Sustainability in Action: Identifying and Measuring the Key Performance Drivers' (2001) 34 Long Range Planning 593.

corporate law firms are situated in major urban centres and India is no different. This means that they often have a reasonable prospect of finding sustainable companies with which to enter into contracts should they wish to do so.

Firms with sustainability policies involving supply chain contracts typically take a three-pronged approach.¹⁷⁵ Firstly, they will devise a clear sourcing plan, along with specific targets. This identifies what the benefits will be as a result of taking this extra-firm sustainability approach, and identifying how much the firm can realistically achieve. The second, more substantive element, involves requesting from their suppliers a complete overview of the sustainability policies pursued. This allows the firm to evaluate and analyse the outlook of the businesses with whom they will be contracting. Every detail should be noted, and should help the firm in terms of how it proceeds with these other businesses. Finally, there is an ongoing process which requires the firm to monitor the behaviour and activities of its suppliers and partners over the course of their relationship. Crucially, this should not be limited to monitoring, and typically involves the firm encouraging and pressuring its partners to ensure that they continue to have high standards in this area.¹⁷⁶

The CPP Survey indicates that this is an area in which Indian law firms have made little progress. The general responses mentioned that the firms are either too small to devote resources to this, or don't value its importance. There was limited evidence of attention to the sustainability of partner businesses, but it is clear that the firms that do are very much in the minority. This is an area in which hard data is difficult to acquire, but the reticent responses of the firms indicate that Indian law firms are not keeping pace internationally in this crucial area.

¹⁷⁵ Craig R. Carter and Dale S. Rogers, 'A Framework of Sustainable Supply Chain Management: Moving Toward New Theory' (2008) 38, 5 IJPDLM 360.

¹⁷⁶ Ibid.

Simple areas in which law firms can use their clout externally to promote sustainability include landlords, suppliers of material goods to the firm, and businesses providing the firm with services. Should it prove possible, local governments can also be an excellent partner in sustainability drives. The overarching factor remains accepting that firms do not operate in isolation when it comes to sustainability. Many law firms do not have the same environmental or community impact as, for example, a plastics factory. It is often by lobbying their partners that the real differences can be made, using the firm's lobbying power to influence policies that transcend the legal industry.

The British Assessment Bureau has provided a guideline to help firms take the initiative when it comes to influencing their suppliers' policies.¹⁷⁷ A useful initial step can be to prepare 'sustainability questionnaires' to suppliers, in order to gauge exactly where they stand on issues. These vary based on specific circumstances, but typically they will seek to identify the standards and values that guide prospective business partners. If the firm is unsure of the criteria at which it should be looking, it may utilize a number of helpful benchmarks that offer some indication of sustainability commitments. Local, national or international awards, in addition to a certification from the ISO 14001 environmental management standards are usually a clear sign that the business has a track record of sustainability.

Crucially, supply chain sustainability is also a central feature of the United Nations Global Compact. As well as providing general information on how firms can improve their practices, the website also provides useful information on firms already at the forefront of these projects, allowing others to extrapolate the techniques and apply them in their own context.

¹⁷⁷ British Assessment <<http://www.british-assessment.co.uk/guides/writing-a-sustainability-policy/>> accessed 15 February, 2017.

An interesting case study has been conducted on Lafarge Holcim (“LH”), the world’s largest manufacturer of building materials. While it is obviously involved in a different line of work to a law firm, its report to the United Nations Global Compact Initiative provides an extremely clear insight into a leading company’s framework for vetting its suppliers.

LH took the step of actually setting up the Lafarge Holcim Sustainable Procurement initiative to address its sustainability challenges outside the boundaries of its own operations.¹⁷⁸ This may or may not be necessary, depending on the size and scope of the law firm, but indicates the need for a specific and carefully-managed approach. LH has identified the key areas in which it believes supplier sustainability affects it most. These naturally vary from firm to firm, but in the case of LH, health and safety, environmental management and performance, corporate social responsibility practices and bribery and competition laws have been prioritized.¹⁷⁹ The broad scope of these criteria is straightforward, in that it closely correlates to the primary ideas espoused by the Organisation for Economic Co-operation and Development (“OECD”) and the United Nations Global Compact principles. An interesting nuance is the mechanisms LH has in place to ensure continued adherence to its exacting standards on the part of its suppliers. It has identified ‘high risk’ suppliers through its own methodology, and conducts regular assessment of these businesses and the firm’s own resulting exposure in terms of its supplies. Finally, it strives to mitigate risk to its own sustainability through supply-related problems, and compiles annual reports on each of its partners.¹⁸⁰

LH is heavily dependent on supplies, and it will not be necessary for every law firm to put such

¹⁷⁸ Lafarge Holcim, ‘Sustainability Report 2015’ <http://www.lafargeholcim.com/sustainability-report-2015> accessed 3 January, 2017.

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

an intricate programme in place. LH’s work, however, does serve as a useful template that firms may wish to keep in mind when trying to establish an outward-looking sustainability policy. In this regard, supply chain sustainability for law firms can be enhanced in basic areas. Firms such as Nixon Peabody LLP have used supplier monitoring policies, by reviewing materials being used, to discover unsustainable practices relating to materials from their cleaning contractors.¹⁸¹ Another option has been for firms to ensure that employment policies of partner businesses, such as courier services, adhere to the highest ethical standards.

One interesting aspect of supply chain sustainability is the potential for legislation to be introduced, compelling firms to ensure that detailed binding requirements are adhered to by their partners. India has no stringent approach in this regard thus far, but an interesting analogy can be drawn to the UK situation, wherein the Modern Slavery Act 2015 has taken an exacting approach to this. It requires companies to publicly report the steps they have taken to ensure that their supply chains are free of slavery and human trafficking. This is a global-leading piece of legislation, indicating the potential for stricter action should firms prove reticent in their approach.

Overall, it is this extra-firm approach to sustainability that lends credence to the claims of firms that they are generally making progress economically, socially and environmentally.

B. THE LAW FIRM AND THE COMMUNITY

2.3. COMMUNITY OUTREACH

- The concept and practice of pro bono services in India is slowly streamlining in favour of an institutionalised, organised

¹⁸¹ ‘Legally Green®’ <<https://www.nixonpeabody.com:443/en/np/legally-green>> accessed 26 August 2017.

practice from an unorganised, per case basis practice.

- The CPP Survey results indicate that most of the firms neither have a written pro bono policy in place nor a separate department or committee to coordinate pro bono affairs of the firm.
- The most important factor in improving the Indian situation is involvement of the Bar Council of India (and possibly, the Society of Indian Law Firms) in recognising, mandating and monitoring implementation by the law firms; in tune with the development of pro bono internationally.

SCOPE

Attorney General Baroness Scotland is often quoted, as we do here, to emphasise the inherent obligation of the profession to undertake pro bono work. “Pro bono is ‘in the DNA’ of every lawyer – part of a gut instinct that injustice should be rectified through the instrument of the law.”¹⁸²

Engrained with this philosophy, many jurisdictions have made steadfast improvements to the end of making pro bono their parallel priority. Even with the effect of globalization of knowledge and practices, all the fervour over pro bono’s plight seemed disconnected from the bigger picture of professional service in India.

The currently evolving understanding and practice of pro bono has acquired a distinctive shape in the country. This sub-chapter puts forth that the western notion of institutionalised pro bono is not received in a vacuum among the law

¹⁸² Eduardo Reyes, ‘How to: Make Pro Bono Work’ (The Law Gazette, 31 October 2016) <<https://www.lawgazette.co.uk/features/how-to-make-pro-bono-work/5058552.article>> accessed 21 January, 2017.

firms of India. The concepts from the US and the UK are indigenised and adopted to suit the local needs. The local needs temper the institutionalised values and influence the development required to regularise pro bono as a fundamental feature of corporate law firms. We use the CPP Survey to observe that the demand for pro bono legal services in India far exceeds the supply, and a concerted, organized effort by the legal profession would go a long way towards ensuring the provision of quality pro bono legal services to the needy consistent with the right to free legal aid enshrined in the Constitution.¹⁸³ Since the institutionalization of pro bono practice is most visible among the law firms in the UK and the US, this sub-chapter, as has been done in the previous sub-chapters, will make frequent references to the trends and practices adopted by international law firms.

This sub-chapter will aim at analysing the empirical data in the backdrop of the existing legal framework and business environment in which the law firms operate globally. The key questions that are of interest are the kind of pro bono work undertaken by law firms in India, the contextual understanding of the term pro bono and the interaction of indigenous elements with global trends with respect to the understanding and practice of pro bono. Based on the indicative trends, we discuss the factors that influence, whether positively or negatively, the pro bono culture amongst Indian law firms and in conclusion briefly discuss the relationship between the notions of pro bono, corporate social responsibility and public interest.

We used the CPP Survey to gauge the present state of pro bono engagement of Indian corporate

¹⁸³ The Constitution of India at Article 39A provides for the State obligation (as Directive Principles of State Policy) to provide free legal services to the needy; ‘Pro Bono Practices and Opportunities in India’, Latham & Watkins LLP (2015) <<https://www.lw.com/admin/Upload/Documents/Global%20Pro%20Bono%20Survey/pro-bono-in-india.pdf>> accessed 21 January, 2017.

law firms. To find out the extent of institutionalization of pro bono work by the surveyed law firms, their responses to questions relating to the existence of pro bono departments/committees, budgetary allocation, and the hours spent in doing pro bono work were analysed.

The core questions which will be explored, separately or contextually, in this sub-chapter are:

- Why is there not a culture of pro bono in India?
- What are the present policies that Indian law firms adopt?
- How are the cases taken on board?
- What type of cases are taken on board?
- Who are pro bono clients?
- Is there a conflict check mechanism in place?
- What is the firm's contribution to the government policy making or legislation drafting initiatives, rendering services to ministries on a case-by-case basis or stationing a lawyer at the premises for certain duration?
- Does the firm represent private bodies/non-profits/corporate bodies before the Government in policy matters?

While detailing our observations on the 'core questions' in this sub-chapter, we attempt to delve into finer details based on responses received on these core questions. The secondary issues which we propose to address are the minimum number of cases per associate/partner in the firm, cost of providing pro bono services and how is it adjusted in terms of billable hours of the firm member or evaluated for appraisals. We also look at the impact, focus and structure of pro bono at the firm in the context of whether there is a dedicated team, or whether the firm appears as *amicus curiae* before

the court and if so, whether it is a point of prestige evaluation by firm ranking agencies.

A. The Pro Bono Culture and Policies:

The TrustLaw Index of Pro Bono¹⁸⁴ from the Thomson Reuters Foundation compiled data from over 49,000 lawyers working at 141 firms in 77 countries. The index provides a snapshot of key national, regional, and global trends shaping pro bono programmes. Among the general trends, the index found that 2 million hours of pro bono were completed globally. In terms of firm size, small firms performed the highest number of pro bono hours compared to their larger counterparts. Lawyers at medium-sized firms performed an average of 19.3 hours over the last 12 months.¹⁸⁵ The survey also found that over 77 per cent of firms factored pro bono into appraisal processes (77.2 percent). When it was factored into appraisals, lawyers performed 40.2 hours of pro bono, compared to 20.7 hours where it was not. Lawyers at firms with mandatory pro bono targets completed an average of 65.5 hours. Lawyers at firms where the target was only aspirational averaged 31.7 hours.

In the survey above, Trust Law also interviewed four Indian Law firms. The Index records a positive growth in these firms' attitudes towards pro bono. The average number of pro bono hours per lawyer per year reported by the firms increased by nearly 50 percent over 2015 (4.5 hours from 2.7 hours) as also the percentage of fee earners doing ten or more hours of pro bono work annually also piqued significantly to 15.9 percent from the 5.3 percent reported in 2015. Similarly, partner

¹⁸⁴ 'Trust Law Index of Pro Bono 2015', Thomson Reuters Foundation (2015) <<http://www.trust.org/contentAsset/raw-data/870662fb-5deb-4549-8cc5-d4e3d02b311f/file?byInode=true>> accessed 24 December, 2016.

¹⁸⁵ 'Trust Law Index of Pro Bono 2015-Analysis-Office Size', Thomson Reuters Foundation (2015) <<http://www.trust.org/contentAsset/raw-data/2e029f9e-7404-402e-9ddf-664010e94de0/file?byInode=true%20>> accessed 24 December, 2016.

engagement saw a dramatic increase from the 1.8 hours reported in the 2015 Index to 10.1 hours of pro bono work in 2016.¹⁸⁶

Based on the above, it can be inferred that the globalisation pro bono movement responds to the macro-level forces of globalization. Driven by the internationalization of law firm practice and the different constraints faced by legal services infrastructures in countries around the world, pro bono initiatives have emerged vigorously at a global level. In the United States, the ABA Model Rule 6.1¹⁸⁷ provides for ‘Voluntary Pro Bono Publico Service’ by every enrolled lawyer, such that every lawyer has a professional responsibility to provide legal services to those unable to pay and mandates at least 50 hours of pro bono publico legal services per year. The ABA engages in periodic assessment of the level of pro bono participation in the US and identification of strategies for expanding pro bono legal services in the country.¹⁸⁸ In 2006, the ABA House of Delegates urged all law firms to participate in pro bono and public service activities. It also recommended effective strategies, such as counting pro bono hours as billable hours and supporting the pro bono commitment and involvement of senior and retired lawyers, so as to provide lawyers with opportunities to do pro bono work and thus, urged firms to adopt specific internal policies and procedures to support such work.¹⁸⁹ The ABA Centre for Pro Bono provides technical assistance and planning advice

to encourage law firms to develop pro bono policies and projects.¹⁹⁰ In 2015, the New York Bar mandated that all applicants must have carried out at least 50 hours of legal pro bono work before they are approved to practice law.¹⁹¹

In 1997, the Law Society, which is the counterpart to the Bar Council of India in England and Wales, established the Solicitors Pro Bono Group as a vehicle to develop pro bono partnerships between solicitors and legal services organizations.¹⁹² By 1999, the Group had obtained commitments from 40 percent of the top fifty firms to participate in pro bono programmes. In 2010, The National Pro Bono Centre was created. The Centre houses the profession’s national clearing houses for legal pro bono work delivered in England and Wales – LawWorks (the Solicitors’ Pro Bono Group), the Bar Council’s pro bono unit and the CILEx Pro Bono Trust (“CILEx PBT”), representing solicitors and barristers and chartered legal professionals, respectively. The centre is designed to be a “hub” for pro bono charities across the sector and supports the wide range of pro bono projects and brokerage which the charities support, helping individuals and community groups all over England and Wales.¹⁹³ The Law Society provides a practical guide to developing a law firm pro bono programme and has developed a support system for the institutionalisation of pro bono.¹⁹⁴

¹⁸⁶ Trust Law Index, supra n. 185, H8.

¹⁸⁷ The text of the rule can be accessed at <http://www.americanbar.org/groups/probono_public_service/policy/aba_model_rule_6_1.html> accessed 24 December, 2016.

¹⁸⁸ American Bar Association Standing Committee On Pro Bono And Public Service, ‘Supporting Justice III: A Report On The Pro Bono Work Of America’s Lawyers American Bar Association’ (2013) <http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_pb_Supporting_Justice_III_final.authcheckdam.pdf> accessed 24 December, 2016.

¹⁸⁹ American Bar Association, ‘Resolution Adopted By The House Of Delegates’ (2006) <https://www.americanbar.org/content/dam/aba/directories/policy/2006_am_121a.authcheckdam.pdf> accessed 22 February, 2017.

¹⁹⁰ Further information can be accessed at <http://www.americanbar.org/groups/probono_public_service/resources/pro_bono_role/law_firms.html> accessed 29 December, 2016.

¹⁹¹ ABA Standing Committee On Pro Bono And Public Service, ‘New York’s 50-hour Preadmission Pro Bono Rule: Weighing the Potential Pros and Cons’ (2013) <http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_pb_preadmission_pro_bono_requirement_white_paper.authcheckdam.pdf> accessed 22 February 2017.

¹⁹² Further information can be accessed at <<https://www.lawworks.org.uk/>> accessed 27 December, 2016.

¹⁹³ The National Pro Bono Centre’s Official Website, <<http://www.nationalprobonocentre.org.uk/about-us/>> accessed 27 December, 2016.

¹⁹⁴ ‘Pro Bono Manual’, The Law Society (2016) <<http://www.lawsociety.org.uk/support-services/>>

While the core values of the Indian legal profession remain the same, in contrast from the international regulators of legal profession, the Bar Council of India has neither made pro bono a part of the larger discussion in terms of professional standards nor indicated it as an important aspect of legal service.

Several elite firms, including London's Clifford Chance LLP and Freshfields Bruckhaus Deringer LLP, have created full-time coordinator positions to facilitate pro bono activity.¹⁹⁵ In 2015, Allen & Overy LLP, DLA Piper LLP and Coram Children's Legal Centre launched the first Children's Pro Bono Legal Service in the UK. This clinic uses volunteer lawyers to provide end-to-end representation (rather than just one-off initial advice) for some of the most marginalised children in the country and won the Legal Week Innovation Award for CSR Innovation in 2016.¹⁹⁶

Although the contours of pro bono are highly context specific and still in the early stages of development, a few broad observations can be made. One is that, as in the US and the UK, countries have focused increased attention on pro bono as state-sponsored legal aid schemes have been cut back under the banner of fiscal austerity.¹⁹⁷ Australia, for example, has begun promoting pro bono, through national conferences and other measures,¹⁹⁸ after drastic cuts to its legal

aid budget.¹⁹⁹ Similarly, Chinese law firms stepped up pro bono work in the wake of the international refugee crisis. Indian state-sponsored legal aid is the State's constitutional duty;²⁰⁰ the involvement of the BCI in implementing this mode of private law firm's involvement is indispensable. Another important feature of the adaptation of pro bono models internationally is that it has often been promoted by the same players. For example, the Ford Foundation has been a key financial supporter of pro bono initiatives in Australia, Chile, South Africa, and Russia.²⁰¹ The Pro Bono Institute has provided technical assistance to programmes in Chile, Argentina, Brazil, and Australia.²⁰² In Canada, *probono.net* has licensed its code to allow for the development of ProBonoNet BC, which was created in 2002 to facilitate pro bono in British Columbia.²⁰³ Australia has a similar website. While, new actors have entered the pro bono field. Many transmission lines for pro bono programmes internationally have been established by prominent pro bono organizations.²⁰⁴ A possible reason for the lack of these international organisations' reach in India could be non-liberalised legal markets and a ban on entry of international law firms.

[practice-management/pro-bono/pro-bono-manual/](#) accessed 29 December, 2016.

¹⁹⁵ Vault Career Intelligence, 'Vault Guide to Law Firm Pro Bono' (2015) <https://hls.harvard.edu/content/uploads/2010/06/Vault-Guide-to-Law-Firm-Pro-Bono-2015.pdf> accessed 19 January, 2017.

¹⁹⁶ Allen & Overy LLP, 'Accessing Free Legal Advice', Corporate Responsibility (2015) <<http://www.allenoverly.com/corporate-responsibility/probono-community/justice/Pages/Accessing-free-legal-advice.aspx>> accessed 29 December, 2016.

¹⁹⁷ Francis Regan, 'Legal Aid Without the State: Assessing the Rise of Pro Bono Schemes' 33U.B.C. L. Rev. 383 (2000).

¹⁹⁸ Pro Bono News 16/2013, 'National Pro Bono Resource Centre', NPBRC eNewsletter (2013).

¹⁹⁹ Frederick H. Zemans & Aneurin Thomas, 'Can Community Clinics Survive? A Comparative Study of Law Centres in Australia, Ontario and England', *The Transformation of Legal Aid* at 65, 70.

²⁰⁰ Constitution of India, Article 39A.

²⁰¹ Ford Foundation, 'FF Grants' <http://www.fordfound.org/search/results_section.cfm?section=FF#grants&searchstring=pro#bono> accessed 29 December, 2016.

²⁰² Pro Bono Institute, 'Global Pro Bono' (2013) <<http://www.probonoinst.org/globalist.php>> accessed 29 December, 2016.

²⁰³ Further information can be accessed at <<http://starscream.netnation.com/probononet/probono2/BC/index.cfm>> accessed 29 December, 2016.

²⁰⁴ For example, the Cyrus R. Vance Center for International Justice Initiatives has worked to promote pro bono initiatives in Latin America, particularly in Argentina, Brazil, and Chile. The Cyrus R. Vance Center for International Justice Initiatives, 'Contact Us' <http://www.abcny.org/cyrus_center/contact_us.htm> accessed 29 December, 2016.

It can also be observed that the US firms with pro bono emphasis fare well with aspiring lawyers since it is an extremely important criterion for students. The law school recruitment guide at the University of Virginia²⁰⁵ for students provides key points to consider while choosing a law firm. The intricacies of these questions indicate the deep entrenchment of the pro bono culture within the US legal system and will be beneficial in understanding the model. The key points set out therein are as follows:

“1. How is the firm’s pro bono program structured?”

- Is there a full-time coordinator? (if so, ask to talk to this person)
- Is the coordinator an attorney?
- Is the coordinator a partner or are partners involved in the supervision of pro bono cases?
- How are pro bono cases brought into the firm?
- Does the firm work routinely with specific non-profits?
- Who screens/assigns the cases?
- What types of pro bono matters does the firm accept? (impact, class actions or solely individual matters?)
- Do individual attorneys have any discretion in bringing in their own pro bono cases?
- Do attorneys in all of the firm’s offices participate?
- Does the firm provide training and supervision for pro bono matters?

²⁰⁵ University of Virginia School of Law, ‘Evaluating a Law Firm’s Commitment to Pro Bono—The Pro Bono Program’ <http://www.law.virginia.edu/html/publicserv/probono_lawfirm.htm> accessed 24 January, 2017.

- Does the firm provide support staff for pro bono cases?
- 2. How does the firm encourage pro bono work?**
- Are attorneys required or encouraged to perform a minimum number of pro bono hours annually?
 - Do pro bono hours count toward the firm’s billable hours requirement?
 - Is there a cap on the number of pro bono hours that count as billable?
 - Are pro bono hours considered as part of the bonus/promotion performance review?
 - Do summer associates participate in pro bono, and, if so, are they evaluated on such work?
 - Are pro bono cases treated the same as billable cases when work is distributed?
 - How many of the lawyers who recently made partner did substantial pro bono work?
 - Does the firm sponsor any public interest fellowship or externship programs, and, if so, what types?
 - How many lawyers in the firm did pro bono and how many hours per lawyer?
- 3. Is the firm a signatory to the Pro Bono Institute’s Law Firm Pro Bono Challenge?**
- The Pro Bono Institute’s Law Firm Pro Bono Challenge²⁰⁶ – *The Challenge definition of pro bono has become an industry standard, utilized not only by major law firms but by the legal media in reporting the pro bono*

²⁰⁶ Pro Bono Institute, ‘The Law Firm Pro Bono Challenge’ <<http://www.probonoinst.org/projects/law-firm-pro-bono/law-firm-pro-bono-challenge/>> accessed 24 January, 2017.

contributions of large firms. It calls for an institutional commitment and requires the firm to commit 3-5 percent of their total billable hours to pro bono.

- Has the firm met the Challenge's goals in the last 2-3 years?
- 4. Where does the firm rank in the Am Law 100 or Am Law 200 pro bono charts and has it been recognized by any legal services providers for its pro bono contributions?**
- *American Lawyer (Annual comprehensive ranking of big law firms. For example, see Am Law 100)*²⁰⁷
 - Has the firm won any other pro bono awards?
- 5. What does the firm say about its pro bono program on its website or in its annual report?**
- Is the description substantive or more firm marketing?
- 6. Does the firm offer summer associates the option to split their summer**^{208?}

It is these indicators, perhaps a detailed checklist, which law students increasingly utilise to decide in which law firms they would like to build a career.²⁰⁹ It is not a stretch to assume that law firms would step up their pro bono attraction quotient to score well in the student indicators to attract and retain the best talent.

Even in India, it can be observed that clients are increasingly requiring firms to demonstrate their social commitment as part of tendering processes and there is a constant nudge from young lawyers to work on social impact projects. The CPP Survey results indicate that most of the firms neither had a written pro bono policy in place nor a separate department or committee to coordinate pro bono affairs of the firm. This even holds true for the biggest Indian law firms. It was generally noticed that pro bono activities were undertaken on an *ad hoc* basis, usually at the behest of one or more of the partners and was not institutionalised. None of the firms that were surveyed had a fixed budgetary allocation for pro bono activities, releasing funds for pro bono activities as and when required. Surprisingly, the frequency of pro bono engagement of a firm stood independent of and did not link with the institutionalisation of pro bono at all.

The biggest factor that facilitates pro bono involvement of law firms in other jurisdictions is missing in India – involvement of the legal profession regulator in mandating and monitoring law firms' duty to contribute to pro bono services. In our observation, this creates a lack of initiative by legal practitioners at these firms competing for their billable targets and the firms which could surpass their social responsibility for lack of a watchdog. This effect is clearly reflected in lack of any mention of pro bono emphasis in a law firm's practice by law schools and law students in India when choosing a prospective employer.

B. The Nature of Pro Bono Work and the Clients:

Pro bono in India had traditionally been provided informally, frequently by solo and small firm practitioners who conferred free services as a matter of individual responsibility. It is derived from the central feature of legal professionalism, that is,

²⁰⁷ The American Lawyer, 'The 2014 AM Law 100' (2014) <<http://www.americanlawyer.com/current-year/id=1202489912232/The-2014-Am-Law-100-The-Super-Rich-Get-Richer>> accessed 24 January, 2017.

²⁰⁸ The option involves splitting of the summer break assignment into pro bono and non-pro bono work.

²⁰⁹ Lawyer2B, 'Would you do a weeks' worth of pro bono every year' (2016) <<https://l2b.thelawyer.com/would-you-do-a-weeks-worth-of-pro-bono-every-year/>> accessed 19 February, 2017.

the ideal of public service.²¹⁰ This ideal reconnects lawyers with the public good, reinforcing the view of the lawyer as the guardian of the public interest; someone “whose contribution to society goes beyond the acquisition, aggregation, and deployment of technical skills.”²¹¹

There is no specific definition of “pro bono” in India nor do the professional standards prescribe any regulations on it. The TrustLaw Index²¹² defines pro bono as “legal assistance provided without the expectation of payment to people of limited means or to organisations that have a social, environmental, humanitarian or community focus.” The UK pro bono protocol defines it as “legal advice or representation provided by lawyers in the public interest, including to individuals, charities and community groups who cannot afford to pay and where other means of funding are not available”.²¹³

C. Pro bono & CSR:

From the above it is evident that what each firm ought to do and wants to do should be clearly set down. However, we observed from the CPP Survey that the use of the term “pro bono” is a fairly recent development in India.²¹⁴ The current use and understanding of the term is considerably amorphous and overlaps with other socially driven initiatives like CSR. Beliefs such as “giving

back to society” and “doing good” emerge as the common elements that fundamentally underlie these concepts and impart very broad definitional parameters to them. Unlike the case of the UK or the US, initiatives like pro bono and CSR are not understood as having clearly distinct meanings and spheres of operation in India. Pro bono in India reflects both, indigenous elements such as participation in Lok Adalats,²¹⁵ as well as practices prevalent at the global level²¹⁶ and it is *sui generis* to the country.

Based on the CPP Survey, we estimate that one reason which may be attributed to these merging contours is that as full service or corporate law firms are transaction work focused, the individual members of the firm do not have many opportunities to get directly involved with litigation based pro bono work. Instead, they would make monetary contribution to an organization dedicated to a particular social cause and register it under the discussed umbrella of “giving back to the society.” Ofcourse, transactional lawyers can still undertake other pro bono activities, such as, setting up charitable bodies, charity finance, transactional work in respect of such endeavours.

Another aspect worth mentioning is the positive move to retain international and multinational clients. As mentioned earlier, this emerges from the fact that big corporate clients insist that their law firms must be in tune with their internal CSR policies. These internal CSR policies, in turn, draw from various obligations of corporations under international conventions or under laws of other jurisdictions. An example could be control of carbon credits and emissions at office space. With these client preferences and fierce domestic competition, a firm without CSR at its heart is likely to miss out on business. Therefore, the firms are increasingly engaging in CSR activities

²¹⁰ ‘Speech of Shri D.V. Sadanand Gowda, Hon’ble Minister of Law and Justice of Law Day 26th November, 2014’ <<http://lawmin.nic.in/mino/2014-11-26%20-%20LAW%20DAY%20SPEECH.pdf>> accessed 8 March, 2017.

²¹¹ Austin Sarat & Stuart Scheingold, ‘Something To Believe In: Politics, Professionalism, And Cause Lawyering’, Stanford University Press (2004) at 173, 174.

²¹² Trust Law Index, supra n. 185 at 7.

²¹³ The Law Society, ‘The Joint Pro Bono Protocol for Legal Work’ <<http://www.lawsociety.org.uk/support-services/practice-management/pro-bono/the-pro-bono-protocol/>> accessed 24 January, 2017.

²¹⁴ Arpita Gupta, ‘HLS Program on the Legal Profession Research Paper No. 2013-4: Pro Bono and Corporate Legal Sector in India’ (2012) at 5 <<https://ssrn.com/abstract=2344257>> accessed 24 January, 2017.

²¹⁵ Lok Adalats (people’s courts) settle dispute through conciliation and compromise.

²¹⁶ Arpita Gupta, supra n. 214 at 31.

and merging the concept with pro bono under the umbrella of “giving back to the society” or “doing good.”

D. Pro Bono and Involvement of Law Firms in Public Interest Litigation (“PIL”) or Class Action Suits:

At the outset, it must be mentioned that the rules of the Bar Council of India, under the chapter on Standards of Professional Conduct and Etiquette, prohibits advocates from soliciting work through advertisement of their areas of specialization and the cases they are/were involved in.²¹⁷ This is against the professional ethics of lawyers and any facilitation is a contract opposed to public policy.²¹⁸ Therefore, the firms cannot offer free legal services or invite pro bono cases by way of advertisements. The method of attracting pro bono activities is by personal relationships, word of mouth or professional referrals. One often discussed reason for not undertaking pro bono work is that such commitments compete with business interests by forcing firms to act against their own retained clients.

As part of the standards of professional conduct mentioned above, the lawyers also have a duty to render legal aid to those who are “genuinely in need of a lawyer” as, “free legal assistance to the indigent and oppressed is one of the highest obligations an advocate owes to society.”²¹⁹ Social Action Litigation (“SAL”) and non-litigation-based means of promoting social welfare are the two most significant constituents lying at the core of public spirited litigation in India.²²⁰ Both of these essentially focus on providing access to

justice to the underprivileged through all possible channels. PIL in India is largely dominated by SAL and is often used synonymously with it. Justice P.N. Bhagwati, who made the pioneering move to introduce SAL in India, succinctly summarized the underlying purpose: “to promote and vindicate public interest which demands that violations of constitutional or legal rights of large numbers of people who are poor, ignorant or in a socially and economically backward position should not go unnoticed and unaddressed”.²²¹

In tandem with a primarily litigation centric vision of justice, the Constitution of India and a parliamentary legislation makes the state responsible for providing free legal aid to the needy. Article 39A²²² of the Constitution of India directs the state to “provide free legal aid...to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.” In consonance with this provision, the Parliament of India enacted the Legal Services Authorities Act, 1987, which provides for free and competent legal service to the weaker sections of society through Lok Adalats under the respective State Legal Services Authorities.²²³

In the CPP Survey, we found that the pro bono culture among the Indian law firms is not as institutionalized as their counterparts in the West. This can be largely attributed to the remarkable difference in the average size of the Indian law firms as compared to the western law firms. The lack of comparatively deeper pockets, lesser human resources, bar on accepting contingency fee arrangements and mercurial status of third-party funding for pro bono make it a less desirable

²¹⁷ Bar Council of India Rules, Rule 36, § IV, II, Part IV.

²¹⁸ Indian Contract Act, s. 23; *Ganga Ram v. Devi Das*, 61 PR (1907).

²¹⁹ Bar Council of India Rules, Rule 46, § VI.

²²⁰ Upendra Baxi, ‘Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India’ *Third World Legal Studies* 4 (1985) 107, 132. Upendra Baxi first drew attention to the difference between the PIL of India and the US. On grounds of certain fundamental differences,

he preferred to use the term Social Action Litigation in case of India.

²²¹ *People’s Union for Democratic Rights v. Union of India*, (1982) 3 SCC 235, 240 : AIR 1983 SC 1473, 1476.

²²² Directive Principles of State Policy, the Constitution of India, Art. 39A, Part IV.

²²³ As required by the Legal Services Authorities Act, 1987 (of India), most States have enacted State Legal Service Authorities Act to provide easy, free of cost and extensive access to justice to the weaker sections of society.

option even for the biggest law firms in India. Looking at the numbers – a broad result indicates that though most law firms do some kind of pro bono work in India, it is rather unstructured, less than 20% firms suggest engaging in pro bono work on a regular basis. Over 50% of surveyed law firms agreed that conflict check mechanisms operate for business and pro bono clients in the same manner. Most law firms in India do not have mandatory pro bono programmes or pro bono requirements for their associates. We also noticed that the hours spent in doing pro bono work were usually not accounted for or not counted as billable hours.

E. Policy Work and Advisory Assistance to the Government:

Going beyond litigation-centred means is an imperative for substantively forwarding the cause of public interest,²²⁴ as non-litigation focused access to justice approaches are extremely potent vehicles for bringing about widespread and sustainable change. Though this aspect of access to justice has not traditionally received as much attention as the litigation-based approaches, policy makers and civil society organizations are increasingly recognizing its importance. Some of the important non-litigation focused approaches are: enacting social legislation, spreading legal awareness, promoting public interest focused ethics as core elements of legal education and, ensuring effective enforcement of the provisions of the existing socially focused enactments.²²⁵ But the extent to which they could be potent vehicles for law firms to improve access to justice in the country is yet to be tried and tested.

Closely linked to the above-mentioned approach to access to justice is another important approach, i.e. assessing the impact of the existing

laws and social policies, and making policy and legal reform suggestions. In India, a number of civil society organizations, research and policy think tanks, social activists (further empowered by the Right to Information Act, 2005 (of India)) as well as a number of government appointed committees are active in this sphere. Given their commercial expertise, these law firms also engage actively with regulatory bodies, various ministries and policy makers to present the challenges faced by social entrepreneurs and usher in regulatory changes.

Prima facie, advising the government on legal matters might not be regarded as falling within the ambit of pro bono work. But, given the specific nature of the State in India and the intention with which the legal advice is given, free of charge advice to the government could be seen as pro bono work. The relinquishment of a fee for legal advice given to the state by law firms can be seen as a way of contributing that amount towards social welfare spending by the State. Thus, to the extent that taxpayer's money is saved and can be utilised for some welfare activity, advice given in such cases can be regarded as pro bono. This would be especially so in the case of advice related to enactment of some legislation/rule having wide social implications.²²⁶ Further, due to their experience and high degree of expertise with respect to commercial laws, corporate law firms can be good candidates for advising the government on reforming and streamlining the business laws of the country.

The response to our questionnaire in the CPP Survey on policy involvement with the Government was rather non-enthusiastic. It could be observed that only one of the surveyed firms had a specific structured public policy practice, which was not yet monetised. This is a clear indication of the nascent stage of this practice area

²²⁴ Arpita Gupta, *supra* n. 214 at 12.

²²⁵ Jeremy Cooper, 'Public Interest Law Revisited', *Commonwealth Law Bulletin* 25 (1999) 140.

²²⁶ Personal knowledge of the authors that Indian law firms are engaged in assisting the government with the drafting of legislation.

and more so, emphatic need to recognise it as a viable practice area worthy of independent institutional standing.

F. The Third Party: Organisations instilling Pro Bono Culture in Indian Law Firms:

Referral organizations focused on linking transactional business lawyers with non-profit and small for-profit organizational clients have gained increased attention within the pro bono system. This holds true equally for India. Some such organizations, which have recently come up are: TrustLaw Connect, i-probono and UnLtd India. TrustLaw Connect is a Thomson Reuters Foundation Service and i-probono is a UK based non-profit online network, both of which are seeking to develop an active pro bono culture among law firms in India. Some of the respondent firms revealed their connection with these organizations and disclosed undertaking pro bono work through them. But, the present extent of involvement of Indian law firms with such organizations is very limited.²²⁷

G. Key observations:

Sarat remarks tellingly that “Crises in the profession do not just happen; they are ‘created’ and marketed by particular segments of the bar hoping to mobilize their colleagues to deal with what are perceived to be pressing problems”.²²⁸ Pro bono’s institutionalization worldwide has depended critically on the rise of the big corporate law firm. Although small-scale practitioners have been important actors in the pro bono system, it has been big firms that have provided the resources and prestige to promote pro bono as a

central professional goal. In India, that role is yet to be taken up by big law firms. It is necessary to begin with them as the big firm’s organizational structure provides very practical advantages over smaller practice sites in delivering pro bono services. *First*, since the pro bono model seeks to deploy large numbers of lawyers to provide free services, it relies heavily on the big firm as a mass supplier of pro bono personnel. *Second*, because big firms are highly leveraged, they can generally absorb the costs associated with pro bono more readily than their smaller counterparts, which cannot afford to forego significant amounts of billable work. *Third*, as already referred to above, big international firms have the administrative capacity to coordinate large-scale pro bono efforts that small firms cannot match.

As discussed earlier, internationally pro bono forms a part of the intense market competition to attract elite law school graduates, many of whom care deeply about pro bono opportunities. The big firms abroad have therefore designed pro bono programmes to complement broader recruitment and retention plans. This approach, if adopted in India, may attract a brighter crop of recruits as well as aid in long term lawyer retention.

Litigation-based and non-litigation-based measures together provide a range of options to law firms in India to design innovative, efficient and high impact pro bono programmes aimed at furthering the cause of public interest. The models developed by the UK and the US render robust systems which may be employed with modifications to suit the organic need of the Indian law firm. The focus for Indian firms currently must be on the structures of organizational collaboration, mechanisms of efficiency, strategies for accountability, and processes of adaptation that define pro bono’s institutional identity.

In a developing country like India, there are numerous economic and social issues that need sustained efforts for their effective resolution. The scale of the problems that these issues pose

²²⁷ Telephone call with i-probono, Transcript available on record.

²²⁸ Austin Sarat, ‘Enactments of Professionalism: A Study of Judges’ and Lawyers’ Accounts of Ethics and Civility in Litigation’, 67 Fordham L. Rev. 809 (1998).

renders the efforts made by the government alone inadequate, thus, registering the need for a large-scale and systematic involvement of private actors for addressing these issues effectively.

2.4. ETHICAL CRITERIA

- This chapter looks at ethical criteria that are widely applied in law firm practices, with UK and US firms being the pioneers and leaders in this movement.
- From a behavioural practice point of view, Indian law firms should actively promote and disseminate to their associates the firm's code of ethics in relation to professional conduct and managing conflicts of interest and confidentiality.
- On ethical practices that correlate to the economic factors, measures relating to anti-corruption, anti-money laundering and insider trading must be advocated and strictly applied to prevent detrimental and unethical practices.
- Although Indian firms do acknowledge the importance of sound ethics in their practice, many still rely merely on implied knowledge and the professional standards set out by the Bar Council of India, without having explicit policies and actions taken to promote them within the firm.

SCOPE:

In running their daily course of business, firms and their lawyers are involved in numerous decision-making processes. Most of the time, those decisions are taken by each individual lawyer in each respective firm and it is important to note that the culture of the firm will play a key role in influencing and shaping each individual member's

decision-making process. In the case where the subject matter is more significant, such decisions go up the hierarchy ladder to be decided by the authorized individuals, whose decisions will also be closely knitted to the firm's cultures.

Ethics is important to the practice of law, be it for the firm or individual lawyers, because (i) lawyers are integral to the establishment of the Rule of Law, itself founded on principles of justice, fairness and equity; (ii) lawyers are professionals and ethical responsibility is an inherent part of the legal profession; and (iii) lawyers are admitted as officers of the court and therefore have an obligation to serve the court and the administration of justice.²²⁹ Accordingly, firms, being a medium that binds lawyers together, have a responsibility to advocate the importance and incorporation of ethics to their legal practice, because the Rule of Law implies that nobody is above the law, be it the society, lawmakers, and also lawyers.

Lawyers themselves are subject to legal ethics as applied by the bars to which lawyers are admitted and as operated within law firms. Similarly, the context in which lawyers operate and the functions they perform distinguishes themselves from other individuals and professions, thus lawyers must sometimes take into account values and considerations that would be foreign to laypersons.²³⁰ By acting ethically, firms and their lawyers may receive significant benefits, including creating an excellent firm reputation, therefore increasing awareness, which will in turn attract specific clients. Ethical firms may also appeal to professionals, enabling the firm to recruit from a bigger pool of talent.

In relation to ethical criteria, the area where law firms need to pay particular attention includes professional conduct, conflict of interest,

²²⁹ Peter MacFarlane, 'The importance of ethics and the application of ethical principles to the legal profession' (2002) Vol. 6, *Journal of South Pacific Law*.

²³⁰ Fred C. Zacharias, 'Integrity Ethics' (2009) 22 *Geo. J. Legal Ethics* 541.

business dealings, confidentiality, anti-corruption, anti-money laundering, insider trading, and use of social media. Each of these ethical criteria not only plays an important role in advancing the firm's practice, but some of them also help the firm and its members to comply with the rules, as well as to avoid unwanted criminal liability.

A. Professional Conduct:

No matter the jurisdiction, every lawyer is bound by traditional legal standards that require them to condemn improper behaviour, particularly to their clients and to the firm they work for. It is advisable for law firms, small or large, domestic or international, to have a set of behavioural standards that must be understood and are required from their employees.

Honesty, integrity and fairness

According to the IBA, “a lawyer shall at all times maintain the highest standards of honesty, integrity and fairness towards the lawyer's clients, the court, colleagues and all those with whom the lawyer comes into professional contact, because a lawyer has a duty to be professional, which encompasses civility, professional integrity, personal dignity, candour, diligence, respect, courtesy, and cooperation.”²³¹ As a consideration of their services, lawyers are entitled to a reasonable fee for their work, but they shall not charge an unreasonable fee by generating unnecessary work. In the US, ABA Rule 1.5 rules that a lawyer shall not “make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses”.²³² Reasonableness is

normally determined with a view to the nature of the assignment, its difficulty, the amount involved, the scope of work to be undertaken and other suitable criteria, and the firm and its lawyers shall strive to achieve the most cost-effective resolution of the client's dispute.²³³

In the UK, the principles of the Code of Conduct of the SRA hold that solicitors must, among others²³⁴:

- Act with integrity.
- Act in the best interest of each client.
- Provide a proper standard of service to clients.

In achieving those purposes, the SRA recommends providing clients with the information they need to make informed decisions about the services they need, how these will be delivered and how much they will cost. This will enable firms and their lawyers to understand the client's expectations and responsibilities, and vice versa. It also recommends lawyers to provide services to clients in a way that respects diversity.

Baker McKenzie LLP published a code of conduct for its lawyers that sets out a duty to take their professional responsibility seriously, including to understand and to abide by the ethical standards of the courts and the bar/law societies that apply.²³⁵

Sound behavioural practice will result in a higher added value for clients and contribute to the overall credibility level of the firm. Therefore, it is the role of the firms to ensure that these

²³¹ International Bar Association, ‘IBA International Principles on Conduct for the Legal Profession’, adopted 28 May, 2011 at 16.

²³² American Bar Association, ‘Rule 1.5: Fees’ <http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_5_fees.html> accessed 31 January, 2017.

²³³ International Bar Association, *supra* n. 231 at 31.

²³⁴ Solicitors Regulation Authority, ‘SRA Code of Conduct 2011’ (November 2016), <<http://www.sra.org.uk/solicitors/handbook/code/content.page#>>, accessed 19 January, 2017.

²³⁵ Baker McKenzie LLP, ‘The Baker & McKenzie Code of Business Conduct’ <http://www.bakermckenzie.com/-/media/files/about-us/conduct/bm_codeofconduct.pdf?la=en> accessed 31 January, 2017.

principles are upheld by their members in their daily practice. If a set of behavioural standards is implemented and upheld properly by practising firms, it will assist in ensuring high quality service by firms' personnel, thus leading to enhanced overall credibility and performance of the firm.

Independence

Lawyers must always be independent in their judgment and be transparent in their conduct. They should exercise independent, unbiased professional judgment in advising a client. Independence requires that a lawyer act for a client in the absence of improper conflicting self-interest, undue external influences or any concern which may interfere with a client's best interests or the lawyer's professional judgment.²³⁶

Some circumstances that might impair a lawyer's independence which law firms should endeavour to avoid include:²³⁷

- The involvement of the lawyer in a business transaction with a client absent proper disclosure and client consent.
- Acting for two clients with competing or potentially competing interests.
- Where the lawyer becomes involved in a business, occupation or activity whilst acting for a client and such an interest takes or is likely to take precedence over the client's interest.
- Unless otherwise authorised by law, knowingly acquiring an ownership, possessory or security interest adverse to the client.
- Holding or acquiring a financial interest in the subject matter of a case which the lawyer is conducting, whether or not before a

court or administrative body, except, where authorised by law, for contingent fee agreements and liens to secure fees.

Financial participation in clients' business is another issue that requires specific attention from law firms. To maintain independence in its practice, the firm and its lawyers should not acquire investment in the form of direct or indirect ownership or other income participation in outside business enterprises with which the firm has business transactions. This investment prohibition, however, should exclude securities traded in the open market, in which the firm and its members are not involved in the transaction or are not in possession of any inside information. It is important that firms must ensure that every permissible transaction made, including permitted financial participation, must be conducted on an arm's length basis. This is aimed at ensuring a degree of independence and objectivity in advising clients.

In the UK, the Code of Conduct upholds as one of its main principles that solicitors must not allow their independence to be compromised. For instance, as law firms and their lawyers' relationships with their clients grow throughout time, the SRA suggests to, among others, (i) not have one's independence and professional judgment be prejudiced by virtue of any arrangement with another person; (ii) refuse to act where a client proposes to make a gift of significant value to the lawyer, his family, or the firm, unless the client takes independent legal advice; and (iii) not compromise one's independence when recommending that a client uses a particular person or business.²³⁸

In the CPP Survey, 9 respondents (~75%) mentioned that attorney behavioural standards are 'very important' in their practice. The other respondents regard it as 'important', and one respondent regarded this as 'neutral', but no firm considered behavioural practice as 'not or less important'. Some firms do have an independent,

²³⁶ International Bar Association, supra n. 231 at 12.

²³⁷ Ibid.

²³⁸ Solicitors Regulation Authority, supra n. 234.

formal behavioural protocol in place that requires their lawyers to abide by it. The rest, including smaller Indian firms, tend to not have a written policy, although certain professional values and ethics are impliedly expected from the member lawyers. Some firms mention they rely on the professional standards set by the Bar Council of India. This shows that professional conduct is an area to which firms particularly pay much attention, and where firms require their member lawyers to conform with.

B. Conflicts of Interest:

A conflict of interest exists if the representation of one client will be directly adverse to another client, or there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, a third person or by a personal interest of the lawyer.²³⁹

Firms and their lawyers must avoid any interest that interferes with the independent exercise of their judgment and obligation to perform their responsibilities in the best interests of the client and the firm itself, because trust and confidence in the legal profession and the rule of law depends upon lawyers' loyalty to clients.²⁴⁰ Every lawyer owes a fiduciary duty to respect the confidential information of their clients and to do his best for the client, whereas in the presence of information from one client that is prejudicial to the interests of the other client, a lawyer may not properly do his duty to each.²⁴¹

Membership of the Bar Council of India is mandatory for all lawyers wishing to practice in India, whereby they must pass the bar exam and once admitted, adhere to the rules set out by the association. Under the rules of the Bar Council of India

relating to professional standards, a lawyer has an obligation "fearlessly to uphold the interests of his client by all fair and honourable means"²⁴² while also "make all such full and frank disclosure 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."²⁴³

In the US, ABA classifies conflict of interest into three categories, namely Conflict of Interest between Current Clients, Duties to Former Clients, and Special Conflict of Interest for Former and Government Officers and Employees. Under Rule 1.7 or the first category, a lawyer shall not represent a client if (i) the representation of one client will be directly adverse to another client; or (ii) if there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.²⁴⁴ In relation to former clients, under Rule 1.9, a lawyer who has formerly represented a client in a matter shall not represent another person in the same or a substantially related matter, and he is also not permitted to use information relating to the representation to the disadvantage of the former client or reveal information relating to the representation except as permitted.²⁴⁵ Lastly, under ABA Rule 1.11, a lawyer who has formerly served as a public officer or employee of the government shall not represent

²³⁹ MacFarlane, *supra* n. 229.

²⁴⁰ International Bar Association, *supra* n. 231 at 18

²⁴¹ MacFarlane, *supra* n. 229 at 10.

²⁴² The Bar Council of India, 'Professional Standard on Rules on Advocate's Duty Towards the Client' Rule no. 5, <<http://www.barcouncilofindia.org/about/professional-standards/rules-on-professional-standards/>> accessed 20 January, 2017.

²⁴³ *Ibid.* rule no. 4.

²⁴⁴ American Bar Association, 'Rule 1.7: Conflict of Interest: Current Clients' <http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_7_conflict_of_interest_current_clients.html> accessed 31 January, 2017.

²⁴⁵ American Bar Association, 'Rule 1.9: Duties to Former Clients' <http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_9_duties_of_former_clients.html> accessed 31 January, 2017.

a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, and also, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person.²⁴⁶

In the UK, chapter 3 of the Code of Conduct clearly sets out that a lawyer can never act where there is a conflict, or a significant risk of conflict, between the lawyer and the client. And if the conflict takes place between two or more current clients, a lawyer must not act for all or both of them unless the matter falls within the scope of some limited exceptions.²⁴⁷

²⁴⁶ American Bar Association, 'Rule 1.11: Special Conflicts of Interest for Former & Current Government Officers & Employees' <http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_11_special_conflicts_of_interest_for_former_current_government_officers_employees.html> accessed 31 January, 2017.

²⁴⁷ Chapter 3 (Conflicts of Interest), SRA Code of Conduct, 2011 lists the following exceptions to act in the presence of conflicts of interest applicable to all legal service providers in England & Wales: "(A) Where there is a client conflict and the clients have a substantially common interest in relation to a matter or a particular aspect of it, you only act if: (i) you have explained the relevant issues and risks to the clients and you have a reasonable belief that they understand those issues and risks; (ii) all the clients have given informed consent in writing to you acting; (iii) you are satisfied that it is reasonable for you to act for all the clients and that it is in their best interests; and (iv) you are satisfied that the benefits to the clients of you doing so outweigh the risks. (B) Where there is a client conflict and the clients are competing for the same objective, you only act if: (i) you have explained the relevant issues and risks to the clients and you have a reasonable belief that they understand those issues and risks; (ii) the clients have confirmed in writing that they want you to act, in the knowledge that you act, or may act, for one or more other clients who are competing for the same objective; (iii) there is no other client conflict in relation to that matter; (iv) unless the clients specifically agree, no individual acts for, or is responsible for the supervision of work done for, more than one of the clients in that matter; and (v) you are satisfied that it is

It would be valuable if Indian firms could expand and adopt measures on conflicts of interest that are implemented in the US and the UK as mentioned above. For instance, firms may expand the classification of conflict of interest to be divided into three categories, as implemented by the ABA. A more descriptive and exhaustive definition would help to erase ambiguity and create certainty for practicing lawyers in India.

Further, it would be best for firms to establish and enforce another layer of rules and procedures designed to avoid its personnel from engaging in conflict of interest representation. This includes refraining from dealing with any entity in the presence of an adverse interest and generally conducting its affairs in accordance with applicable professional and ethical rules of conduct and all other applicable laws, ordinances, and regulations. Conflict of interest could also be avoided by requiring each firm lawyer to devote full time and attention only to the activities of its firm, reflecting what is mandated under Part VI, Rule No. 47 of Bar Council of India Rules, which specifies that generally, an advocate shall not personally engage in any business.²⁴⁸

In the CPP Survey, not all, but merely 75% of the respondents regard client confidentiality as a 'very important' matter in their practice. Some firms acknowledge having a written policy or a general set of instructions with respect to upholding client confidentiality in their firms, while one of India's leading law firms mentioned having an internal conflict check within the organisation which is circulated amongst partners of the firm, as well as an internal committee which addresses any conflicts. In addition, only as much as half of the respondents mentioned that they would go as far as to decline a new matter if a conflict of interest is identified, whereas few implement ethics

reasonable for you to act for all the clients and that the benefits to the clients of you doing so outweigh the risks."

²⁴⁸ The Bar Council of India, 'Bar Council of India Rules' Part VI, Section VII – Restriction on other Employments, Rule 47.

walls²⁴⁹ between the teams that are working on those matters to ensure there is no information flow. From these results, it can be concluded that some Indian firms address conflicts of interest rather lightly and not as much as they ought to, although treatment of such conflicts varies among firms.

C. Business Dealings:

From time to time, there will be instances where firms will need to buy goods or services from a client. In such a case, in every business dealing with a client, certain rules may apply and all attorneys must be aware and also comply with them. The Bar Council of India seems to leave this area unregulated, except that it emphasizes that Indian lawyers shall not trade or agree to receive any interest in any actionable claim.²⁵⁰

In contrast, under ABA Rule 1.8(a), a lawyer in the US is prohibited to enter into a business transaction with a client unless the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client.²⁵¹

Generally, it is important for law firms to deal with their suppliers doing business with the firm

²⁴⁹ Justice Paul Finn, an Australian academic jurist and Judge of the Federal Court of Australia defines a wall as an “organisational contrivance within an enterprise designed to prevent the flow of confidential information to or from a part or parts of that enterprise. Its alleged purpose is to prevent it being able to be said that an ‘insulated’ area of a firm or company has in fact used or will be in a position to use confidential information possessed by another part of the same firm or company.” ‘Conflicts of Interest and Professionals’ in ‘Professional Responsibility’, Legal Research Foundation Inc Seminar conducted at the University of Auckland, 28 and 29 May 1987.

²⁵⁰ American Bar Association, *supra* n. 232, rule no 11.

²⁵¹ American Bar Association, ‘Rule 1.8: Current Clients: Specific Rules’ <http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_8_current_clients_specific_rules.html> accessed 31 January, 2017.

in a fair and objective manner without favour or preference based upon personal, financial or relationship considerations. Purchasing decisions and contract awards must be based solely on the best interests of the firm and procurement policies must be set up and put in place to serve as guidelines.

It is advisable that Indian firms follow the footsteps of global firms like Clifford Chance LLP and Allen and Overy LLP in having a ‘Supplier Code of Conduct’ to ensure that the firms conduct business dealings only with those who comply with all applicable laws, such as in relation to environmental, labour, human rights, and anti-corruption laws.²⁵² Linklaters LLP went further by not only having such code as a guideline, but also requiring their suppliers to sign off on their ‘Supplier Code of Conduct’.²⁵³ This conduct will preserve the reputation of the firm and also avoid any legal liability that may arise.

D. Confidentiality:

The legal services business involves acquiring and utilizing a myriad of confidential information belonging to the clients. It is of the utmost importance that no members of the firm should make available to any party any confidential information or document disclosed to them during the course of the client-attorney relationship. Protection of confidential information is a fundamental feature of a lawyer and firm’s relationship with clients and this duty continues despite the end of the retainer and even after the death of

²⁵² Clifford Chance LLP, ‘Clifford Chance Supplier Code’ <<https://www.cliffordchance.com/content/dam/cliffordchance/Our-responsibilities/Clifford-Chance-Supplier-Code.pdf>> accessed 31 January, 2017; Allen & Overy LLP, ‘Supplier Code of Conduct’

<http://www.allenoverly.com/SiteCollection/Documents/Supplier_Code_of_Conduct_.PDF> accessed 31 January, 2017.

²⁵³ Linklaters LLP, ‘Linklaters Supplier Code of Conduct’ <www.linklaters.com/pdfs/mkt/london/Code_of_Conduct.pdf> accessed 31 January, 2017.

the client.²⁵⁴ Therefore, it is inevitable that law firms must place a high emphasis on confidentiality principle, to be complied with all its practicing lawyers.

In the US, every lawyer is bound by Rule 1.6 of ABA Model Rules of Professional Conduct on Confidentiality of Information. The rule stipulates that every lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted under certain conditions, including but not limited (i) “to prevent the client from committing a crime or fraud”; (ii) “to prevent, mitigate or rectify substantial injury to the financial interests of another”; (iii) “to comply with other law or a court order”; and (iv) “to detect and resolve conflicts of interest arising from the lawyer’s change of employment”.²⁵⁵

In the UK, under the Code of Conduct, duty of confidentiality is considered paramount and measures need to be taken by firms and their lawyers to uphold this duty. The objectives to be achieved include:

- Keeping the affairs of clients confidential unless disclosure is required or permitted by law or the client consents.
- Any individual who is advising a client makes that client aware of all information material to that retainer of which the individual has personal knowledge.
- Ensuring that where a duty of confidentiality to one client comes into conflict with a duty of disclosure to another client, the duty of confidentiality takes precedence.

²⁵⁴ Solicitors Regulation Authority, *supra* n. 234.

²⁵⁵ American Bar Association, ‘Rule 1.6: Confidentiality of Information’ <http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_6_confidentiality_of_information.html> accessed 7 March, 2017.

- Having in place effective systems and controls in place to enable risk identification to client confidentiality and to mitigate those risks.

In India, under the Bar Council of India Rules in relation to professional standards, lawyers are not allowed to disclose the communications between clients and themselves.²⁵⁶ They are also prohibited from misusing or taking advantage of the confidence reposed in them by their clients.²⁵⁷ Similarly, under the Indian National Bar Association Members Code of Conduct, one of India’s fastest growing voluntary professional associations,²⁵⁸ every lawyer must not, except with the client’s consent, at any time disclose confidential information or use it otherwise than on behalf of the client. Similarly, under the duty of confidence owed by each lawyer, an ethical obligation arises for the lawyer and thus a breach of client confidentiality would be grounds for disciplinary action.

Information that is to be kept confidential does not only include strategic and financial information, but also personal data such as names, dates and places of birth, addresses, government identification numbers and other identifier data.²⁵⁹ Privacy laws and regulation must be adhered to by the firm and its members, including by using care to prevent unauthorized access in processing confidential data.

Firms must ensure that confidentiality policies are established and are binding on each of its lawyers. A lawyer must at all times maintain and be afforded protection of confidentiality regarding the affairs of present or former clients, unless otherwise allowed or required by law and/

²⁵⁶ The Bar Council of India, ‘Professional Standard on Rules on Advocate’s Duty Towards the Client’ Rule no. 7 <<http://www.barcouncilofindia.org/about/professional-standards/rules-on-professional-standards/>> accessed 20 January, 2017.

²⁵⁷ *Ibid.* rule no. 15.

²⁵⁸ Indian National Bar Association <<https://www.indianbarassociation.org/>> accessed 20 January, 2017.

²⁵⁹ Baker McKenzie LLP, *supra* n. 235.

or applicable rules of professional conduct.²⁶⁰ The identity of clients should be regarded as confidential as the advice given by the firm itself. One global firm prescribed that records should also be well maintained in any law firm, since record-keeping is an important tool in avoiding legal liability for the firm.²⁶¹ Records may embody the form of hard copy documents, paper copies, electronic files, and audio and video recordings. It is essential for firms to never erase or cause any records to be eliminated for improper purposes.

In maintaining confidentiality, one respondent in the CPP Survey addressed this issue by having all information regarding its client to be shared on a secure server and the office email addresses of member lawyers to be routinely checked to ensure that no information is being sent outside the office network.

E. Anti-corruption:

Stating the obvious, lawyers must not engage in illegal activities. Where a lawyer acts in such a way as to be directly responsible for the act of corruption or acts as part of a conspiracy to corrupt, such as by paying any bribe or actively arranges a corrupting activity, they may face liability as a principal offender.²⁶² Even where a lawyer is not directly responsible for the act of corruption but facilitates or otherwise provides assistance to a principal offender, such as by preparing supporting documents to a corrupt transaction, the lawyer can be liable as an accessory or accomplice.²⁶³

The Bar Council of India has set out that a lawyer “shall ... use his best efforts to restrain and prevent his client from acting in any illegal, improper manner or use unfair practices in any

matter...”.²⁶⁴ Not only that, the Bar Council of India Rules relating to professional standards go further by stipulating that lawyers “shall refuse to represent any client who insists on using unfair or improper means”.²⁶⁵ Likewise, under the Indian National Bar Association Members Code of Conduct, every advocate should expose corrupt and dishonest conduct in the profession. They are the first restrictions on Indian lawyers to engage in corrupt practices, for every lawyer owes a personal duty not only in avoiding but also exposing corrupt actions to the bar.

Comparatively, the UK has the Bribery Act 2010 and has arguably one of the toughest approaches, criminalising even the failure to report suspicion of money laundering within its anti-money laundering laws to the Serious Organised Crime Agency.²⁶⁶ On the other hand, the Foreign Corrupt Practices Act 1977 of the US prohibits, among other things, the making of, the promising to make, and to make corrupt payments, directly or indirectly, to foreign government officials, foreign political parties or officials, or candidates for foreign political office, to obtain or retain business for or with, or direct business to, any person.²⁶⁷

Evidently, global law firms place strong emphasis in complying with these rules by having internal policies on anti-corruption that applies across all of their offices,^{268,269} and thus so should Indian

²⁶⁴ The Bar Council of India, ‘Professional Standard on Rules on Advocate’s Duty Towards the Court’ Rule no. 4 <<http://www.barcouncilofindia.org/about/professional-standards/rules-on-professional-standards/>> accessed 20 January, 2017.

²⁶⁵ Ibid. Rule no. 5.

²⁶⁶ Thomson Reuters Foundation and Arnold & Porter LLP, supra n. 262 at 13.

²⁶⁷ The Criminal Division of the US Department of Justice and the Enforcement Division of the US Securities and Exchange Commission, ‘A Resource Guide to the US Foreign Corrupt Practices Act’ <<https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2015/01/16/guide.pdf>> 14, accessed 31 January, 2017.

²⁶⁸ Baker McKenzie LLP, supra n. 235.

²⁶⁹ Linklaters LLP, ‘Ethics – Fair dealing and ethics’ <<http://www.linklaters.com/RESPONSIBILITY/TRUSTED-ADVISOR/Pages/Ethics.aspx>> accessed 31 January, 2017.

²⁶⁰ International Bar Association, supra n. 231 at 21.

²⁶¹ Baker McKenzie LLP, supra n. 235.

²⁶² Thomson Reuters Foundation and Arnold & Porter LLP, ‘The role of lawyers in the fight against corruption: A Summary Report’, (2013) at 7.

²⁶³ Ibid. at 8.

firms. Compliance with a variety of anti-corruption laws should be mandatory and they should be applied in any interaction of any members of the firm with clients, governments, government officials, and all other stakeholders.

Indian firms should also consider adopting the United Nations Global Compact, which is what some global firms have already done to show their commitment to being a responsible business, by striving to advance the ten universally accepted principles covering human rights, labour, the environment, and anti-corruption through the firms' approach to business and the firms' engagement with their stakeholders.^{270,271,272} The United Nations Global Compact is a call to business worldwide with the objective to mainstream the adoption of sustainable and socially responsible policies by businesses around the world. One of the ten principles adopted by the United Nations Global Compact is derived from the United Nations Convention against Corruption, which stipulates that businesses should work against all forms of corruption, including extortion and bribery.²⁷³

In the CPP Survey, on the questions in relation to anti-corruption, all but one respondent mentioned that anti-corruption principles are 'very important'. Most firms address the issue by having a strict policy in place, whereas some firms do not, although almost all do not tolerate such practice. Internal policies laid out by firms for their employees include prohibition on conduct

(including offering, giving, asking or receiving) relating to any form of bribery and facilitation payments as well as mandatory reporting of any corrupt or suspected corrupted actions. Other than having strict policies, some firm implement 'Know Your Customer' checks as well as a regular reporting and oversight structure.

F. Anti-money laundering

Money laundering, is defined by the American President's Commission on Organized Crime, as the process by which one conceals the existence, illegal source, or illegal application of income, and then disguises that income to make it appear legitimate.²⁷⁴ The funds usually originate from serious crimes, ranging from drug trafficking and terrorist activity to illegal sales of weapons, human trafficking, fraud, political corruption, and child pornography. Regardless of the crime, money laundering typically involves a three-step process when converting illicit proceeds into apparently legal monies or goods: (i) placement: the criminally derived money is placed into a legitimate enterprise; (ii) layering: the funds are layered through various transactions to obscure the original source; and (iii) integration: the newly laundered funds are integrated into the legitimate financial world "in the form of bank notes, loans, letters of credit, or any number of recognizable financial instruments."²⁷⁵ As money laundering activities involve a huge amount of money that, at times, require a strategic advice from legal practitioners, it is vital that law firms have in place a preventive measure for money laundering

The Indian Parliament enacted the Prevention of Money Laundering Act, 2002 ("PMLA") to

²⁷⁰ DLA Piper LLP, 'About Us' <<https://www.dlapiper.com/en/uk/aboutus/#segment4>>, accessed 31 January, 2017.

²⁷¹ Herbert Smith Freehills LLP, 'Business and Human Rights' <<https://www.herbertsmithfreehills.com/pro-bono-and-citizenship/business-and-human-rights>>, accessed 31 January, 2017.

²⁷² Clifford Chance LLP, 'How We Do Business' <<https://www.cliffordchance.com/our-responsibilities/responsible-business/how-we-do-business.html>> accessed 31 January, 2017.

²⁷³ United Nations Global Compact, 'The Ten Principles of UN Global Compact', <<https://www.unglobalcompact.org/what-is-gc/mission/principles>> accessed 19 January, 2017.

²⁷⁴ USA President's Commission on Organized Crime, 'Interim Report to the President and Attorney General: The Cash Connection: Organized Crime, Financial Institutions, and Money Laundering', (1984) at 7.

²⁷⁵ Teresa E. Adams, 'Tacking on Money Laundering Charges to White Collar Crimes: What Did Congress Intend, and What Are the Courts Doing?', (2000), 17 GA. ST. U. L. REV. 531.

combat money laundering. Section 3 of PMLA defines the offence of money laundering as follows: ‘Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of the offence of money laundering’.²⁷⁶ It prescribes an obligation on banking companies, financial institutions and intermediaries for verification and maintenance of records of the identity of all their clients and also of all transactions and for furnishing information of such transactions in prescribed form to the Financial Intelligence Unit-India.²⁷⁷

Therefore, law firms are required to be committed to minimizing the risk of their operations being used by money launderers. They have the responsibility to ensure that their services are contracted by legitimate businesses using funds derived from legitimate sources, which is, for example, what Baker McKenzie LLP has in place as its internal policy.²⁷⁸ It is compulsory for all firms to carry out customer due diligence measures to ensure that their clients are who they say they are, or in other words, promote a “Know Your Customer” policy as a cornerstone principle for the firm’s business practices. Reasonable measures must be taken to establish whether a client is acting for another person or entity and to identify persons to whose advantage the client acts.

In adhering to anti-money laundering laws, firms should also avoid conducting business with anonymous clients, shell banks and clients engaged in blacklisted activities (e.g. by regulators), as well as avoid wrongfully under-reporting the size of a cash transaction and tax liability. This is an extremely important area in relation to

which one global firm went further in this regard by tackling money laundering problem in one of the most important money laundering countries, Montenegro, by undertaking a major pro bono project to conduct research into the anti-money laundering regulations that apply in Montenegro, followed by identification of solutions on how the Montenegrin financial system could be improved.²⁷⁹ In addition, it is also important for firms to monitor any ongoing transaction, and report to relevant authorities any information pointing to money laundering or terrorist financing. These rules must not only be the responsibility of the firm as a whole, but also of each individual member of the firm. To sum, firms should avoid participating or facilitating transactions that involve proceeds that are known or suspected to be derived from illegal activities.

Similar to anti-corruption measures, more than 90% of the CPP Survey respondents opined that anti-money laundering is a ‘very important’ issue. Firms chose to resort to written policies, due diligence and background checks in assessing and avoiding possible money laundering involvement.

To ensure compliance with the anti-money laundering policy, our suggestion is for firms to put in place internal controls and monitoring system to oversee its activities through a combination of internal audit by management as well as external audit by third parties. Internally, it is suggested that firms should have in place a panel whose tasks are to review, handle and process matters relating to suspicion of money laundering activities.

G. Insider Trading:

In capital markets transactions, where firms and their lawyers deal with publicly listed companies,

²⁷⁶ Department of Revenue, Ministry of Finance, Government of India, ‘Overview (Prevention of Money Laundering)’ <http://dor.gov.in/overview_pml> accessed 31 January, 2017.

²⁷⁷ Ibid.

²⁷⁸ Baker McKenzie LLP, *supra* n. 235.

²⁷⁹ Allen & Overy LLP, ‘A&O tackles money laundering in Montenegro’ <<http://www.allenoverly.com/publications/en-gb/Pages/AO-tackles-money-laundering-in-Montenegro.aspx>> accessed 31 January, 2017.

they may acquire, from time to time, information that is not known by the public, or has not been made public. This information is deemed to be inside information, if it would affect the price and performance of the companies if made known to the public.²⁸⁰

As a result, many jurisdictions prohibit the use of inside information in trading of securities of public companies known as insider trading. Insider trading usually involves the sale or purchase of publicly traded company shares or securities by persons connected with a company (insiders), who have price sensitive information not generally known by the public or by the persons with whom the insiders deal.²⁸¹ Because members of law firms often receive inside information from their clients due to the nature of their relationship, it is important to have an insider trading policy to be set up.

In India, the Securities and Exchange Board of India (“SEBI”) enacted the SEBI (Prohibition of Insider Trading) Regulations in 2015, which contains prohibitions on communication of unpublished price sensitive information, procurement of unpublished price sensitive information, and trading in securities when in possession of unpublished price sensitive information.²⁸² The criteria for unpublished price sensitive information would be whether the information is generally available or not, and the extent to which such information relates to both the company and the securities.

Similarly, the US federal securities laws and the regulations of the US Securities and Exchange Commission prohibit the purchase or sale of securities by a person who possesses “material”,

“non-public” information concerning the issuer of the security at the time of the trading. Prohibition also applies to a third party who purchases or sells a security as a result of being informed of such non-public information (known as tipping).

It is a criminal offence for a person under the Criminal Justice Act 1993 to deal and to encourage another person to deal in securities that are price-affected securities in relation to the information he possesses as an insider, as well as to disclose such information to another person otherwise than in the proper performance of the functions of his or her employment, office or profession.²⁸³ An information would fall under the above-mentioned category if it concerns a specific matter relating to the company’s business which is not generally known but which would, if it were generally known, be likely to significantly affect the price of the company’s securities.

Firms must make sure that their attorneys do not use any non-public information acquired by the members of the firm to buy or sell securities. Baker McKenzie LLP classifies such information to include:²⁸⁴

- financial results;
- projections of future results;
- major proposed corporate actions;
- changes in key personnel;
- changes in dividends;
- significant project or product developments;
- positive or negative developments in outstanding significant litigation; and
- any other facts which might cause a company’s financial results to be substantially affected.

²⁸³ Section 52 of the Criminal Justice Act 1993.

²⁸⁴ Baker McKenzie LLP, supra n. 235.

²⁸⁰ Practical Law Company, ‘Inside information’ <<http://uk.practicallaw.com/8-200-9269>> accessed 31 January, 2017.

²⁸¹ Stephen Herne, ‘Inside Information: Definitions in Australia, Canada, the UK, and the US’ (1986), 8 *Journal of Comparative Business and Capital Market Law* at 1.

²⁸² Practical Law Company, ‘Corporate crime, fraud and investigations in India: overview’ <<http://uk.practicallaw.com/3-520-5575?service=ld#a506537>> accessed 31 January, 2017.

To achieve compliance by each participant of the firm, it is important to have in place securities trading policies. In relation to insider trading transactions, the policies will act as guidelines in deciding whether it is acceptable for a firm's member to purchase certain securities. Firm securities trading policies should generally address the following goals:²⁸⁵

- To educate employees as to what constitutes unlawful securities trading or tipping.
- To articulate the firm's policy that such unlawful trading and tipping by its members and employees is prohibited.
- To institute some policy, procedure and/or rules designed to make it unlikely that such trading or tipping will occur.
- To maintain and enforce the policy, procedure and/or rules.

To further eradicate any chance of occurrence of insider trading, it should also be made a violation for a member of the firm to inform other parties of any inside information, also known as tipping, and such violation should also be applicable either when the purchase is made by the firm's members or by their relatives so long as it benefits the holder of the inside information.

In the CPP Survey, three-quarters of the respondents considered insider trading prohibitions to be 'very important'. Two respondents considered it as 'important' and only one respondent considered it as 'neutral'. The CPP Survey indicates that some firms address this issue by having a written policy, training, and oversight structure. One firm goes to the extent of prohibiting investments in stocks by any of its associates or partners, and any investment made has to be approved by the firm. Responses vary because not all respondent firms obtain access to

²⁸⁵ American Bar Association, 'Law Firm Policies Regarding Insider Trading and Confidentiality' (1991), 47 Bus. Law. 235.

inside information of publicly traded companies. However, amongst those who do have access, the majority have taken actions in mitigating the risk of insider trading practices.

H. Use of Social Media:

Social media is a powerful and innovative tool that can bring a lot of benefits if used properly. However, many firms struggle in creating their social media policy, especially in India.

As per the rules of the Bar Council of India, advertising or solicitation of work is not permitted for the legal profession under Indian laws.²⁸⁶ Indian law firms cannot advertise their existence in any form of media, including the Internet,²⁸⁷ except for (i) name of the firm; (ii) address, telephone numbers and email addresses; (iii) (a) enrolment number; (b) date of enrolment; (c) name of state bar council where originally enrolled; (d) name of the state bar council on whose roll their name currently stands; and (e) name of the Bar Association of which the advocate is a member; (iv) professional qualifications and academic qualifications; and (v) areas of practice.²⁸⁸ This creates

²⁸⁶ In the professional standards of the Bar Council of India on 'Rules on an Advocate's Duty Towards Fellow Advocates' provides that "an advocate shall not solicit work or advertise in any manner. He shall not promote himself by circulars, advertisements, touts, personal communications, interviews other than through personal relations, furnishing or inspiring newspaper comments or producing his photographs to be published in connection with cases in which he has been engaged or concerned", available at <<http://www.barcouncilofindia.org/about/professional-standards/rules-on-professional-standards/>>, accessed 19 January, 2017.

²⁸⁷ Bar Council of India Rules, Section VII Rule 36 under Duty to Colleagues, "An advocate shall not solicit work or advertise, either directly or indirectly, whether by circulars, advertisements, touts, personal communications, interviews not warranted by personal relations, furnishing or inspiring newspaper comments or producing his photographs to be published in connection with cases in which he has been engaged or concerned."

²⁸⁸ *V.B. Joshi v. Union of India*, Writ Petition (Civil) No. 532 of 2000, decided on 5-4-2013 (SC); Vikrant Pachnanda, 'Interview of the Month: Mr. Diljeet Titus', (2009) Vol 2 Issue 1 <<http://www.indialawjournal.org/archives/>>

a non-level playing field against global firms from the US, the UK and other countries, where there is no such ban and firms may advertise their businesses freely.

From the perspective of each individual, proper care must be taken into account by every lawyer in engaging in social media sites. Before making any information public, lawyers always have to think of the implications of their actions because any online post has to be presumed permanent since posts made online are easily traceable.

Legal and ethical responsibilities such as a ban on advertising, duty of privacy, confidentiality and whether an online post will impair the interest of the client or the firm must be carefully considered before taking any action. Firms should establish a set of clear guidelines or policies to which its lawyers should adhere, such as Baker McKenzie LLP which does not generally restrict the use of social media, but it sets out the responsibilities that must be observed by its lawyers such as “obligations to

[volume2/issue_1/interview_of_the_month.html](#)> accessed 24 February, 2017.

protect the privacy, confidentiality and legal interests of the firm and its clients”.²⁸⁹

From the CPP Survey, one third of firms surveyed consider social media policy to be ‘not important’, and another one third to be ‘less important’. Two respondents were ‘neutral’, while the remaining two regarded social media policy to be ‘important’. Most respondents, including a leading firm in India, indicated that they do not have any social media policy in the firm, even in relation to the personal use of social media by their employees.

Professionalism and ethics are the keys in formulating guidelines on the use of social media. Although the use of social media is not restricted, it is important to remind lawyers to not impair their productivity at work and not to mix personal and professional interests and perspectives. Any discussion of the client’s detail and subject matter, confidential and business information of the client and also the firm should be avoided.

²⁸⁹ Baker McKenzie LLP, supra n. 235.

CHAPTER 3: CONSTRUCTING A SOCIALLY RESPONSIBLE LAW FIRM: TOOLS AND STRATEGIES FOR IMPLEMENTATION

A. BUILDING A ROBUST INCLUSIVE, BALANCED, SUSTAINABLE AND ETHICAL WORK ENVIRONMENT

We list below some strategies and practical measures Indian law firms can adopt based on our recommendations in Chapter 3.

Diversity & Inclusion:

- Develop an understanding of how to leverage the diversity within your team to avoid ‘group-think’, i.e. where collective thinking of a group of intelligent individuals results in poor decision making by the group as a whole due to lack of diversity of thought.
 - Mentor or sponsor individuals with high potential from a group under-represented in your firm’s leadership.
 - Clearly communicate role and importance of equality, diversity and inclusion as a ‘must have’ to everyone in the firm.
 - Create an action plan to achieve the diversity and inclusion improvements that you want to achieve as a firm as part of the firm’s core business planning and review process –create a set of performance indicators to track progress.
 - Recruit and promote people who demonstrate the values and behaviours you need to achieve the improvement you seek.²⁹⁰
- Have a written equality and diversity policy based on the size and nature of your firm which includes: a requirement that everyone in the firm complies with the outcomes; details of how you will implement, monitor, evaluate and update the policy; details of how you will ensure equality in relation to the treatment of staff, clients and third parties instructed in connection with client matters; details of how complaints and disciplinary issues are to be dealt with and details of arrangements for diversity monitoring.
 - Provide staff with training and information about complying with requirements of the diversity policy.²⁹¹
 - Implement committee structures within the firm which include representation from all levels of staff of the firm throughout the firm to create further inclusion in decision-making processes.
 - Lobby with the Bar Council of India to ensure that failure to implement the requirements of the equality and diversity policies be considered an enforcement issue²⁹² with the consequence of disciplinary action being taken against the non-compliant law firm by the respective state bar council.

²⁹⁰ Action points 1 to 5 under this heading are based on recommendations of the Law Society of England & Wales in its ‘Future of Legal Services’ report of January 2016.

²⁹¹ Action points 6 & 7 to under this heading are based on the SRA Code of Conduct Handbook.

²⁹² This is a statutory obligation of the state bar councils. Section 7 of the Advocates Act, 1961 mandates the Bar Council of India to safeguard the rights, privileges, and interests of lawyers. State Bar Councils are also required to safeguard the interests of advocates on its roll and conduct seminars.

Women specific initiatives:

- Develop strong women’s networks within the firm where senior women lawyers support junior lawyers or women are paired with other women who are following similar career paths.
- Launch mentoring schemes particularly for women who re-enter the firm after a maternity break of part-time lawyers intending to switch to full-time legal work. Mentors should be responsible for helping their mentee develop competence, credibility and confidence. They must help the mentee establish and expand a network of relationships including with sponsors, peers, role models and additional mentors.
- Mentor-mentee should not be detached from work assignments, i.e. they should work together. Firms could set mentorship hours and recognise this as a billable activity, for instance, similar to continuing legal education credits.²⁹³

Recruitment and promotion practices:

- Implement written recruitment and promotion policies (for internal use and those provided to external parties) which use inclusive language and support these processes with a formal and transparent process on promotion and progression within the firm.
- Allow convenient access to the firm’s recruitment and promotion policies to all members of staff on the firm website.

- Be actively involved in initiatives to reduce barriers to entry into the profession such as, schemes assisting payment of tuition fees and associated expenses of legal education for meritorious law students, contextual analysis of curriculum vitae of applicants to law firms etc.

Remuneration and benefits:

- Encourage transparency in remuneration decisions through discussions with each fee earner on the measures used by the firm management to calculate the fee earners’ annual pay package.
- Provide access to gender pay gap information of the firm, if any, to all fee earners – by publishing the difference between average hourly rates and bonus payments made to male and female fee earners with the same or similar work experience.

Anti-Harassment and Anti-Discrimination:

- Draft and implement anti-discrimination and anti-sexual harassment policies for the firm.
- Actively encourage all staff (fee earners and non-fee earners) to report incidents of harassment or discrimination of any sort to their supervisor or human resources team of the firm or a counsellor, where the firm has a suitably trained person available for that role.
- Provide details of the grievance redressal procedure available to a victim, such as to whom should complaints be addressed and how their complaint will be dealt with including the investigation process and what disciplinary action may be taken against the harasser in accordance with the firm’s disciplinary procedures.

²⁹³ David A. Thomas & John J. Gabarro, ‘Breaking Through: The Making of Minority Executives in Corporate America’, (Harvard Business School Press, 1999) 96, 104, who state that “Mentors ‘must play the dual role of coach and counsellor: coaches give technical advice...while counsellors talk about the experience of doing it and offer emotional support’ at 136, 137.

- Remind staff to keep a record of all incidents of harassment or other forms of discrimination.

Qualitative aspects of the working environment:

Make one or more of the following options available to fee earners of the firm across offices and experience levels:

- Flexible work schemes such as part-time arrangements, compressed or ‘core’ full-time hours when employees must attend work, job share (same role) between two or more colleagues, short work weeks, fully-paid sabbatical programmes and staggered work hours (preferred start and end times provided the total work hours are same as for other associates).
- Term time working to allow parents to spend school holidays with children.²⁹⁴
- Use of technology to support remote or home working or telecommuting.
- Shared parental leave (i.e. paternity and maternity leave) to allow couples to plan childcare efficiently.
- Compulsory adoption and maternity leave entitlement.
- Mandatory annual vacation allowance ranging from 2-3 weeks per year.
- Replacing billable v/s non-billable time recording requirements with other indicators such as “firm time” and “client time”.
- Credit certification of partners in recognition of their contribution to diversity, inclusion and fair recruitment practices in their areas of responsibility.

²⁹⁴ Law Society of England & Wales, *supra* n. 112 at 5.

Staff Development and Training:

- Provide access to coaching programmes specifically tailored to the lawyer’s personal and professional situation, at important points in their career, especially in senior associate years and new partner years.
- Require individuals to draw up a learning plan with aims and objectives. Arrange for periodic review of the learning methods against satisfaction of aims of the individual employee – through discussions as part of the performance appraisal process, scheduled planning meetings and conducting surveys to gain feedback on effectiveness of the plan.²⁹⁵
- Develop a culture of learning in the firm, including providing adequate time to learn and create opportunities for the employee to apply new skills.
- Similar to the SRA in the UK or the law societies in Canada, whereas the content of CPD training can be designed by individual law firms in coordination with professional development service providers, the Bar Council of India could approve accreditation programmes for CPD and ensure that firms follow these requirements.
- Evaluate stress levels in annual performance appraisals of associates. Encourage associates to report work stress to their managers or partners regularly. Track number of working hours of associates to ensure that work-life balance is not compromised.

²⁹⁵ Alan Tarter, ‘Professional Development: A Key Element of Law Firm Culture’ (2016) *New York Law Journal* Vol. 255 Issue 53 <<http://www.newyorklawjournal.com/id=1202752341195/Professional-Development-A-Key-Element-of-Law-Firm-Culture>> accessed 22 January, 2017.

Recycling and Waste Reduction:

- Continually innovate and stay informed about new technologies and ideas. The example discussed in Chapter 3.1 B, in which the firm arranged with Starbucks to keep a mug for each employee, is testament to the fact that thinking outside the box is often required, particularly when firms already seem to be quite good at the basics.
- Be prepared to work with suppliers and partners when trying to manage waste and enhance recycling. If you are unhappy with the type of paper or filing equipment being supplied, be prepared to negotiate and discuss the problem with the relevant parties. Some of the most significant developments in the US have been made in cases where firms have pursued quasi-partnerships with suppliers to make a conscious improvement in this area.
- Maximise the potential for electronic software as a substitute for paper documents, ensuring that hard copies are required only when absolutely necessary, such as for court documents.

Energy Conservation:

- Go beyond the basics. Having clear management-issued philosophies when it comes to cutting down on unnecessary office electricity and power usage is a benefit, but looking beyond the rudimentary areas of lighting and heating bills usage is necessary. Solar panels, green initiatives and collaborations with landlords could all be exploited here.
- In areas like heating and lighting use, with new technologies consistently becoming available, do not stagnate, and stay updated on the latest products to continue to make improvements. This will involve communicating with suppliers, and setting aside funds to purchase newer equipment.

- For transport-related energy usage and ways to reduce energy wastage, carpooling or bus or other transport services provided by the firm for employees could be used.

Economic Sustainability:

- In addition to being aware of the nexus between positive social and environmental policies, and overall economic performance, you need to ensure that this ethos filters down from management to all levels of the firm.
- Given the relatively longer lifespan of Indian firms, be prepared to engage in policies that are costly in the short run but lead to savings over time. Ensure decision makers, such as managing partners, are given adequately long tenures so that they can implement policies with a long-term economic focus.
- Choose a suitable method for establishing overall economic sustainability, be it the Global Sullivan Principles, the United Nations Global Compact etc. This should take into account factors such as corruption and labour policies, and not just financial accounts.

- Use seminars and education programmes to develop a culture of economic sustainability in the firm, ensuring that all employees understand the culture.

Supply Chain Sustainability:

- Where possible, devise internal procedures for measuring and monitoring your partners' commitments to sustainability. The templates provided by the OECD and the United Nations Global Compact should serve as a useful starting point for firms without existing procedures. This will ensure that other businesses can be measured

against a concrete set of sustainability criteria to see that they are in compliance.

- Identify suppliers with an excellent track record by looking at indications such as prizes, awards and newspaper write-ups – which, in an Indian context, include the prestigious Parivartan Awards and the Golden Peacock Global Award for Sustainability. Also, organisations such as the Centre for Responsible Business offer information on sustainable business practices.
- After entering into a relationship with a supplier or contractor, set clear standards and criteria that must be met in order to continue a relationship with your firm. Decide how onerous these standards should be, but ensure that they should be consistent and coherent.
- Advertise contracts and relationships that have developed with socially conscious partners, and seek to establish networks and dialogues with these partners in a way that can be used to improve sustainability practices within the firm.

Professional conduct:

- Enter into fee arrangements with clients only if considered suitable for the client's needs and for the client's best interests.
- Provide clients with all the necessary information to allow them to make informed decisions about the services they need, how it will be handled, the likely overall cost and the options available to them.

Conflicts of Interest:

- Provide access to coaching programmes tailored to educate firm's employees, including lawyers in relation to conflict of interest checks, and including how to identify and

assess the presence of conflicts of interest and how to handle them.

- Establish an *ad hoc* forum or an internal committee whose task involves discussing and providing recommendations in relation to matters involving possible conflicts.
- Decline to act for clients whose interests are in direct or indirect conflict unless all relevant clients consent in writing, or when in the presence of a common interest with the lawyer.
- Establish formal ethics wall procedures to protect client interests when potential conflicts arise.

Confidentiality:

- Through periodical meetings or seminars, educate and ensure every member of your staff understands and upholds their duty of confidentiality earnestly and does not disclose any client confidential information except under very specific exempted circumstances.
- In a conflict between a duty of confidentiality to one client and a duty of disclosure to other client, all lawyers must ensure their duty of confidentiality prevails.

Anti-corruption:

- Implement a set of guidelines for lawyers to which to refer in relation to activities that are illegal and prohibited by the firm and by law.
- Require employees to fully understand the associated risks of, and not actively participating in, corrupt behaviour;
- Ensure that employees are aware that indirect participation can constitute being an accessory or accomplice.

Anti-money laundering:

- Promote a strong principle inside the firm to not participate in or facilitate transactions that involve proceeds that the firm knows, or suspectedly knows, is generated from criminal activities.
- Establish a Know Your Customer due diligence check to be carried out before accepting any new matter from clients.

Insider trading:

- Establish an exhaustive securities trading policy containing guidelines to identify, educate, and conclude steps to be taken in relation to securities trading by firm members.
- Conduct periodical training and enforcement towards firm members to ensure adherence to the securities trading policy.
- Ensure that law firm personnel privy to inside information adhere to strict confidentiality and especially abstain from trading and dealing in those companies which are the firm’s clients.

Use of social media:

- Implement a social media policy, in particular to govern professional and personal activities of staff, in compliance with the Indian legal requirements prohibiting marketing and solicitation of work.
- Educate firm staff of the legal and ethical responsibilities that arise from social media usage, as well as the different positive and negative impact that staff’s social media activities may have.

B. BUILDING A PRO BONO PRACTICE

Scott in his article²⁹⁶ traces the terrain of pro bono’s institutional expansion in the US and delineates the contribution of the following factors which may be well suited for the Indian model:

- ▶ emphasis on the movement by the organized bar to connect professional service ideals and practice;
- ▶ the eventual decline of state-sponsored legal services programmes;
- ▶ the development of a robust non-governmental pro bono infrastructure; and
- ▶ the rise of the big law firm culture.

Regulators:

- The Bar Council of India or Society of Indian Law Firms must take steps to create a provision for attributing dedicated roles to law firms at the legal aid cell/legal services agency of the courts or State entities. This would result in the creation of a specific market for law firms’ pro bono services and instil positive competition among firms to boost their practices. In doing so, what needs to be cautioned against are the professional tensions generated by pro bono’s commodification in as much as the underlying public purpose of the service being saddled by overarching business costs.
- Restrictions on advertisement and solicitation in respect of pro bono must be clarified and relaxed to increase outreach. With transformed litigation and corporate filing systems, and heavy emphasis on disclosures and e-filing, and emphasis on legal business development within lines of ethical conduct,

²⁹⁶ American Bar Association Standing Committee on Pro Bono And Public Service, supra n. 188 at 5.

it is pertinent that the Bar Council reconsider its rules.²⁹⁷

- It is imminent for the Bar Council of India to conceptualise pro bono in India as derived from Article 39A of the Constitution of India as discharged through the lawyers it enrolls and for law firms to voluntarily acknowledge their duty to represent the needy. The UK Pro Bono Charter forms a ready reference for framing pro bono policies. It is modelled to be a Statement of Commitment which, when attested to by a law firm, demonstrates its commitment to improving access to justice for those individuals and organisations who have legal needs, are ineligible for legal aid and are unable to afford legal services.

Law Firms:

- The heads of law firms ought to be sensitised towards the emerging concept of pro bono as an essential form of legal services. They have the power to institutionalize pro bono and create an enabling environment in their firms and thus, encourage junior members of the firm to take up pro bono work on a regular basis.
- Must allocate dedicated resources to pro bono and its adaption in their institutional structure and culture.
- Identify:
 - ◆ The nature of the pro bono work they intend to take up.

²⁹⁷ Law firms find loopholes to promote their services, (Mint 05 July, 2013), <<http://www.livemint.com/Companies/vqsXsEeGYuqPli9I8TPL00/Law-firms-find-loopholes-to-promote-their-services.html>> (Lalit Bhasin, president of the Society of Indian Law Firms (SILF), said such activity doesn't conform with Rule 36 of the rules of the Bar Council of India, which prohibits activities amounting to advertising and soliciting business. He said that instances mentioned in Rule 36 aren't exhaustive but indicative. Any kind of promotion is a violation of the Rule).

- ◆ The expertise required for it.
- ◆ Criteria relating to clients making them eligible for assistance.
- ◆ General firm-related criteria, including a check for conflicts, and making sure resources and expertise are available.
- Place emphasis on efficiency directly associated with primary ideas is of transaction cost reduction and carefully targeted resource commitments. Following is a quick checklist of relevant self-assessment questions:
 - ◆ Does the firm have actual or potential conflict(s) of interest?²⁹⁸
 - ◆ Does the firm have the necessary resources available?
 - ◆ Are there people within the firm with sufficient expertise?
 - ◆ Staff development: does the matter afford opportunities for training or education?
 - ◆ Community profile: does the matter allow the firm to develop its community profile?
 - ◆ Are there opportunities to partner with commercial clients on a pro bono matter?
 - ◆ Can the cost of providing pro bono legal advice be met and a budget allocated?

²⁹⁸ The chief consideration for law firms is cultivating their paying client base. Decisions about pro bono are therefore always filtered through the lens of how they will affect the interests of commercial clients. Conflict of interest analyses are of central concern within law firms, where pro bono committees and coordinators are charged with vigilantly monitoring pro bono requests for conflicts problems. Even when actual conflicts do not bar pro bono representation, the spectre of so-called positional conflicts presents an additional hurdle. Positional conflicts arise when a lawyer advances an argument on behalf of one client that "is directly contrary to, or has a detrimental impact on, the position advanced on behalf of a second client in a different case or matter."

- Engage with pro bono coordinators responsible for conducting the administrative outreach and policy work necessary to facilitate their firms' pro bono activities; such that the independent distinction for the purposes of rules of the Bar Council of India is maintained and the professional duty is seamlessly discharged.²⁹⁹
- Cultivate pro bono partnerships outside the context of the big firm which extends the sphere of political alliance. As large companies shape their in-house pro bono programmes to complement broader corporate philanthropic goals, they become integrated into the broader network of pro bono supporters.
- **Market Risk:** Pro bono can be politically controversial and, even when positional conflicts are not technically at issue, firms can take a dim view of pro bono activities that might merely offend the firm's regular clients or its prospective clients.
- **Market Appeal:** On the other side of the coin, big firms are more likely to support pro bono in areas where the potential for positional conflicts is slim and where the firm can expect positive public relations. Thus, firms are attracted to pro bono cases outside the scope of their core practice areas that are politically safe and easy to exit should a conflict arise. Firms are attracted to cases that can be promoted in the community as exemplars of public spiritedness and targeted to potential recruits as indicia of strong pro bono cultures. From this perspective, pro bono is not simply a gift, but

an investment that law firms are making in their own reputations

Lawyers:

At the core of pro bono is the professional development of lawyers. This demands time and commitment from associates and its prioritisation along with complex analysis by partners. The following some of the issues that law firms must keep in mind while framing their pro bono policies:

- Pro bono enlarges the structure of opportunity for public-spirited lawyers, who use pro bono pragmatically to advance different career objectives. Some lawyers use pro bono to craft lifelong careers inside private firms that include significant contributions to public interest causes. Others engage in pro bono as a means of enhancing job opportunities by building a public service persona that allows them to move back and forth between private sector, governmental, academic, and non-profit posts.
- Because of its fluid structure, the pro bono system offers significant opportunities for lawyers to deploy different types of advocacy strategies. Although formal rules and practices have developed, there is considerable latitude within the system for practitioners to undertake a range of legal cases using a variety of lawyering techniques.
- The flexibility of the pro bono system also makes room for programmes to develop creative problem-solving approaches to issues facing low income and under-represented client communities. By emphasizing informal dispute resolution and prioritizing social service provision, these programmes underscore the range of non-traditional advocacy strategies that pro bono programmes deploy.

²⁹⁹ What emerges from an examination of international position on coordinators is a picture of significant discretion vested in them to influence the contours of a firm's pro bono program. This discretion is apparent primarily in the outreach and intake process. Many coordinators affirmatively engage in outreach to solicit cases from legal services and public interest groups, and actively screen requests for pro bono volunteers.

CHAPTER 4: CONCLUSIONS

- India's legal services sector has a promising future, flourishing with its growing economy. As Indian law firms develop, it is important to be socially responsible in their practices.
- As an institution, Indian firms must allocate particular attention to the internal policies relating to human capital that govern the firm, in order to attract and retain the best talent.
- Sustainability is an aspect that firms must always take into account in their decision making by always advocating economic sustainability, energy conservation, and waste reduction.
- Indian law firms must have a positive impact on the community. One way to do that is by increasing the already existing participation in pro bono activities on various causes relevant to the firms and/or their lawyers.
- Indian law firms must advocate, disseminate, and apply internally, ethically responsible practices. This involves best practices in carrying out legal services ethically, including maintaining independence and good professional conduct as well as avoiding behaviour leading to or supporting conflicts of interest, corruption or money laundering.

country. India saw strong and stable deal activity with over 400 deals valued at around US\$ 11.9 billion in the first quarter of 2016 compared to US\$ 9.4 billion across 352 deals in the corresponding quarter of 2015 in the merger and acquisition and private equity investment space.³⁰⁰ Law firms hold one of the key roles in accelerating the nation's growth.

In doing so, it is inevitable that law firms need to take into account social responsibilities in their practices. A culture of openness, diversity and tolerance operating alongside innovation and human capital promote economic development. Measures towards employees, colleagues and the community must be assimilated within the law firm's culture to promote and set examples of good practice. Firms also have the responsibility to be ethical in their decision making, be it carried out by the firm or the individuals inside the firm.

Many Indian law firms have in place their own guiding principles to be respected by both the firm and its staff. However, as the CPP Survey results indicate, these have not yet become part of the formal structure and process of law firms. A major consideration to adopt these principles appears to be the relatively small size of their practices. Efforts should begin from within the organisations towards recruitment, remuneration and promotion policies and proceed towards economic sustainability and community outreach policies of the firms.

The Indian legal landscape flourishes alongside the positive macro-economic conditions of the

³⁰⁰ Grant Thornton India LLP, 'Deal Tracker: Providing M&A and Private Equity Deal Insights - Q1- 2016' (Grant Thornton, 2016) Volume 12.03.

The firm culture and ethos should reflect openness, fairness, inclusiveness and respect for diversity. There should be zero tolerance to discrimination, harassment and victimisation of employees on any grounds. Particular focus is required for women lawyers. Law firms need to develop strategies to ensure retention of women lawyers through institutional changes and empower women through support, and the development of skills, and provide the required resources for them to succeed. Continuing professional development should form an essential part of law firms' strategies. To keep pace with the globalisation of legal service delivery, Indian law firms need to switch to measures designed to meet lawyers' needs through each stage of their careers. There is already recognition of the importance of work-life balance to practice; focus however needs to shift from client demands to those of the fee earner. Employee satisfaction is a business imperative due to its direct impact on employee productivity, recruitment, retention and business performance of the organisation.

Indian firms' views and practices towards sustainability, particularly economic sustainability should extend beyond its perceived limits of environmental carbon emissions policies. It should proceed to a long-term approach, going beyond financial accounts when determining the firm's survival prospects. In its current manifestation, when a firm acts positively in terms of its wider surroundings and treats communities positively, this effect beneficially reflects back upon them. This area, in which costs can clearly be linked to sustainability practices, seems to be the one in which the greatest strides have been made in the Indian legal market. The situation for Indian law firms is positive in this respect, whereby many of them acknowledge the importance of applying, and have the intention to apply these measures, although there is still little that can be seen in practice.

Energy conservation and resource usage are areas in which law firms have made great

progress globally. The leading developments have been in terms of reduction in unnecessary appliance usage, lowering energy costs, carpooling, and progressive 'work from home' schemes. The challenge for Indian law firms is to remain imaginative, and search for policies that may not be as obvious or cost beneficial in the short run, but that will ultimately enhance sustainability. Waste reduction and recycling seem to mirror the area of energy conservation quite closely. There is a clear trend that includes cutting down on paper usage, and recycling office materials where possible. The challenge for Indian law firms is, again, to remain innovative. The Schwabe scheme, in which US law firms devised a plan with Starbucks to reduce waste, is a shining example of this. It also emphasizes, however, that in order to reduce waste and use materials more efficiently, interacting with and communicating with suppliers is essential.

Similarly, supply chain responsibility essentially accounts for the external element of a company's sustainability obligations, recognizing that it has the potential to impact the wider market by prioritizing relationships with other sustainable firms. It is not as easy to manage, particularly if there is a limited market for suppliers and contractors. This is the area in which Indian firms are most lacking in terms of sustainability. From the CPP Survey, there seems to be a lack of coherent mechanisms for checking supplier practices and principles. An obvious way to start would be to look at international guidelines, such as those promulgated by the United Nations to introduce a proper system that seeks to reinforce these principles.

An equally significant aspect that Indian law firms need to consider is their community outreach. The UK and the US did not create their pro bono terrain in a day. This transformation was apparent at multiple levels. Pro bono presented professional advantages over the public service systems it would eventually eclipse. Litigation-based and non-litigation-based measures together provide a range of options for law firms in India to design innovative, efficient and high

impact pro bono programmes aimed at furthering the cause of public interest. The CPP Survey suggests that pro bono is not yet well developed and institutionalised in India, with big firms taking insignificant steps, while the rest of the legal market is somewhat reluctant to invest capitals in developing such a system. On the contrary, the models developed by the UK and the US present robust systems, which may be employed with modifications to suit the organic need of the law firm in India.

Last but not least, an area in which law firms, both in India and globally, need to pay particular attention to is the governance and impact of ethics in their practice. As the vehicle that embodies individual advocates, Indian law firms have a responsibility to promote the importance and adoption of ethical considerations by each individual member, as well as the practice of the firm as a whole. While the core ethical principles have been set out by the Bar Council of India, there is room for Indian law firms to improve by adopting best practices set out by international legal profession bodies. These include the American Bar Association, the Solicitors Regulation Authority, and the International Bar Association, which have, in their respective jurisdictions, become prominent advocates for the adoption of ethical criteria by their members.

A law firm should create a working environment that supports and rewards excellent professional

conduct, including the preservation of honesty, integrity and fairness. Independence of its members should also be an area of focus of Indian law firms, to allow its lawyers to make professional judgments devoid of conflicting interests. All individuals, let alone lawyers, must avoid any illegal conduct in their profession and practice, direct or indirect, including in relation to corruption and money laundering activities. From the CPP Survey, Indian law firms acknowledge the importance of these behavioural practices and hence the implicit adoption of these guiding principles.

This is an opportune time for the Bar Council of India to make a real difference and propel the growth of the Indian legal practice through various measures, including requiring law firms to uphold professional values, ethics, standards and integrity, being at the forefront of advising law professionals about developments in the legal market and assisting them to embark on this change, and offering public education to build confidence among both consumers and providers on legal and ethical issues. However, Indian law firms can pre-empt any actions or mandatory requirements of the Bar Council of India by voluntarily adopting the guidelines recommended by this study. By adopting such guidelines, Indian law firms can garner benefits from a financial perspective as well as revert the practice of law back to first principles – the provision of social good. In this way, every Indian law firm can aspire to be a “socially responsible law firm”.

ANNEXURE 1: SOLICITORS REGULATION AUTHORITY DIVERSITY QUESTIONNAIRE³⁰¹

Firms to add their own background information and guidance and data protection warnings here

It is the firm's responsibility to advise people working at the firm what the data is to be used for, who will have access, and to ensure that the data is collected, processed and reported in accordance with the data protection legislation.

Role categories

The data collected from everyone working at the firm must be broken down by the role categories set out below when reporting the aggregated firm data to the SRA.

1. Select the category which best describes your role in the firm

Role category	Notes	
Solicitor (sole practitioner, partner, member or director)	Members or directors who are not solicitors should be recorded in the 'Managerial role' category below.	
Solicitor	All other practising solicitors including assistant solicitors, associates or consultants. Includes Registered European Lawyers and Registered Foreign Lawyers.	
Other fee earning role	Includes fee earners such as trainee solicitors, legal executives (who are not chartered or a fellow) and paralegals i.e. those who are not 'authorised persons'.	
Role directly supporting a fee earner	Includes legal secretaries, administrators, legal assistants, or non fee earning paralegals.	
Managerial role	Includes non-lawyer managers, directors, or members and others such as practice managers, finance or account managers etc.	
IT/ HR/other corporate services role	Not an authorised person and not individuals in a managerial role – includes finance or accountancy roles.	
Barrister	Individuals authorised by the Bar Standards Board.	

Continued overleaf

³⁰¹. 'SRA Solicitors Regulation Authority Diversity Questionnaire' <<http://www.sra.org.uk/SearchResult.aspx?id=72&searchtext=diversity+questionnaire>> accessed 26 August 2017.

Role category	Notes	
Chartered Legal Executive (Fellow of CILEX)	Individuals authorised by ILEX Professional Standards.	
Licensed Conveyancer	Individuals authorised by the Council for Licensed Conveyancers.	
Patent or Trade Mark Attorney	Individuals authorised by the Intellectual Property Regulation Board.	
Costs Lawyer	Individuals authorised by the Costs Lawyer Standards Board.	
Notary	Individuals authorised by the Master of the Faculties.	
Prefer not to say		

Ownership and supervisory responsibilities in the firm

2. How would you describe your role in the firm?

Sole practitioner, partner, member or director of the firm	
Associate or Assistant	
Other employee or staff member	
Prefer not to say	

3. Do you have a share in the ownership of your organisation (e.g. equity partner, shareholder)?

Yes	
No	
Prefer not to say	

4. Do you have responsibility for supervising or managing the work of lawyers or other employees?

Yes	
No	
Prefer not to say	

Diversity questions (protected characteristics under the Equality Act 2012)

5. From the list of age bands below, please indicate the category that includes your current age in years:

16 - 24	
25 - 34	
35 - 44	
45 - 54	
55 - 64	
65+	
Prefer not to say	

6. What is your gender?

Female	
Male	
Prefer not to say	

7. The Equality Act 2010 generally defines a disabled person as someone who has a mental or physical impairment that has a substantial and long-term adverse effect on the

person's ability to carry out normal day-to-day activities.

- (a) Do you consider yourself to have a disability according to the definition in the Equality Act?

Yes	
No	
Prefer not to say	

Please note: If an individual has a condition which fits the Equality Act definition, they should tick 'Yes' to this question even if they do not feel in any way limited by that condition.

- (b) Are your day-to-day activities limited because of a health problem or disability which has lasted, or is expected to last, at least 12 months?

Yes, limited a lot	
Yes, limited a little	
No	
Prefer not to say	

8. What is your ethnic group?

Asian/Asian British

Bangladeshi	
Chinese	
Indian	
Pakistani	
Any other Asian background	

Black/Black British

African	
Caribbean	
Any other Black background	

Mixed/multiple ethnic groups

White and Asian	
White and Black African	
White and Black Caribbean	
White and Chinese	
Any other Mixed/multiple ethnic background	

White

British/English/Welsh/Northern Irish/Scottish	
Irish	
Gypsy or Irish Traveller	
Any other White background	

Other ethnic group

Arab	
Any other ethnic group	
Prefer not to say	
Prefer not to say	

9. What is your religion or belief?

No religion or belief/Atheist	
Buddhist	
Christian	
Hindu	
Jewish	
Muslim	
Sikh	
Any other religion	
Prefer not to say	

10. What is your sexual orientation?

Bisexual	
Gay man	
Gay woman/lesbian	
Heterosexual/straight	
Other	
Prefer not to say	

Socio-economic background (education) and caring responsibilities

11. Did you mainly attend a state or fee paying school between the ages 11 – 18?

UK State School	
UK Independent/Fee-paying School	
Attended school outside the UK	
Prefer not to say	

If you changed your type of school during your education, or were educated partly in the UK and partly outside, please select the category that applies to your main place of education in the last two years of your education.

12. If you went to University (to study a BA, BSc course or higher), were you part of the first generation of your family to do so?

Yes	
No	
Did not attend University	
Prefer not to say	

13. Are you a primary carer for a child or children under 18?

Yes	
No	
Prefer not to say	

14. Do you look after, or give any help or support to family members, friends, neighbours or others because of either:

- ◆ Long-term physical or mental ill-health/disability
- ◆ Problems related to old age?

(Do not count anything you do as part of your paid employment)

No	
Yes, 1 - 19 hours a week	
Yes, 20 - 49 hours a week	
Yes, 50 or more hours a week	
Prefer not to say	

If you look after more than one person, please total the hours spent caring for both or all individuals and select the correct category for the total number of hours.

Thank you for taking part in this survey

ANNEXURE 2: CPP SURVEY QUESTIONNAIRE

No.	Question	Not Important	Less Important	Neutral	Important	Very Important
1.	How important is attorney behaviour standard to your law firm/practice?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
What do you understand by the term “attorney behaviour”? Has the firm/practice adopted a behaviour standard for its lawyers? How do you measure the firm/practice’s lawyers’ compliance with its behaviour standards?						
2.	How important is client confidentiality to the firm’s practice?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
What mechanism(s) do you use to ensure that confidentiality principle is upheld in the firm/practice and by its staff? What steps does the firm/practice usually take when a conflict of interest arises in relation to a client?						
3.	What is the firm/practice view on anti-corruption and anti-money laundering principles?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has the firm/practice adopted anti-corruption and anti-money laundering policies? If not, what checks do you have in place to ensure that the firm’s lawyers are not involved in any such dealings?						
4.	What is the firm/practice view towards insider trading through use of insider information?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Where the team has access to “inside information”, what measures are taken to ensure that none of the firm’s staff undertake insider trading?						
5.	How important is social media for the firm/practice (for advertising or marketing purposes)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

No.	Question	Not Important	Less Important	Neutral	Important	Very Important
If the firm/practice has a social media policy, what are the main goals it aims to achieve? What measures are taken to ensure that none of the firm staff engage in advertising or solicitation of work (whether directly or indirectly)?						
6.	How essential is a clearly stated employee policy the firm/practice?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
List the main employment related policies adopted by the firm/practice. Do these include (i) anti-harassment policy; (ii) anti-discrimination policy; (iii) remuneration policy and separate performance evaluation criteria; (iv) leave/holiday policy; and (v) diversity and inclusiveness policy? Who evaluates compliance with these policies (is there a separate monitoring committee)?						
7.	How important is a flexible working policy to the firm/practice?	Not Important <input type="checkbox"/>	Less Important <input type="checkbox"/>	Neutral <input type="checkbox"/>	Important <input type="checkbox"/>	Very Important <input type="checkbox"/>
Do you have a written flexible work policy? What should a flexible working policy contain at the minimum?						
8.	Do you believe that staff development is important for a firm?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
In your view, what are the minimum aspects this policy should cover? Should this be limited to fee earning staff?						
9.	How relevant is social responsibility for smaller size law firms?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do you agree that the size of firm/practice matters, i.e. it is harder for smaller firms/practices to adopt “socially responsible” policies?						
10.	How important is it to bridge the gender pay gap in the legal profession?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is there a gender pay gap in Indian law firms? What is the gender ratio in the firm/practice for fee earners? Are female and male fee earners at the same levels being paid the same salary (including bonus payments)? How many partners are female? Is there a difference in earnings of female partners to male partners? Please explain your response.						
11.	Do you think conducting an annual employee satisfaction audit by a law firm is useful?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

No.	Question	Not Important	Less Important	Neutral	Important	Very Important
Do you conduct periodic employee satisfaction checks? What indicators do you employ to evaluate employee satisfaction?						
12.	How important is pro bono work to the firm/practice?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does the firm have a specific pro bono policy? If not, is the firm/practice involved in pro bono activities? If yes, does it conform with the professional standards of the Bar Council of India (or any other organization it is part of)?						
13.	How relevant is a structured mode of accepting instructions on pro bono matters?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
To what degree does the firm/practice conform with your view? What are the usual types of pro bono matters handled by the firm/practice? Do you have a conflict check mechanism for pro bono clients? In the event of conflict between a non-pro bono and pro bono client, how is the conflict managed?						
14.	How important is the involvement of fee earners in pro bono matters?	Not Important <input type="checkbox"/>	Less Important <input type="checkbox"/>	Neutral <input type="checkbox"/>	Important <input type="checkbox"/>	Very Important <input type="checkbox"/>
Is there minimum number of mandatory pro bono matters each fee earner is required to handle? What is the ratio of number of fee earners to partners in a pro bono matter? What is the role of partners in pro bono matters? How is the time recorded by a fee earner in pro bono matter: (i) billed by the firm; and (ii) evaluated in performance appraisals?						
15.	Do you have a separate public policy practice?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If yes, what is the structure and function of this practice? How long has this been a recognized area of practice of the firm/practice? Do you have a dedicated team or is a team assembled for specific projects? What is the revenue stream and profitability of this practice? What type of work does the public policy practice engage in and with what clients? How do you ensure transparency and accountability (from professional ethics standards) to the firm's clients who are or may be potentially affected by the view adopted by the firm/practice in any policy work undertaken for the Government or for a regulator or similar client?						
17.	Is economic/environmental sustainability important to the firm/practice?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Chap. 1: Designing socially responsible law firms in India

Chap. 2: Elements of a Socially Responsible Law Firm

Chap. 3: Constructing a Socially Responsible Law Firm

Chap. 4: Conclusions

Annexure

No.	Question	Not Important	Less Important	Neutral	Important	Very Important
Do you believe existing practices of the firm/practice meet its sustainability goals? Is there room for improvement/cutting costs incurred by the firm/practice?						
18.	Does the firm/practice apply sustainability criteria when choosing suppliers?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do you inquire as to sustainability practices along the supply chain? Would suppliers' sustainability practices affect the firm/practice's relationship with them?						
19.	Does the firm/practice have a clear waste-reduction strategy in place?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
How important is recycling in the office? Does the firm/practice recycle where possible, and have separate refuse containers for recyclable/non-recyclable wastes? What measures are taken to reduce costs incurred for waste disposal? To what extent does the firm/practice rely on electronic communications? Is this preferred to traditional forms such as post/fax/courier delivery? Do you believe that the use of electronic communications will assist in elimination of physical wastes?						
20.	How important is energy conservation to the firm/practice?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are lights, computers, printers etc. regularly switched off when not in use/after office hours/during weekends? Are there 'cycle-to-work' days/carpooling/group transport for employees?						
Can we use the results of this survey to generate our handbook? If you disagree, please help us understand your reasons for disagreement (not exceeding 150 words).						
=== END OF SURVEY ===						

SURVEY PARTICIPANTS

NUMBER OF LAW FIRMS CONTACTED	NUMBER OF LAW FIRMS RESPONDED
57	12

ANNEXURE 3: BIBLIOGRAPHY

Books:

- Austin S & Stuart S, *Something To Believe In: Politics, Professionalism, And Cause Lawyering* (Stanford University Press, 2004)
- Katzmann RA, *The Law Firm and the Public Good* (Brookings Institution 1995)
- Kronman AT, *The Lost Lawyer: Failing Ideals of the Legal Profession* (Harvard University Press 1995)
- Maister D, *Managing the Professional Service Firm* (Simon & Schuster UK Ltd., 2003)
- Thomas P (ed.), *Discriminating Lawyers* (Cavendish Publishing, London, 2000)
- Sanders T, *Saving the World at Work* (Crown Business 2008)

Articles, journals and webpages:

- American Bar Association, 'Law Firm Policies Regarding Insider Trading and Confidentiality' (1991), 47 *Bus. Law.* 235
- AK Aditya, 'Will Continuing Legal Education strengthen the legal profession in India?' (*Bar & Bench*, 20 January, 2016)
- AK Aditya, 'Mergermarket M&A Tables: The Indian Legal Market Recorded Its Highest Ever Activity in 2016' (*Bar & Bench*, 13 January 2017)
- Allen and Overy, 'Corporate Social Responsibility at Allen and Overy' <<http://www.allenoverly.com/SiteCollectionDocuments/CR-2016.pdf>>
- Baker McKenzie 'Corporate Social Responsibility | About Us | Baker McKenzie' <<http://www.bakermckenzie.com/en/aboutus/corporate-social-responsibility>>
- Baker McKenzie, 'The Baker & McKenzie Code of Business Conduct' <www.bakermckenzie.com/-/media/files/about-us/conduct/bm_codeofconduct.pdf?la=en>
- Ballakrishnen S, 'Why is Gender a Form of Diversity? Rising Advantages for Women in Global Indian Law Firms', (2013) 20 *Ind. J. Global Legal Stud.* 1261
- Baxi U, 'Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India' *Third World Legal Studies* 4 (1985) 107
- Boon A, Duff L & Shiner M, 'Career Paths and Choices in a Highly Differentiated Profession: The Position of Newly Qualified Solicitors', (July 2001) *The Modern Law Review* Vol 64 No.4 563

- Bruch N, 'Women in Big Law: Where Firms Are Succeeding and Failing', (*Palm Beach Daily Business Review*, 18 July, 2016) Volume 62 Issue 196
- Carter C and Rogers D, 'A Framework of Sustainable Supply Chain Management: Moving Toward New Theory' (2008) 38, 5 *IJPDLM* 360
- Chachra M, '70% working women do not report workplace harassment in India' (*Business Standard*, 4 March, 2017)
- Clifford Chance LLP, 'How We Do Business' <www.cliffordchance.com/our-responsibilities/responsible-business/how-we-do-business.html>
- Constituent Assembly of India Volume XI' <<http://parliamentofindia.nic.in/ls/debates/vol11p11.htm>
- Cooper J, 'Public Interest Law Revisited', *Commonwealth Law Bulletin* 25 (1999) 140
- Danagher D, 'Green is the New Black' < <https://www.linkedin.com/pulse/green-new-black-uk-law-firms-david-danagher>>
- Devlin R, 'Bend or Break: Enhancing the Responsibilities of Law Societies', (2015) 38 *Man. L.J* 119
- DLA Piper LLP, 'About Us' <www.dlapiper.com/en/uk/aboutus/#segment4>
- DLA Piper LLP 'Pro Bono' <<https://www.dlapiper.com/en/asiapacific/focus/probono/pro-bono>>
- Doley K, 'In India Inc too, women lawyers setting new bar', (*Financial Express*, 6 March, 2016)
- Donkin R, 'Heated debate over measurement and meaning: Whatever the arguments, professional practices are beginning to see good CPD as a recruitment and retention too', (*Financial Times*, 24 November, 2003)
- Duttgupta I, 'Indian companies started to believe in diversity of workforce' (*The Economic Times*, 12 September, 2010)
- Dyllick T and Muff K, 'Clarifying the meaning of Sustainable Business: Introducing a typology from business-as-usual to true business sustainability' (2016) 2 *Organisation and Environment* 29
- Epstein M and Roy MJ, 'Sustainability in Action: Identifying and Measuring the Key Performance Drivers' (2001) 34 *Long Range Planning* 593
- *Financial Times*, 'Innovative Lawyers 2016', (*Financial Times*, 6 October, 2016) 11th edn.
- Ganz K, 'Day Zeros: Demand from Amarchands Divided Offsets Drop in 2017 Recruitments from Others [via Mint]' (*Legally India*, 12 April 2016)
- Ganz K, 'Revealed: The 17 Law Firms with the Greatest Partner Turnover in the Last 4 Years (after Cataclysmic 2016)' (*Legally India* 27 June 2016)
- Ganz K, 'LI Salary Survey Results (Part 2): How Much Do and Will Your Law Firm Batchmates Make?' (*Legally India*, 23 November, 2012)
- Ganz K, 'Shroff Brothers to Split Amarchand Mangaldas into Two by 1 April - Livemint' (*Livemint* 27 January 2015)

- Gupta A, 'HLS Program on the Legal Profession Research Paper No. 2013-4: Pro Bono and Corporate Legal Sector in India' (2012)
- Hall K, 'Annual Declaration replaces CPD hours', (The Law Society Gazette, 21 May , 2014)
- Heineman B.W. 'The General Counsel as Lawyer-Statesman'https://clp.law.harvard.edu/assets/General_Counsel_as_Lawyer-Statesman.pdf
- Herbert Smith Freehills, 'Business and Human Rights' <<https://www.herbertsmithfreehills.com/pro-bono-and-citizenship/business-and-human-rights>>
- Herne S, 'Inside Information: Definitions in Australia, Canada, the UK, and the US' (1986), 8 *Journal of Comparative Business and Capital Market Law* at 1
- Hull K E, 'The Paradox of the Contented Female Lawyer' (2000) 33 *Law and Society Review* 687
- Krishnan J K, 'Peel Off Lawyers: Legal Professionals in India's corporate law firm sector', (National Law University of India Law School, 2013) *Socio-Legal Review Vol.9*
- Kassi-Vivier Yand others, 'Demonstrating the Business Value of Pro Bono Service' https://www.taprootfoundation.org/sites/default/files/imce/Taproot-Business-Value-2016_CC.pdf
- Kirby M, 'Law Firms and Justice in Australia' <http://www.hcourt.gov.au/assets/publications/speeches/former-justices/kirbyj/kirbyj_award.htm> .
- Linklaters LLP, 'Ethics - Fair dealing and ethics' <www.linklaters.com/responsibility/trusted-advisor/Pages/Ethics.aspx>
- Livelaw network, 'Access to Justice Is a Fundamental Right Guaranteed under Article 14 & 21 of Constitution: SC Constitution Bench' (Livelaw 20 July 2016)
- Loper R and Loper R, 'How Green is My Law Firm' (November 2008) *Legal Marketing Association*
- MacFarlane P, 'The importance of ethics and the application of ethical principles to the legal profession' (2002), Vol. 6, *Journal of South Pacific Law*
- Makhija S & Raha S, 'Challenges Faced by Women in the Legal Profession', (Rainmaker, 2012)
- Muaclov J, 'Ten Ways Law Firms Lose a Lot of Money' (Canadian Bar Association, 15 October, 2014)
- Murray B, 'The Importance of Pro Bono Work in Professional Development' (2009) 23 *The Journal of Trial Practice Committee*
- 'New York's 50-hour Preadmission Pro Bono Rule: Weighing the Potential Pros and Cons' (ABA Standing Committee on Pro Bono and Public Service, 2013)
- Pro Bono News 16/2013, 'National Pro Bono Resource. Centre', NPBRC eNewsletter (2013)
- 'Pro Bono Practices and Opportunities in India' (Latham & Watkins, 2015)
- 'Pro Bono Services by Advocates' (Department of Justice, Government of India 2017) <http://serviceonline.gov.in/serviceLinkHome.html?serviceToken=GENPsEv0YR546>
- Quigley W, 'Letter to a Law Student Interested in Social Justice' 1 *DePaul J. for Soc. Just.*

- Regan F, 'Legal Aid Without the State: Assessing the Rise of Pro Bono Schemes' 33U.B.C. L. Rev. 383 (2000)
- 'Resolution Adopted By The House Of Delegates' (American Bar Association, 2006)
- Reyes E, 'How to: Make Pro Bono Work' (The Law Gazette, 31 October, 2016)
- Saluja P, 'Women's Day Special: Pallavi Shroff, Dina Wadia, Vineetha MG, Indu Malhotra and Pratibha Singh on Women and the Legal Profession', (Bar & Bench, 7 March, 2014)
- Sharma N, 'May the Force Be with You! Justice Badar Durrez Ahmed Bids Farewell to Delhi HC [Read Speech]' (Bar & Bench , 30 March 2017)
- Shrivastava P, 'Prof Madhav Menon asks to split law courses, law unis to step up & more in DSNLU foundation day speech' (Legally India, 4 October, 2016)
- SILF?: Mission & Goals' <<http://www.silf.org.in/3/Mission-and-Goals.htm>>
- Singh A, 'Why are Law Firms Stalling on Sustainability' (Forbes, New York, 8 July, 2010)
- 'Speech of Shri D.V. Sadanand Gowda, Hon'ble Minister of Law and Justice of Law Day 26th November, 2014' <lawmin.nic.in/mino/2014-11-26%20-%20LAW%20DAY%20SPEECH.pdf>
- Thomson Reuters Foundation and Arnold & Porter LLP, 'The role of lawyers in the fight against corruption: A Summary Report', (2013)
- Thomson Reuters Foundation ' 2016 Trust Law Index of Pro Bono)
- Tuppen C and Zadek S, 'Adding Values: The Economics of Sustainable Businesses, Occasional Paper' (2000, British Telecommunications, London)
- University of Virginia School of Law, 'Evaluating a Law Firm's Commitment to Pro Bono- The Pro Bono Program'
- UNDP, 'Programming for Justice: Access for All – A Practitioner's Guide to a Human-Right- Based Approach to Access to Justice.'
- Vaughan S, Linden Thomas and Alastair Young, 'Large Law Firms and Corporate Social Responsibility' <<http://www.birmingham.ac.uk/Documents/college-artslaw/law/research/bham-law-spotlight-corporate-social-responsibility.pdf>>
- Whelan CJ & Ziv N, 'Law Firm Ethics in the Shadow of Corporate Social Responsibility', (2012) Georgetown Journal of Legal Ethics 6
- Zacharias F, 'Integrity Ethics' (2009), 22 Geo. J. Legal Ethics 541

ANNEXURE 4: LIST OF ABBREVIATIONS

ABA	American Bar Association
BCI	Bar Council of India
CPD	Continuing Professional Development
CPP	Cambridge Pro Bono Project
CSR	Corporate Social Responsibility
IBA	International Bar Association
LGBT	Lesbian, Gay, Bisexual and Transgender Communities
LSB	Legal Services Board of England & Wales
OECD	Organisation for Economic Co-operation and Development
PIL	Public Interest Litigation
PMLA	Prevention of Money Laundering Act 2002
SAL	Social Action Litigation
SEBI	Securities and Exchange Board of India
SRA	Solicitors Regulation Authority
UK	United Kingdom
UN	United Nations
US	United States of America

ANNEXURE 5: KEY RESOURCES

Key Legislations

- *American Bar Association, 'Model Rules of Professional Conduct'* <www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_5_fees.html>
- *Bar Council of India Rules*, www.barcouncilofindia.org/wp-content/uploads/2010/05/BCIRulesPartItoIII.pdf
- *Bar Council of India, 'Professional Standard on Rules on Advocate's Duty'* <www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html>
- *International Bar Association, 'IBA International Principles on Conduct for the Legal Profession' (2011)* <http://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=bc99fd2c-d253-4bfe-a3b9-c13f196d9e60>
- *Solicitors Regulation Authority, 'SRA Code of Conduct 2011'* <www.sra.org.uk/solicitors/handbook/code/content.page#> (November 2016)

Organisations

- *American Bar Association*: www.americanbar.org/aba.html
- *Bar Council of India*: www.barcouncilofindia.org/
- *Canadian Bar Association*: www.cba.org/Home
- *Indian National Bar Association*: <http://indianbarassociation.org>
- *International Bar Association*: www.ibanet.org
- *Law Society of England and Wales*: www.lawsociety.org.uk/
- *Legal Services Board*: www.legalservicesboard.org.uk/
- *Solicitors Regulatory Authority*: www.sra.org.uk/solicitors/solicitors.page
- *United Nations Global Compact*: <http://unglobalcompact.org>

Studies, Reports and Surveys referred

- www.lawsociety.org.uk/news/documents/Future-of-legal-services-pdf
- <http://www.lawsociety.org.uk/support-services/practice-management/diversity-inclusion/diversity-and-inclusion-in-law-firms-the-business-case>
- <http://www.sra.org.uk/solicitors/diversity-toolkit/diversity-toolkit.page>
- <https://www.sra.org.uk/sra/how-we-work/reports.page#innovation>
- http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/20170215/2017_Encouraging_A_Diverse_Workforce.pdf
- http://www.americanbar.org/content/dam/aba/marketing/women/visibleinvisibility_vs.authcheckdam.pdf
- https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/500087/Government_response_-_Closing_the_Gender_Pay_Gap.pdf
- <http://www.lawsociety.org.uk/support-services/advice/practice-notes/flexible-working/>
- http://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf
- <http://www.trust.org/contentAsset/raw-data/af585d7d-6a7f-4c65-9b5c-3b5534118c74/file>
- <https://research.legalservicesboard.org.uk/news/latest-research-14/>
- <https://www.lawsociety.org.uk/about-us/documents/diversity-report-october-2016/>
- <https://www.pwc.in/assets/pdfs/publications/2016/making-diversity-work-key-trends-and-practices-in-the-indian-it-bpm-industry.pdf>
- http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/decision_document_diversity_and_social_mobility_final.pdf
- <https://www.sra.org.uk/solicitors/code-of-conduct/guidance/case-study/lack-diversity.page>
- <http://www.workingmother.com/2016-working-mother-flex-time-lawyers-50-best-law-firms-women#page-3>
- <https://www.lawsociety.org.uk/support-services/practice-management/diversity-inclusion/procurement-protocol/statement-of-commitment-to-procurement-protocol/>
- https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/500087/Government_response_-_Closing_the_Gender_Pay_Gap.pdf
- https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/218497/employment-trib-stats-april-march-2011-12.pdf
- <http://www.lawsociety.org.uk/support-services/advice/practice-notes/flexible-working/>
- http://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf

- http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_pb_Supporting_Justice_III_final.authcheckdam.pdf
- <http://www.trust.org/contentAsset/raw-data/d31d8b72-0f82-4241-88e1-71abc90e3d72/file>
- www.unglobalcompact.org/what-is-gc/mission/principles
- <http://www.lawsociety.org.uk/support-services/research-trends/health-and-wellbeing-report-2014/>
- <http://www.lawsociety.org.uk/support-services/practice-management/pro-bono/pro-bono-manual/>

Websites

- <http://barandbench.com>
- <http://first100years.org.uk>
- <http://interlawdiversityforum.org>
- <http://nbs.net>
- <http://www.british-assessment.co.uk>
- <http://www.conventuslaw.com>
- <https://www.globalreporting.org>
- <https://www.recregistryindia.nic.in>
- www.communitybusiness.org
- www.financialexpress.com
- www.ft.com
- www.ibanet.org
- www.jstor.org
- www.lawgazette.co.uk
- www.legallyindia.com
- www.livelaw.in
- www.legislation.gov.uk
- www.lfoa.org
- www.scribd.com
- www.thelawyer.com
- www.unglobalcompact.org
- www.workingmother.com

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EDITOR & AUTHORS

Siddharth Peter de Souza

Siddharth Peter de Souza is the founder of Justice Adda and a Doctoral Candidate in Law at the Humboldt University of Berlin. Siddharth has an LL.M. from the University of Cambridge, an LL.B. from the Campus Law Centre, University of Delhi and a B.A. (Hons) Economics from St. Stephens College. He previously worked as a German Chancellor Fellow at the Max Planck Foundation for International Peace and the Rule of Law, Heidelberg and as a Judicial Clerk at the High Court of Delhi.

Varsha Aithala

Varsha Aithala is a legal practitioner with significant corporate work experience. She graduated from NALSAR University of Law, Hyderabad and has since worked in leading law firms in India and in an international law firm in the UK. She is qualified to practice English and Indian laws. She holds a Master's degree in Corporate Law from the University of Cambridge.

Francine Adityani

Francine Adityani completed her first law degree from Universitas Pelita Harapan, Jakarta, and has since joined a prominent law firm in Indonesia as a

corporate lawyer. Between jobs, she taught as an assistant lecturer at the university that awarded her bachelor's degree. She recently graduated with a Masters in Corporate Law degree from the University of Cambridge.

John Gallagher

John Gallagher is an Irish law student, who studied initially at University College Dublin, before completing a Masters at the University of Cambridge where he focused on Corporate Law and also worked on Pro- Bono research. He is currently an LL.M. candidate at Harvard Law School.

Shruti Khanijow

Shruti Khanijow is a Senior Associate at a leading law firm with their international commercial disputes practice at New Delhi. She was previously a law clerk to the then Chief Justice of India (Hon'ble Mr. Justice H.L. Dattu). Shruti holds an LL.M. in International Law from University of Cambridge. At Cambridge, she was on the editorial board of Cambridge International Law Journal and Cambridge Law Review and represented the University of Cambridge before the President of Armenia, as a Visiting Scholar/Young Law Expert at Luys Foundation, Armenia.

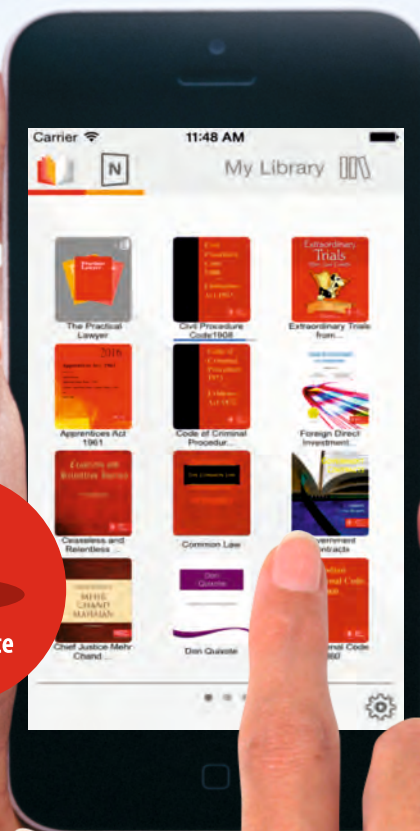
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