

CHAPTER 1

LEGAL RESEARCH: HOW TO FIND LAW

1.1 INTRODUCTION

Research is perhaps as old as mankind. If necessity was the mother of invention, it was also the mother of discovery. The primitive man's needs must have sent him in search not only of food, but also of knowledge. The process was basically the acquisition of knowledge, the quest for truth, the exploration of the unexplored. Since the area unexplored was at that time vast, every discovery must have been a grand thrill¹. Legal Research is indispensable for systematic investigation of problems of law or any matter connected with law. Research, therefore, is to be pursued to obtain a better knowledge of law and understanding of any problem that may be integral to better and more effective legislation connected with the area which may be for example having sociological or economical import².

Legal research is “the process of identifying and retrieving information necessary to support legal decision-making. In its broadest sense, legal research includes each step of a course of action that begins with an analysis of the facts of a problem and concludes with the application and communication of the results of the investigation.”³

One of the main reasons law school students leave law school with deficient research skills is that they entered law school with poor or nonexistent research skills. When we teach under the old paradigm, we are not helping them improve or acquire these skills. Entering law students have not been exposed to traditional research tools such as a card catalogue or the Reader's Guide to Periodical Literature, and thus lack these as a backdrop for learning legal research using the specialized print sources of the legal field.

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1. Legal Research: Some thoughts 78 AIR 1991: J130-2p.
 2. Relevance of Legal Research in the Development of Legal Services by Mishra, Yogesh Guj. LH 2003(2)
 3. J. Myron Jacobstein and Roy M. Mersky, Fundamentals of Legal Research, 8th ed. (Foundation Press, 2002) p. 1

The ironic part is that by the time we show our students the traditional print resources; they already have entered the wonderful world of free and unlimited access to LexisNexis and Westlaw with all its benefits and privileges. No wonder they never use the print digests again. To properly address the needs of our students, we must first acknowledge that the bricks-and-mortar-library we grew up with no longer exists as the centre of knowledge⁴.

The loss of this venerable source means that anyone attempting to teach today's law students about the Index to Legal Periodicals must not only explain how to use it but also what an index is and why people would ever need one. This is a much more daunting task than simply pointing out that ILP is the legal version of the Reader's Guide. What has occurred in the past decade at the undergraduate level is a change in the way research is conducted. The reasons why this has occurred are many and varied:

- The growth of the Internet encouraged academic publishers to move content online.
- The popularity of online databases enabled administrators to rely on them to help cope with tight budgets and skyrocketing journal costs.
- The rise of the Internet also allowed educators to move online to reach distance-student populations and expand their educational base.

Librarians need to respond to these changing expectations with “a judicious combination of educating users while adapting to their expectations.” This is what teaching legal research from the inside out is all about. It is not about caving in, it is about joining hands. Legal research is difficult; we do not earn points by making it even more difficult. However, we must also realize that technology has not simplified legal research—it has just made it deceptively easy. As teachers and trainers we cannot lose sight of this fact and its repercussions.

The processes of legal research differ from country to country according to their legal systems. Generally Legal Research involves the process of finding primary source of law, or primary authority, in a given jurisdiction (cases, statutes, regulations, etc.), searching secondary authority (for example, law reviews, legal dictionaries, legal treatises, and legal encyclopedias such as American Jurisprudence and Corpus Juris Secundum), for background information about a legal topic and searching non-legal sources for investigative or supporting information.

Legal research is a process performed by advocates, law students, law researchers, law librarians and paralegals for various purposes. Sources of legal information range from printed books, to free legal research websites and information portals to fee database vendors such as LexisNexis, Westlaw, JSTOR, Manupatra. Law libraries around the world provide research services to help their patrons finding the legal

4. See Simon Chesterman, *The Globalisation of Legal Education*, 2008 SING. J. LEGAL STUD. 58, 66 (2008) (observing that “... faculties will seek ways to ensure that their graduates are both intellectually and culturally flexible, capable of adapting not merely to new laws but to new jurisdictions”).

information they need in law schools, law firms and other research environments. A number of law libraries maintain and provide online legal information available in public domain through *library webpage* for all.

A Law Library is a collection of legal materials such as Case Laws, Constitutions, Legislations, Legal Articles, Reporting Journals, Parliamentary Proceedings, legal monographs, treatises, Judicial & Administrative decisions and other legal resources related to national and international means in print as well as digital form of media, for a specific class of users such as Law Students, Legal Scholars, Researchers, Judges, Advocates, Parliamentarians and other legal specialists. Information resources of a law library in India may be classified as under:

PRIMARY RESOURCES

- CONSTITUTION OF INDIA & OTHER NATIONS
- LEGISLATION-INDIA
 - India Code
 - Gazette of India
 - Acts of Parliaments
 - Bills of Parliaments
 - Local Laws of all States
- LEGISLATION-FOREIGN
 - U.S. Code
 - United Kingdom Statutes
 - Australia-Commonwealth Consolidated Acts
 - Canada Consolidated Statutes
- CASE LAW
 - INDIAN REPORTS
 - (a) Supreme Courts
 - All India Reporters (1914 onwards)
 - Supreme Court Reports (1950 onwards)
 - Judgment Today (1980 onwards).
 - SCALE (1970 onwards)
 - Supreme Court Cases (1969 onwards)
 - (b) Indian Higher Courts
 - All High Courts Reports since their inception

➤ FOREIGN REPORTS

- U.S. Supreme Court Reports
- Supreme Court Reports-Canada
- Australian Law Reports
- Reports on Patents & Trademark Cases
- Law Reports of the Commonwealth
- All England Law Reports
- Weekly Law Reports
- Dominion Law Reports
- Federal Law Reporter

➤ ACADEMIC JOURNALS

- Indian Journals
- Foreign Journals

SECONDARY SOURCES

➤ LEGAL ENCYCLOPAEDIAS

- Halsbury's Laws of England
- Halsbury's Laws of India
- American Jurisprudence
- Forms & Precedents
- Words & Phrases

➤ LEGAL DICTIONARIES

- Black's Legal Dictionary
- Stroud's Legal Dictionary
- Wharton's Law Lexicon
- Aiyar's Advanced Law Lexicon

➤ DIGESTS

- Supreme Court Yearly Digest (SCC).
- A.I.R. Yearly Digest
- Supreme Court of India Nominal Index and comparative tables.
- High Courts Cases Digests

- Supreme Court Labour Digest
- Digest of Labour Law Cases
- Digest of Tax Cases
- Service Law Reporter Digest
- Index to Indian Legal Periodicals
- Index to Legal Periodicals & Books (1926 onwards)

We now live in a society where information is a key factor in any endeavor made and is known as Information Society. To become literate, information is a must. The law library being the information household of our legal resources can play a major role in creating awareness of legal research need. Once a library has a good collection, library users need to be educated about the different types of resources available and how to attain it.

In recent years, the advent of online legal research outlets such as SCC Online, AIR InfoTech, Manupatra, IndLaw, FindLaw, Westlaw, LexisNexis, and HeinOnline has reduced the need for some types of printed volumes like reporters and statutory compilations. A number of law libraries have therefore reduced the availability of printed works that can easily be found on the Internet, and have increased their own Internet availability. On the other hand, some university law libraries retain extensive historical collections going back to the earliest English reports.

1.2 USER ORIENTATION PROGRAMMES IN LAW LIBRARIES

User Education Programme is a pre-requisite for a Law Library. Legal Researchers need various types of information based on their subject area. User Education & Orientation to Legal Research and the Use of Law Library Collections is designed to give a basic introduction to legal sources and research techniques. It provides an overview of statutes, regulations, and court cases and the relationships among them. The Law Library's resources for locating these items in print and automated formats are presented.

With the tremendous production of legal information and wide areas of legal research, the physical organization of books and other documents in law libraries has become very complicated. The situation has made things difficult for legal professionals to tap legal resources effectively. The application of new technology in information retrieval requires training for users. The changing pattern of legal education has also increased the necessity and the urgency for user education. In early days' teachers took the traditional classroom approach. But now-a-days emphasis is given on end use of libraries. Today, most of the law libraries are using computers for information storage and retrieval. Several International and National Legal Databases are available to explore legal information. Information retrieval from such databases with the help of computer is called online information retrieval

system. The use of on-line information retrieval system requires a good training on the part of the users. With the increasing of databases in various disciplines, the needs of user training have become evident. Besides, knowledge of Government Official Portals also provides help in exploring legal rules, regulations, legislations and other procedures.

Several common questions arise when a legal researcher enters in a law library.

- (a) What Are the Different Types of Legal Materials?
- (b) Where Are Court Cases Found?
- (c) How Do Legal Researchers Find Cases?
- (d) What Role Do Statues Play?
- (e) Where Are Constitutions Found?
- (f) What Are Law Reviews and Academic Legal Journals?
- (g) What Are Treatises, Committees and Commission Reports and from where it may be found?
- (h) What Is Computer-Assisted Legal Research?
- (i) What Is the Difference Between Circulation, Reference, and Technical Services?
- (j) How Does Interlibrary Loan Work?

A law library of international standards is liable to provide information services to legal researchers through online databases, physical books and journals as well. However the user needs to be well equipped to be able to avail these benefits.

1.3 HOW TO START LEGAL RESEARCH

Legal Research is an art and requires proper guidance to explore legal information resources. At primary stage researcher has to choose a subject area of research. A Law library provides a good compilation of legal resources. A researcher may start his/her research through browsing Legal Articles, Books Treatise, and Monographs. At the primary level library professionals help the researcher to provide articles and books available with in the library related to subject area.

1.4 HOW TO FIND BOOKS, LEGAL ACADEMIC JOURNALS AND LAW REVIEWS

Books are arranged in a classified manner based on subjects with the stack of the Library. Generally, Universal Decimal Classification System especially designed for arranging research library books and other reading materials is used in the law

library. Library housekeeping software is used to maintain bibliographical information of books. Books on almost all universe of law subjects may be found with the help of Online Public Access Catalogue maintained through computers within the Library. Books may be searched through title, author, subject, publisher, combination search etc. There are several publishers' websites which provide online access of contents of books published by them. E-Hart, Questa are few examples of online book databases.

Legal fraternity may require different types of information for different purposes. One's search strategy for retrieving the desired information has to be formulated on the basis of the **"information requirement"** at hand. The most common types of information sought by the legal fraternity are:

- Any particular case law
- Case laws on a specific topic
- Legislative intent of any act
- Material for speeches to be delivered
- Legislative history of any particular enactment
- Corresponding foreign law to any statutory provision in India
- Meaning of any particular **"word"** or **"phrase"**

Law journals and reviews are treated as true nature of research work and are most useful for legal researchers to browse views of eminent scholars on the same subject area of research. Most of the US Law Schools are providing their journals and law reviews on the webpage of the school for free access to rest of the world. (Online List maintained by www.hg.org for journals)

1.5 HOW TO FIND LEGISLATIVE INTENT

In case of any ambiguity while interpreting the provision of any statute, judges have to examine the **"legislative intent"** of the legislature for enacting a particular legislation. The **legislative intent** of any provision can be ascertained with the help of the following tools:

- Objects and Reasons of the Act (published in the bill)
- Parliamentary debates
- Law Commission Reports (if the bill has been introduced on the recommendation of the Law Commission)
- Standing Committee/ Joint/Select Committee Reports
- Reports of the Committee appointed by the ministries for enacting/reviewing any existing enactments.

1.6 HOW TO FIND LEGISLATIVE INTENT OF TAX STATUTES / EXCISE AND CUSTOMS, TARIFF, EXCISE TARIFF AND SERVICE TAX ETC.

Tax Statutes are amended on a year-to-year basis by the “**Finance Act**” passed by the Parliament/State Legislatures after the budget session. Whenever the constitutionality of any provision is challenged or there is any dispute in the interpretation of any provision in any taxing statute, courts have to ascertain the **legislative intent** of that provision. **Legislative intent** of any taxing statutes may be ascertained with the help of the following documents:

- “**Notes on Clauses**” given in the Finance Bill/Finance Act.
- “**Budget Speech**” of the Finance Minister.
- “**Parliamentary Debates**” related to specific clauses.

In every finance bill there is a note for each clause under the heading “**Notes on Clauses,**” which gives an indication of the purpose for which the corresponding provision is introduced.

Speeches delivered by the Finance Minister of the Union government while presenting the budget in the Parliament or by the State Finance Ministers, while presenting the budget in the state legislatures, are important instruments for ascertaining the purpose of levying a particular tax and serve as an important source of information for the honorable judges for interpreting the provisions of a taxing statute while rendering a decision in any case⁵.

1.7 HOW TO RESEARCH FOR THE MATERIAL FOR PREPARING SPEECHES

Articles published in the law journals on any specific topic are necessary informational resources for writing speeches and can be searched by browsing through the journals, browsing through the legal databases, and browsing through the indexes of the legal articles.

Besides **articles, legislative histories of the enactment relating to the topic, objects and reasons, law commission or committee reports, if any, on the topic concerned, and statistics, are important.** The **internet** is a useful tool for retrieving the statistical information on the relevant topic through various governmental websites.

The legislative history of any particular enactment can be traced with the help of the latest Bare Act. After identifying the amendments in a particular act, original amendments are to be retrieved from the government gazettes or journals containing statutory information. Objects and reasons of the particular amendment also give

5. Anand A.S., *HL Sarin Memorial Lecture: Legal Education in India- Past, Present and Future* (1998) 3 SCC Jour 1

useful insight for the purpose of amendment in any particular act. The **legislation** database, developed by the Supreme Court judges' library, is also a very useful tool for ascertaining the legislative history of any central act in India. This database is going to be made available very soon on the website of the Supreme Court.

Corresponding foreign law to any statutory provision in India can be traced with the help of any international legal database containing statutory information, such as **Westlaw** or **LexisNexis**. Commentaries on the foreign case laws on the subject may also be examined for identifying the corresponding statutory provisions.

1.8 HOW TO FIND LEGAL ARTICLES

Law libraries generally maintain article indexing & abstracting system. It is a prerequisite of a law library to maintain an indexing system containing bibliographical details of articles published in each academic journal received with in the library. A researcher can browse these articles by title, author, name of the journal, subject and combination search through online public access catalogue. Beside, in-house database, the library may also subscribe index to periodicals as published by several publishers and libraries e.g. in India, "Index to Indian Legal Periodicals" ILI, New Delhi, 2008 is published by the library of the Indian Law Institute. Index to Legal Periodicals as published by H.W. Wilson, may be browsed for academic articles published in foreign journals.

Online databases have changed the way of legal research. The following databases are used for searching legal articles.

1. Westlaw International
2. JSTOR
3. Social Science Research Network
4. HeinOnline
5. Global Legal Information Network
6. LexisNexis Online

1.9 HOW TO FIND CASE LAW

Law libraries must maintain a sound collection of Reporting Journals at international and national level. Library specific to law must subscribe at least one reporting journal from each state.

Foreign Law Reports

- All England law Reports
- Australian Law Reports
- Canadian Supreme Court Reports

- Commonwealth Law Report
- Dominion Law Reports
- Federal Law Report
- English Reports
- Law Reports Reprint Rainbow Series 1874 onwards
- US Supreme Court Reports
- Weekly Law Reports

Indian Law Reports

- Supreme Court Reports
- Supreme Court Cases (SCC)
- All India Reporters (AIR)
- Scale
- Judgments Today
- Indian Law Reports
- Law Reports of all States

The most common methods for finding the case laws on a subject are “**digests**” and “**commentaries**” on particular subjects. Subject indexes given at the end of the commentaries are a very useful aid to find out the desired case law on specific aspect. If there is no commentary on any particular enactment, “**AIR Manual**” published by **M/s All India Reporter, Nagpur** can be treated as a very useful source for finding out the case law on any Central Statute.

In digital era, Case law on a particular subject or party name or citation, may be searched with the help of various online databases. Westlaw International, LexisNexis may be used to search foreign caselaw. SCC Online, AIR SC & HC, Criminal Law Journal, Manupatra, Indlaw, Law Premium may be used to search Indian case law.

1.10 HOW TO FIND CONSTITUTIONS OF DIFFERENT COUNTRIES

A constitution is the system of fundamental principles by which a political body (state or nation) governs itself. Law libraries have a separate section maintaining constitutional laws of all countries in the world. Constitution of any country of the world may also be downloaded from various websites i.e. <http://confinder.richmond.edu/>

1.11 WHERE TO FIND COMMISSION & COMMITTEE REPORTS

In India, various commissions and committees are in existence like Women Commission, Commission for SC/ST National Human Right Commission etc.

Reports of such commissions are maintained within the law library Collection. Parliamentary Committee Reports are also major sources of legal information which may be referred through *website of Parliament of India*. *Law. Annual Reports of the Government Departments* are also useful for legal research.

1.12 HOW TO FIND LEGISLATION

Law library must have a good collection of following International and National Legislations i.e. Bills and Acts of the concerned Parliaments like: US Supreme Court Code, General Public Acts (UK), Australia Consolidated Common wealth Act, AIR Manual, India Code, Act of the Parliament, Civil Court Digest, Gazette of India, Current Central Legislations, Current Indian Statutes etc. Acts and Legislations of all countries are also provided through online services.

1.13 PARLIAMENTARY DEBATES AND PARLIAMENTARY COMMITTEE

A law library provides a sound collection of Parliamentary Debates of Rajya Sabha and Lok Sabha. Parliamentary debates may be downloaded from the website of Parliament of India from XIth Lok Sabha 1996 onwards. All *Parliamentary Committee Reports* as published by the Parliament of India are also browsed to disseminate students within the library through online access. Electronic version of Command Papers i.e. Debates of House of Lords and House of Commons are also available on the websites of UK Parliament. http://www.parliament.uk/parliamentary_publications_and_archives/parliamentary_archives/archives_electronic.cfm

1.14 TREATIES AND INTERNATIONAL AGREEMENTS

Law Libraries maintain several research tools containing international treaties and agreements like Encyclopedia of the United Nations, Consolidated Treaty Series, and League of the Nations Treaty Series. Treaties as available in digital form in various online databases are also provided to students and end users in anywhere in the world.

1.15 SEMINAR REPORTS AND THESIS/DISSERTATIONS

Law libraries, especially supporting university system maintain International and National Seminar Reports conducting inside and outside of the countries. Digital version of these reports may be preserved within the law library. Thesis and dissertation submitted by research scholars may also be useful for legal researchers.

1.16 TYPE OF REFERENCE TOOLS

Law libraries maintain a good collection of reference tools like Index to Legal Periodicals, Legal Encyclopedias, Legal Dictionaries, Professional Legal Directories,

Legal Bibliographies, Biographies etc. Besides a law library must also maintain subject based search tools like Corpus Juris Secundum, American Jurisprudence, Halsbury's Laws of England, Halsbury's Laws of India, Supreme Court Yearly Digest, Criminal Law Digest, Supreme Court Case Citator, Supreme Court Case Comparative Tables etc.