OPEN ACCESS REVOLUTION IN LEGAL RESEARCH: *DIRA NECESSITAS*[1]

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Abstract

Any academic research which has not been shared with others to the extreme possible extent is a lost opportunity both in terms of its immediate impact and its reference value for the future researchers. Unfortunately, most of the legal research, particularly in India, is disseminated today by publishing it in law journals which have very limited circulation. Such a trend is utterly deficient to meet the main purpose of research, viz. maximizing knowledge. The internet boom in the 1990s had a galvanizing impact on research as a whole – the legal profession became poised to disseminate limitless levels of information. In such a prevailing condition, it became imperative to strengthen our efforts towards Open Access (OA) publications. This paper attempts to provide a jurisprudential basis behind such initiative and visualize the phenomenon from rights-perspective. It analyzes the evolution of the OA publishing movement and its impact on the traditional scholarly model. It reviews the development worldwide and also in the Indian context, essentially in the post-Budapest Initiative era; the challenges and opportunities faced by the intellectual circles in the country. It surveys the legal information environment and depicts a grim picture of current state of affairs. As a matter of fact, only few top-tier Law Schools in India have OA journals which are far from being sufficient. Most of the OA publishing portals do not command enough credibility for various reasons. The legal intelligentsia in India has also failed to give serious thought to this problem unlike their counterparts in the West. They even lag way behind in terms of action when compared to some other disciplines in India. While attempting a comparative study on the effectiveness of book based and internet based research in the age of information and technology, the authors expressed their dismay over the limited penetration and consequent effect of the expensive commercial online databases. A realist National Open Access Policy is the cry of the day. Hence, a revolution in OA publication in legal research is overdue and it would have far reaching consequences – not only to the legal academic scholars but also to lawyers, judges, policy makers and even the litigants. The prevailing system of exploring doctoral theses through INFLIBNET is commendable yet not enough; all the research projects undertaken by the University scholars shall mandatorily be hosted on their respective University OA repositories developed individually or jointly. The onus of accomplishing the mission of maximizing the spread of

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legal knowledge largely falls on the law schools and the law libraries countrywide. They should rise to the occasion and join hands to the furtherance of the cause. The key therefore is constant advocacy.

Introduction

Once late Benjamin Disraeli, Prime Minister of Britain remarked: "*The more extensive a man's knowledge of what has been done, the greater will be his power of knowing what to do*". There can hardly be any disagreement with this opinion. Knowledge is a common property available to all like natural resources. However, the irony is natural resources stock dwindles when shared, while knowledge wants to be shared and when shared it grows! Any academic research which has not been shared with others to the extreme possible extent is a lost opportunity both in terms of its immediate impact and its reference value for the future researchers. Natural resources require strong preservative action, self-governing mechanisms, for its sustainability, on the other hand, we have enclosed, prevented and copyrighted knowledge to an unsustainable and self-degrading commodity. We have allowed much of the knowledge produced by scholars around the world in the past few centuries and recorded in copyrighted journals and have made them available to limited fortunate souls. We have protected them as 'Holy Grail' forbidden for public consumption. We have allowed the copyright laws to protect the interests of publishers, who are intermediaries in reaching the knowledge to others, rather than protect the interests of the knowledge creators, viz. the authors of research papers, who want to give away their knowledge for free. The past two decades have seen the emergence of a movement that seeks to restore the knowledge commons back to the knowledge creators, through facilitating open access (OA). Although the OA movement began before the advent of the Internet, it would not be an exaggeration to say that it would not have grown but for the emergence and widespread use of the Internet [Arunachalam, "Open Access" 271].

Not surprisingly, most of the legal research, particularly in India, is disseminated today by publishing it in law journals which have very limited circulation. Such a trend is utterly deficient to meet the main purpose of research, viz. maximizing knowledge. The legal intelligentsia in India has also failed to give serious thought to this problem unlike their counterparts in the West. They even lag way behind in terms of action when compared to some other disciplines in India.

This paper reviews and analyzes the evolution of OA movement in serial publications worldwide and its impact in India. It discusses the current state of affairs in Indian academics in general and law in particular. It highlights the challenges which the traditional publishing model poses to the OA movement. Drawing inspiration from some of the novel steps taken by some of the western law schools, it proposes some initiates for better and wider dissemination of scholarly writings without any fetters of copyright laws.

What is Open Access?

OA deals with free access to and reuse of scholarly works. To date it has been primarily concerned with scholarly journal articles; however, digital books, electronic theses and dissertations, and research data have been of growing concern. So, generally speaking, OA is free online availability of digital contents, scholarly journal articles, research results which authors publish without any economic consideration and is based on the philosophy of creating a 'perfect world' where knowledge is free and easily accessible. OA operates within the legal framework and authors own the original copyrights to for their work. Authors can transfer the rights to publishers to post the work on the web or else can retain the rights to post their work on the archives.

In fact, open access is a step ahead of "Free Access" which removes just the price barriers by providing free access to end users. Under OA, the end user not only has free access to the content but also have the right to further distribute the content [Keisham and Sophiarani 206].

Multiple definitions of OA publishing exist. Commonly known as the three Bs, the Budapest Open Access Initiative (February 2002), Bethesda Statement on Open Access Publishing (June 2003) and Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities (October 2003) public statements represent the most highly regarded definitions of OA, and all agree on the essentials. Though differing slightly, the statements essentially note that OA allows users to read, download, copy, distribute, print, search, or link to the full text of works, permitting use for any lawful purpose, as long as Internet access to the material is possible. OA functions within current copyright law by allowing authors to either retain the right to post their papers on institutional servers or transfer rights to publishers who allow free access to their work and is not applicable to content for which authors expect financial compensation [Albert 253 – 54].

Following two commonly discussed means for achieving the OA goal articulated in the Budapest Open Access, OA may be categorized into two categories [Donovan and Watson 7]:

(1) Establishment of a new generation of online OA journals that conduct peer review yet do not charge subscription or access fees (known as the 'gold' road); and

(2) Author self-archiving and/or commitment to deposit a digital copy of a publication to a publicly accessible website or institutional repository (known as the 'green' road). It may be possible after traditional publication, and publishers permitting free access to the electronic content after an embargo period.

Keisham and Sophiarani succinctly summed up the salient features of OA in the following points [206]:

(1) OA literature is digital, free of charge and free of copyright;

(2) OA is compatible with copyright, revenue, print, preservation, prestige, career advancement, indexing and supportive services associated with conventional scholarly literature;

(3) OA campaign focuses on the literature that authors give to the world without expectation of payment;

(4) OA is compatible with peer review and all the major OA initiatives for scholarly literature insist on its importance.

Development of OA: Initiatives of the Western Scholarly World

Scientific community, consisting of scholars from science, technology and medicine (STM) field, has been in the forefront of this OA movement. The scientific journal was begun in 1665 to enable researchers to share their work quickly and widely and to establish the priority of researchers investigating the same problem. Because authors received intrinsic rewards from publishing, no financial remuneration was awarded. Early journals could not afford to pay authors anyway [Albert 255].

The advent of the Internet made it possible for research to be shared in entirely new ways. Physicist Paul Ginsparg founded the Internet's first scientific preprint service, arXiv, in 1991, allowing scientists to share ideas prior to publication. Three years later, cognitive science professor Steven Harnad started advocating before researchers to immediately start self-archiving—depositing papers in a publicly accessible, Internet-based archive—to maximize exposure to their work and eliminate subscription price barriers hampering research sharing worldwide. Harnad's proposal led to extensive debate and influenced subsequent events leading to the OA movement of today. The biomedical science community joined the act in 1999 with the implementation of E-Biomed, the brainchild of Nobel laureate and then-director of the US National Institutes of Health (NIH), Harold Varmus [Albert 255 – 56]. Because of such tireless efforts from various scholars from the STM world, the OA movement has intensified in the recent times, setting numerous significant milestones.

In the field of law, the Hermes Project at Case Western Reserve University, in collaboration with the U.S. Supreme Court, was the first pioneering project to make use of the Internet. Starting in May 1990, this project allowed for some *avant–garde* network users interested in law to access decisions rendered in the highest American court. Devoid of search engines, requirement of knowing the file number of the judgement in advance, existence of separate elements of judgment in separate files made Hermes rather difficult to use. In retrospect, the Hermes Project was more of an interesting initial attempt at using the Internet for the redistribution of legal information rather than being a successful system to reach the general public [Poulin].

Innovative use of internet in delivering legal information online in a user-friendly manner on a wide scale was accomplished through the establishment of a non-profit group, the Legal Information Institute (LII) at Cornell Law School by Thomas R. Bruce and Peter W. Martin in 1992 with "*the conviction that digital technology should facilitate a quantum shift in the distribution of legal information and also make it possible for a university law school to become a serious electronic publisher of its own research*" [Martin]. The objective of LII is to publish law online, for free; create materials that help people understand law; and explore new technologies that make it easier for people to find the law [LII About]. LII electronically publishes a plethora of primary legal materials including the U.S. Code, U.S. Supreme Court opinions, Federal Rules and Regulations. LII also provides access to other national and international sources, such as treaties and United Nations materials [LII Legal Collections]. It soon inspired similar initiatives to take place across the globe. In fact, the Australasian Legal Information Institute (AustLII) was the first LII to realize the full potential of the ideas put forth by the Cornell team. AustLII became the first Legal Information Institute to offer comprehensive national legal collections open accessible to all [Poulin].

In a significant international development in open access to legal information, in October 2002, delegates to the fourth Law via Internet Conference in Montreal issued a *Declaration on Public Access to Law* stating that [Montreal Declaration]:

- Public legal information from all countries and international institutions is part of the common heritage of humanity. Maximising access to this information promotes justice and the rule of law;
- Public legal information is digital common property and should be accessible to all on a non-profit basis and free of charge;
- Organisations such as legal information institutes have the right to publish public legal information and the government bodies that create or control that information should provide access to it so that it can be published by other parties.

The initial Montreal Declaration was issued by representatives of LIIs from eight areas of the world. It was amended at two later meetings of the LIIs, most significantly in 2003, when the title of the declaration was changed to call for "*free*," rather than for "*public*" access to law, and the qualification "*where possible*" was deleted from the original statement that public legal information "*should be accessible to all on a non-profit basis and, where possible, free of charge* [Danner 360]." Today, various national and regional LIIs are linked from the web site of the World Legal Information Institute (WLII) which holds 1230 databases from 123 jurisdictions via 14 LIIs. Although the LII initiatives largely started to disseminate primary legal information; at present, WLII acts as a repository of various Law Journals worldwide including journals from Indian Law Schools [International Library].

The Social Science Research Network (SSRN), the most popular platform among law faculty for self-dissemination of their written works, was founded in 1994 (Donovan and Watson 28). The Ranking Web of World Repositories has ranked SSRN as No. 1 among its counterparts [Top Repositories]. For law schools, the open access movement surfaced as a force of major importance with the announcement of two major initiatives in 2008. First, on May 7, 2008, the Harvard Law School faculty voted unanimously to make their scholarship freely available in an online repository. With this action, Harvard's became the first law school to make an institutional commitment to open access for its faculty's scholarly publications [Harvard "Yes"].

The words of the motion are self-explanatory echoing their strong commitment to the cause of free knowledge. It reads [Harvard "motion"]:

> *"...[E]ach Faculty member grants to the President and Fellows a nonexclusive, irrevocable, worldwide license to exercise any and all rights under copyright relating to each of his or her scholarly articles, in any medium, and to authorize others to do the same, provided that the articles are not sold for a profit...."*

The second milestone was achieved soon thereafter when, on November 7, 2008, the directors of the several major law libraries met in Durham, North Carolina at the Duke Law School.[2] The talks resulted in the *Durham Statement on Open Access to Legal Scholarship*, promulgated in February 2009, which calls for all law schools (1) to stop publishing their journals in print format and to rely instead on electronic publication coupled with (2) a commitment to keep the electronic versions available in "*stable, open, digital formats*" [Durham Statement]. Since the Statement was issued increased publication of law journals is witnessed in openly available electronic formats.

OA is also at the heart of UNESCO's activities to build knowledge societies through the use of information and communication technology (ICT). UNESCO views the subject from right-based perspective. According to its philosophy, OA is the provision of free access to peer-reviewed, scholarly and research information to all. It requires that rights holders grant worldwide irrevocable *right to copy, use, distribute, transmit and make derivative works* in any format for any lawful activities with proper attribution to the original author. OA uses ICT to increase and enhance the dissemination of scholarship. *OA is about freedom, flexibility and fairness*. In fact, UNESCO hosted a meeting of experts on OA on 22 and 23 November 2011, at its Headquarters in Paris, to discuss how to operationalize the UNESCO Open Access strategy approved by the UNESCO Executive Board at its 187th session and further adopted by the 36th session of the General Conference [UNESCO "Open"]. The meeting resulted in the launch of Global Open Access Portal which provides an overview of the framework surrounding OA in UNESCO Member States by focusing on the critical success factors for effectively implementing OA; each country's strengths and opportunities for further developments; where mandates for institutional

deposits and funding organization have been put into place; potential partners at the national and regional level; and funding, advocacy, and support organizations throughout the world [UNESCO "Global"].

Jurisprudential Justification behind Open Access

Lon Fuller, in much revered book on Jurisprudence, *The Morality of Law*, brings home the imaginative ruler 'Rex' who with a reformist zeal set out to reform the legal system of his country which was in doldrums. One of the steps he resolved to undertake was to draft a comprehensive code employing his intellectual powers solitarily. While he was able to bring out a fairly long document and announced that in future he would be governed by its principles in deciding cases; but he decreed that the Code was to remain secret known only to himself and his scrivener. The resentment of his subjects was such that the plan had to be abandoned [Fuller 34 – 35]. Fuller observes that Rex's "*failure to publicize, or at least to make available to the affected party, the rules he is expected to observe*" defeated his noble intention [39]. Thus, according to Fuller, in a properly regarded legal system, one of the eight "*inner morality*" or inner characters of law is that it should be "*published*".

What is noteworthy is the fact that the Montreal Declaration emphasizes on the free access to "*public legal information*," which is defined in the declaration to be:

> *"...[L]egal information produced by public bodies that have a duty to produce law and make it public. It includes primary sources of law, such as legislation, case law and treaties, as well as various secondary (interpretative) public sources, such as reports on preparatory work and law reform, and resulting from boards of inquiry. It also includes legal documents created as a result of public funding." (Emphasis provided by the authors)*

This definition has a significant bearing in common law countries such as India, where legal scholarship is usually classified as 'secondary' sources which includes writings and commentaries by scholars, and is distinguished from the 'primary' sources of law issued by bodies with law- or rule-making authority: legislatures, courts, and administrative agencies. Secondary authority cannot bind a court; nevertheless, they can be cited to persuade the court of the soundness of an argument.

Hence, it would be naive on our part to presume that law in India would only develop with primary texts of legal provisions be available to the legal experts, researchers and common people at large. Unless interpretations and opinions of various legal scholars are available to us, our understanding of law will remain incomplete forever. When the Government has introduced free-laptop scheme for the district court level judges, the initiative would become sterile unless adequately supplemented by properly-indexed, easy-to-search legal information including scholarly works.

The expression "*freedom of speech and expression*" in Article 19(1)(a) of the Constitution of India has been enlarged by the Supreme Court of India in several cases to include the right to acquire information and disseminate the same [CAB Case]. It includes the right to communicate it through any available media whether print or electronic or audio-visual. This freedom includes the freedom to communicate or circulate one's own opinion without interference to as large a population in the country, as well as abroad, as is possible to reach. Without adequate information, a person cannot form an informed opinion. Thus, right to know has been considered as a concomitant right to right to speak. And such an interpretation is consistent with Article 19 of the Universal Declaration of Human Rights, 1948 [UDHR] which encapsulates right "*to seek, receive and impart information and ideas through any media and regardless of frontiers*." (Emphasis provided by the authors)

If one accepts that all scholarship, regardless of academic discipline, is inherently built upon the foundation established by earlier scholars, then it follows that the more widespread and accessible scholarly information is, the more quickly and efficiently scholarship can advance. Because of the infinitely varied uses to which this information can be put, many of them directly impacting basic quality of life issues, the intellectual duty of the scholar to communicate can be argued to be mirrored by a human 'right to know', which "*has a claim on our humanity that stands with other basic rights, whether to life, liberty, justice, or respect. More than that, access to knowledge is a human right that is closely associated with the ability to defend, as well as to advocate for, other rights* [Willinsky 143]."

This 'right to know', if it is acknowledged to exist, would demand the implementation of OA initiatives. Anything less amounts to willful withholding of the knowledge created within universities – which falls into the economic category of a 'public good' in that it can be provided to everyone, and remain undiminished by the consumption – from those who arguably are most in need of its guidance. These texts would instead be either unreported and lost, or, very nearly the same thing, locked behind expensive or exclusive publishers' domains [Donovan and Watson 10].

It is undeniable that nowhere right of open access to information is recognized in definite terms, yet, in today's environment, hoarding knowledge ultimately erodes our power. If we know something very important, the way to get power is by actually sharing it. While we enthusiastically profess right to information through our path-breaking legislation, namely, the Right to Information Act, 2005, [RTI Act] we cannot sit back and censor scholarly information and limit them to a fortunate few. If we believe that academic information need to be disseminated to the consumers at large, we must consider of bringing out such an OA policy which will reach every nook and corner of this country and worldwide. And when the scholarly article is a product of a research carried out with the assistance of public funds in other words – the taxpayers' money – the voice in favour of OA grows louder.

Problems with the Traditional Method of Publishing and Preservation

One of the primary reasons that have galvanized the OA movement is the increase of library expenses and budgetary constraints. That may well be considered as a reason for the librarians being at the forefront of OA movement. The operating cost of the libraries has increased significantly worldwide in the last few decades.

The rationale for the Durham Statement was clear in stating:

> *"In a time of extreme pressures on law school budgets, moving to all electronic publication of law journals will also eliminate the substantial costs borne by law schools for printing and mailing print editions of their school's journals, and the costs borne by their libraries to purchase, process and preserve print versions."*

Although controversial in its bold scope, when read together with the Harvard vote, the Durham Statement made clear to onlookers that OA had become a serious organizing principle for the future plans of law libraries.

According to the latest Library Journal Periodical Price Survey, law titles rose 16% from 2008 to 2010, from an average cost of $294 to $338. The American Association of Law Libraries Committee Index for Legal Publications, however, reports a 42% increase in costs for all periodicals (both law-school subsidized and commercial) from 2005 to 2009, with the average price jumping from $155 to $222 [Donovan and Watson 4]. Data obtained from National Law School of India University (NLSIU), Bangalore conforms that the trend in India is almost similar. The overall costs of NLSIU Library costs have increased by 20% in last 3 years. That too, after expenses on the online databases has been halved, thanks to the UGC-INFONET Consortium grants. However, the print journal expenses have gone up by 10% during the same period.[3]

Down the years, libraries have not only provided access to books and other printed materials, but tried to preserve them for future users. Publishers of books and journals are not expected to maintain permanent back stock of their publications; preserving the works they published is a responsibility taken up by libraries. Yet printed information does not preserve itself. It requires paper manufactured so that it will not rapidly deteriorate over time, storage under appropriate temperature and humidification regimes, and proper shelving so that items are not lost. Most academic law libraries have traditionally striven toward comprehensiveness in their journal collections, the long runs of many journals and subscriptions to multiple copies of the most important ones mean that journal collections also take up large amounts of space in library facilities [Danner, Leong, and Miller 45 – 47]. This is a herculean task which requires large amount funds for keeping them in a user-friendly manner for the readers. Lying emphasis on OA journals and moving towards digitalization will not only enable the libraries from optimum utilization of space but also make preservation easy and 'stable', and above all, will liberate them from budget constraints.

Traditionally, the libraries in India have faced budgetary constraints which have been pointed out by various committees and commissions as well individual research studies [Bhatt 64]. Of course, comparing the budgets of the US and Indian law schools, would put us in a state of hallucination. Few years back, the annual budget (including for library staff) for the law library at the Harvard Law School is $14 million (Rs. 56 crore) and that of the Yale Law School was over $6 million (about Rs.25 crore) [Rajkumar]. The figures are well-above the budgets of the entire University, let alone the library! Even with such a gigantic budget, Harvard Law School has been pioneering the OA movement and that alone should give the law schools in India more impetus to join this movement.

To sum up, excerpts from the Durham Statement are worth mentioning:

> *"The presumption of need for redundant printed journals adds costs to library budgets, takes up physical space in libraries pressed for space, and has a deleterious effect on the environment; if articles are uniformly available in stable digital formats, they can still be printed on demand."*

Accessibility and Impact of OA Journals

The tradition of writing for impact instead of payment continued for centuries. Journal articles today are still written to advance knowledge and professional status, and new scholarly work depends on prior work. What remains important to many authors is wide dissemination and notice for their work, not financial reward, unusual in the world of intellectual property. Therefore, apart from jurisprudential justifications, the two most important aspects OA publishing considered worldwide are: *Accessibility* and *Impact*. The internet boom in the 1990s had a galvanizing impact on research as a whole – the legal profession became poised to disseminate limitless levels of information. With the growth of the Internet and associated web technologies, the cost of disseminating legal information was enormously reduced. Lower material costs, as well as the emergence and development of open source software, diminished the necessary investment of resources for dissemination and reproduction, as well as costs related to the preparation and management of legal documents. Data processing procedures have also evolved during this period that allowed for the easier and cheaper creation of information systems. This allowed for a simplified strategy for the management and dissemination of law. Furthermore, since the majority of official legal documents were being put together with word processing programs, the preparation of legal information systems was greatly facilitated. As a result of these new conditions, a new potential for the dissemination of law emerged, thereby making public access an extremely worthwhile endeavour in any development oriented program [Poulin].

In spite of the fact that great deal of web-based legal information is freely available through search engines like Google, and some laudable steps have been taken by many of the Western law schools and legal academia worldwide;

barriers remain for access to most of the research published in scholarly journals. Peer-reviewed literature is often funded by taxpayer-supported government grants and is highly valued by judges, researchers, and legal professionals alike. The irony is: while legal scholars provide free peer review, access is controlled by publishers who charge libraries and consumers hefty subscription and per-article fees to view this material.

Arguably, the two most well known paid legal databases are Westlaw and Lexis-Nexis. Extensive collections are also offered by HeinOnline and JSTOR. Unfortunately, there are no such comparative even paid databases available in Indian context. Though Manupatra, SCC Online and Indlaw are gradually emerging as forerunners for research among the legal fraternity, but they are chiefly tailored to search case-laws and legislation. At no cost, their journal sections command the respect when compared to their western counterparts. And being fairly expensive, the penetration of Westlaw and Lexis-Nexis in India is rather limited only to top echelon of the legal fraternity including the legal academia. The well-known Indian databases are not cheap either.

Under such circumstances, a question arose whether open access actually result in an article's increased citation? In 2001, Steve Lawrence wrote a brief yet controversial article for *Nature* postulating that having scholarship freely available on the Internet substantially increases that article's impact. In fact, he considered articles from the same publishing source which allowing him to assume that the examined articles were all of similar quality, and he found "*an average of 336% (median 158%) more citations to online computer-science articles compared with offline articles published in the same venue"*[Lawrence].

In 2005, Chawki Hajjem, Stevan Harnad and Yves Gingras undertook a similar study across ten disciplines including Law. They concluded, when comparing open access articles from the same year, and in the same journal, that open access produced a citation advantage from between 25% to 250%, depending on the discipline. The specific Law results found that 5.1% of law articles were available through open access (across disciplines the range was between 5-15%, suggesting that law lags behind other fields in this measure), and that within Law generally the OA citation advantage came to 108%, second-best figure after Sociology [Hajjem, Harnard, and Gingrass].

This was followed by a research in 2011 particularly in the field of Law by James Donovan and Carol Watson which confirmed the findings of the earlier study but with certain modified numbers. They considered three journals of Georgia Law School, namely, Georgia Law Review, Journal of Intellectual Property Law and Georgia Journal of International and Comparative Law for this purpose. They found 29% of the articles in those journals are open access, and when modified to match the time span of the earlier study, the revised result showed 19% [Donovan and Watson 20]. The study concludes that "*the open access article can expect to accrue citations along the line of 58% more than non-open access articles of similar age and quality, from the same venue*" [24]. The researchers

conclude that because open access articles are more easily accessed, they are read more often. "*Convenient access alone, according to this argument, increases the likelihood of citation* [26]."

Another interesting aspect brought out in this study was the impact because of the stature of the law school or a particular journal. They argue that due to the high prestige, but "*articles in the Harvard Law Review will receive notice and citation regardless of whether they are also available in open access outlets. This would perhaps not be the case for an article published in the law review of a third- or fourth-tier school. If not for the ease of open access, such articles might get lost within the more traditional outlets, crowded out by more glamorous competitors* [30]."

Challenges before Legal Academia In India

OA was initiated in the developed countries and later many developing countries including India have joined the juggernaut. Without any exception, the STM community in India rules the roost. Various Indians R&D organizations, leading scientific research institutions (such as Indian Institute of Science (IISc), IITs, ISI, Institutes under the Council of Scientific and Industrial Research (CSIR) and Indian Council of Medical Research (ICMR), etc.) are now taking part in the open access movement by establishing institutional and digital repositories to provide worldwide access to their research literature. The Indian Medlars Centre (IMC), has taken the pioneering step of putting Indian biomedical journals accessible from a single platform [Keisham and Sophiarani 208 – 11]. Medknow Publications, a small company based in Mumbai, has helped 10 medical journals making the transition from print to electronic open access and all of them are doing much better now than before [Arunachalam "India's march"]. Thanks to all such efforts there is an open access to a large chunk of STM scholarly literature.

However, open-access publishing needs to be complemented by setting up interoperable institutional archives, which allow researchers to make versions of their articles publicly available online both before and after publication. In fact, IISc, Bangalore, was the first in the country to set up an interoperable institutional repository, *ePrints@IISc*, under the leadership of the Late Dr. T. B. Rajashekar.

Unfortunately, social science has been neglected for long; hence, there are not many social science journals of repute from India. Probably *The Economic and Political Weekly* is the lone journal which has a sizable following. It has OA policy which was unrestricted previously including its archive covering full text of the articles, however, at present full text of articles from the last four issues at any given point of time can be accessed. *Indiatogether.org* and *infochangeindia.org* are two relatively popular social science web portals consisting of numerous articles including some authored by well-known names. Though the articles published on those web portals apparently go through editorial screening, the credibility of those write ups are not beyond scepticism.

As far as law *per se* is concerned, the picture is far from encouraging. Unlike the STM community in India, there exists no such consorted effort. Most of the Indian legal journals suffer from 'low circulation - low visibility - low impact factor' syndrome. Be it law faculty of age-old universities or prestigious law schools – the situation is almost similar. Of course, a handful of the premier law schools like the NLSIU, Bangalore; the National Academy of Legal Studies and Research (NALSAR), Hyderabad, Jindal Global Law School, Sonepat, etc, have made some efforts in this regard. Authors' own experience is that either they are not very user friendly or they do not unlimited access to the back volumes. Of course, there exist some OA repositories, e.g. *legalserviceindia.com*, *legalperspectives.blogspot.com*, and *legalsutra.org*; however, neither the articles published therein are peer-reviewed nor the identities of people behind the initiative are known. They are more of a kind of blog. This is in stark contrast with the West. E.g. the Legal Scholarship Network (LSN) which is a part of the SSRN is directed by Bernard Black and Ronald J. Gilson. They are professors of Law from Austin and Stanford Law School respectively. Few commercial houses like the All India Reporter and The Practical Lawyer have given full or partial open access to their journal sections. And there are some web portals, e.g. *judis.nic.in*, *www.indiankanoon.org*, *www.vakilno1.com*, through which legislation and court judgments of the higher courts are available to the public at large. Apart from those few standalone efforts, OA movement has barely developed among the legal academia in this country.

Legal scholars in India write articles in hundreds of law or social sciences journals, national or international, most of them low-impact. Moreover, scholarly journal publishing in India has minimal impact outside the legal academia, that too also primarily authored by Western legal experts. The law journals from the law schools do not enjoy similar prestige like their counterparts in the West. The courts seldom take note of the articles written in Indian law school journals. Apart from commentaries, whatever journal articles the courts have taken into consideration are from established commercial print journals, such as, All India Reporter, Supreme Court Cases, Madras Law Journal, so on and so forth. Judging from this perspective, we regret to declare that legal intelligentsia in India has not contributed significantly in the development of jurisprudence through regular scholarly contribution. Added to the woes, the law journals of the law schools have very little access to create an impact for that matter. Under such circumstances, OA law journals from law schools become an imperative. Going by the research results discussed in the previous section, such initiatives would increase visibility of the journals and access to the scholarly writings of native experts, which would eventually create greater impact. As a matter of fact, easy access to Internet publication has been pointed out as one of the plausible reasons behind increased law review citations by the courts in the US [Schwartz and Petherbridge].

It may also be mentioned that the UGC has come up with new Guidelines, namely, UGC Career Advancement Scheme (Revised Pay Scales for Teachers),

2006, to consider scholarly contributions to journals only having ISSN Number alone while apprising candidates for promotions in their careers. As a matter of fact, many such legal journals with ISSN Number exist in India which has neither command authority nor visibility. The authors are sceptical whether such steps would enrich legal scholarship or further discourage legal scholars to contribute to any OA journal or repositories, which may have greater impact but no identifiable interest for the authors concerned. In fact, problems have been encountered at IISc as well where faculties prefer to write in journals for personal gains rather than contributing to their repository and furthering the cause of knowledge. In spite of efforts from the Archives Unit, the repository has less than 5% of the published papers of the Institute [Sahu and Parmar 30]. Many scholars also find print publication more professionally impressive than online publications [Albert 257 – 58]; and in the context of UGC's new guidelines, it will further dampen the spirit of publishing in OA journals.

OA research has a negligible impact in India among the legal academic curriculum. In fact, *Legal Education and Research Methodology*, which is an UGC-mandated core course at the LL.M. level, does not have any module on Open Access. And to the authors' knowledge, leave apart the conventional law universities, based on interaction with some students from top tier law schools across the country, none of the law schools, where law teachers have ample freedom to modify the course contents within the prescribed limits, have included the same in their course structure. That's why the students are largely ignorant about the development and importance of OA movement unfolding in the West.

While the legal intelligentsia is at the forefront of the OA revolution in the West, their counterparts in India have failed to make any impact, whatsoever. In fact, considerable efforts have been undertaken by the academicians in the STM field in this country for which it is reaping the benefits. E.g., thanks to the patronage of some dynamic OA activists, like Prof. Subbiah Arunachalam of IISc, that *ePrints@IISc* is still the highest ranked (# 98) Indian OA repository, as per the Ranking Web of World Repositories in January 2012 [Top Repositories]. The NLSIU has started efforts in building its own repository in order to open access the research papers authored by the faculty and researchers, articles published in its journals, conference papers, etc. it's a small yet commendable step towards a gigantic mission. More such efforts are long due.

Avenues of Hope

Quite a few things regarding OA have taken place in the field of higher education and libraries which concern the law universities as well. One of the most remarkable and identifiable development in the area was the foundation of the Information and Library Network (INFLIBNET) by the UGC in 1991. Though it started as a project, later in 1996, it became an autonomous Inter-University Centre of the UGC at Gujarat University Campus, Ahmedabad. Importance of OA is evident in the goals of the organizations which includes complete

automation of libraries in educational institutions, facilitate creation of open access digital repositories in every educational institutions for hosting educational and research contents created by these institutions and eventually provide seamless and ubiquitous access to scholarly, peer-reviewed electronic resources to the universities. The Shodhganga@INFLIBNET Centre provides a platform for research students to deposit their Ph.D. theses and make it available to the entire scholarly community in open access.

Another significant landmark in OA field is the establishment of "UGCINFONET DIGITAL LIBRARY CONSORTIUM" by the UGC in 2003. UGC-INFONET is an innovative project launched by UGC to facilitate scholarly e-resources to Indian academies through joint partnership of UGC, INFLIBNET and ERNET. This includes interlinking of universities and colleges in the country electronically with a view to achieve maximum efficiency through Internet enabled teaching, learning and governance. The objectives of the consortium include subscribing electronic resources for the members of the consortium at highly discounted rates of subscription, rational use of funds, and have more interaction amongst the member libraries [Bhatt 64].

The National Knowledge Commission (NKC) was set up by the Government of India in 2005. Easy access to knowledge, creation and preservation of knowledge systems, dissemination of knowledge and better knowledge services are core concerns of the Commission. The NKC has provided the much needed impetus to the development of academic libraries which can be envisaged in today's ICT environment where the nature, role and significance of academic libraries is transforming with cutting edge technologies and the focus is shifting from 'information storage' to 'information access', and this paradigm shift is inevitable for all overall improvement of library functioning and services for present survival and futuristic approach [Bhatt 64 – 65].

Suggestions and Concluding Remarks

In the backdrop of above discussions, it is crystal clear that the prevailing system of propagation of scholarly legal knowledge is unsustainable. Hence, sooner or later, the legal fraternity would be compelled to adopt open access system. Then, what should we do to make a smooth transition? A comprehensive OA policy is the need of the hour which may well consider the following aspects:

- One of the major problems faced in the legal fraternity is lack of awareness. A module on OA must be included in the *Legal Method* and *Legal Education and Research Methodology* subject at the LL.B. and LL.M. level respectively to facilitate more discussion among students.
- Data from NLSIU library shows that the number of online databases has increased from 5 to 8 in last three years. Ideally, law schools should say 'NO' to those corporate giants and instead train students more on utilizing open sources rather than making them dependent on paid databases.

- All the journals of the law schools shall have open access, irrespective whether print version is available or ISSN is assigned to it. This could be made a mandatory condition for the registration of the journal itself.
- All the Law Schools should mandatorily set up open access repositories and make available all sorts of in-house scholarly materials mandatorily available on them. Not only public-funded researches, any research which have public implications, for that matter, should also come under this purview. And these could be pre-conditions set forth while granting of recognition of the institute itself. Faculty, authors, and journal editors with subject expertise coupled with law librarians could potentially provide a very sophisticated, dynamic, and responsive system.
- All LL.M. and M.Phil. dissertations, and Ph.D. theses shall be submitted to Shodhganga@INFLIBNET. Being in public domain, this shall reduce duplicity of research works undertaken at the higher level and enhance originality and quality of ideas.
- Under no circumstances, the quality of the research papers should be compromised. Free publication must never become synonymous with sloppiness. While advocating for OA, we should bear in mind that readers or future researchers are not exposed to sub-standard quality of legal publishing.
- The law libraries in the West have contributed immensely to the OA movement including the Durham Conference. It is time for the law libraries in Indian law schools to wake up to the cause and collaborate among themselves to ensure seamless exchange of scholarly materials among themselves and world at large. This would be a corollary to the implication of INFLIBNET and UGC-INFONET. A legal repository in the line of Indian National Digital Library in Engineering Sciences and Technology (INDEST) is absolutely necessary. Most of the law colleges in the India cannot afford to subscribe to copyrighted databases like Westlaw or Lexis-Nexis, hence, such a legal OA repository would emerge as a leading scholarly database and bridge the gap between the privileged few and the rest of the crowd.
- Print journals involve excessive use of paper which has an adverse environmental impact. Considering from that perspective, we must move towards digital format of the journals. What could 'stable' format may be a point of contention [Danner, Leong, and Miller 50 – 52], but in due course our goal is to move towards all electronic publication.

Globalisation of legal research has become a universal trend. Legal scholars working in a particular country cannot limit their research to some limited audience. Then the research would have no purpose. With the development of web-based research, there has been a remarkable transformation in the

development of legal research. Now with open access, the legal world is poised to disseminate and receive limitless scholarly information. The onus is on the law schools – a unique synergy of students, academics, and librarians with specialized knowledge, intellectual might and manpower to research; to spearhead this revolution. And to get moving towards that direction concerted advocacy is required. The authors' express their dismay over the fact that in spite of being very important, OA has remained largely underexplored area in context of Indian legal fraternity. It's high time for all of us to emerge out of the veil of ignorance and create an intellectual revolution in the country which is long overdue.

Endnotes

1. The Dire Necessity.
2. The participants were the directors of the law libraries at the University of Chicago, Columbia University, Cornell University, Duke University, Georgetown University, Harvard University, New York University, Northwestern University, the University of Pennsylvania, Stanford University, the University of Texas, and Yale University. Subsequently, many other law schools became signatory to the Durham Statement.
3. The authors are grateful to the staff of NLSIU Library for sharing certain data for the purpose of this research.

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