OPEN ACCESS MOVEMENT: CHALLENGES AND OPPORTUNITIES FOR INDIAN LEGAL INFORMATION SCIENCES CENTERS

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Abstract

Free access to law emerged as a revolutionary movement that promotes free access to public legal information through Internet, removes the price and permission hurdles. The paper describes the concept of Open Access and its usefulness in bridging the knowledge gaps between privileged and under privileged communities. It traces the history of Free Access to Law Movement at national and international level. It also discusses the challenges and opportunities for Indian law libraries. It concludes, emphasizing that the authors must publish their scholarly work in Institutional Repositories, Blogs, Open Access journals etc. and urges the government to make public legal information available to all at free of cost and fund such institutes which promotes OA movement.

Key Words: Open Access, Free Access to Law Movement, Legal Information Sciences centers, Law Library, India.

1. Introduction

The Internet and World Wide Web have brought gigantic changes in the process of information generation and distribution. World Wide Web has given more opportunities to creators of knowledge and seekers of knowledge and more particularly to the library professionals, who are facilitators between these two groups. The 21st century has been largely acclaimed as the 'knowledge century era'. The higher education system has undergone metamorphosis due to technological developments and innovation, India is no exception to this. India has the large and complex higher education system in the world next to U.S and China. In many countries the first attempt to exploit the advantages of the web for providing legal information came from the academic sector rather than government, and did so with an explicit ideology of free access provision (Greanleaf, Chung, and Mowbray 319).

The judiciary in India has been amongst the more enthusiastic adopters of ICT with the judgments and orders of various High Courts and Supreme Court being published for free almost instantly on the Internet(Iyengar). With breathtakingly rapid advance of computer technology, law libraries and legal practice will also change out of recognition (Chander 21). But, at the same time it

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has become very difficult for legal information sciences centers to acquire resources particularly electronic resources due to escalation of prices and shrinking budgets. Information possession to information access to open access to information is a gradual shift which is taking place in current information era (Hanchinal 97). This has led to a movement called 'free access to law', worldwide.

The Open Access has brought in a welcome change and opened up new avenues for scholarly publishing and access models (Pandian 232). The Montreal declaration (2002) heralded a new chapter in free access to law. Legal research increasingly has global dimensions. International trade and the WTO, the internationalisation of environmental and human rights issues, the growth of international Courts and Tribunals and the complexities of the growing numbers of regional agreements and organizations, are some obvious examples that require lawyers, governments, businesses and civil society organisations to undertake legal research with an international element more than ever before (Greenleaf 321).

The need for free access to law has become the subject of much discussion amongst legal professionals, government administrators, businesses, NGOs, students, academics and the general public. The Legal Information Sciences Centers must recognise the importance of scholarly communication and intellectual property rights and create awareness among the stake holders about free access to law.

2. Open Access (OA)

The Internet has given new opportunities to make information available to large number of people virtually at no cost. This allows them to access and use the information for new, creative and innovative ways. As a result there is a call for promotion of open access publication so that it can be accessed easily across the world. OA also helps government to fulfill its obligation towards society and also removes the hurdles such as copyright and price.

According to Montreal Declaration (2002), 'public legal information from all countries and internationals 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'. It emphasizes that the public information published by the State should be made available to the common people without any hurdles.

2.1 Why Open Access?

India is producing about 100,000 law graduates every year and there are over a million lawyers in India. Yet there are about 3.2 crore cases pending in

high courts and subordinates courts across the country while 56,383 cases were pending in Supreme Court of India as on December 2011(The Times of India). The big question before the authorities would be how to deal with this problem? Free Access to legal resources will be an alternative solution to counter this problem.

The rising cost of print and electronic publications and cut in library budget forced librarians to search for alternative solutions. OA to scholarly work is emerging as solution to overcome this problem since both authors and users benefit mutually.

3. Legal Education in India

The pattern of legal education which was in vogue in India was transplanted by the British, after establishment of their rule in India. The beginning of formal legal education was made in 1857 when legal education was introduced as subject for teaching in three universities of Madras, Calcutta and Bombay. From 1857 – 1957 a stereo typed system of teaching compulsory subjects and a two years course continued. The Advocates Act, 1961 prescribed minimum standards for lawyers to enter into practice in the court of law. Accordingly, a three year law course was introduced in 1967 and it was adopted by all the universities in India.

In 1985, the Bar Council of India insisted all the universities to introduce 5 year law course; accordingly many law schools in India started 5 year law course where students may join after secondary school. This phase nominally began with the establishment of National Law School of India University, Bangalore in 1986, its regular academic activities began on 1 July 1988. This model brought new changes in the legal education in India as it was completely a different model followed in common law countries.

The law school revolution began in right earnest in 2000 by when the other National Law Schools (like NALSAR, NUJS, NLU-J, NLIU-B) were established (The Unwilling Lawyer). Within a decade the number of NLUs jumped from one to fourteen (Bar and Bench). These law schools emphasized more on practical aspect of teaching law than theoretical aspect. As per the latest data available on Bar Council of India website there are more than 900 law colleges in India as of March 2010 (The Unwilling Lawyer).

The recommendation of National Knowledge Commission (NKC) of India clearly states that the legal education should meet the needs of trade, commerce and industry in the growing internationalization of the profession. It paved the way for improvement in legal education and raised the standard of Indian legal education. In 2011, the Government of India launched the Aakash Tablet, these tablets have been designed primarily for students and keeping the education sector in mind. The ICT has enabled the government to bring new changes and developments in Indian education sector.

4. Free Access to Law Movement

Many countries have established legal information institutes at national, regional and at international level to share and exchange information. Free Access to Law Movement (FALM) is the loose affiliation of legal information institutes (Greenleaf). It is an initiation to bring together projects of number of institutions from across the world dealing with legal information issues and whose goal is to provide free access to legal resources.

The academic institutions of USA, Canada and Australia initiated the movement twenty years ago. Since then they have been making public legal information available for free access via Internet. The genesis of first FALM is traced to Cornell's Legal Information Institute (LII), which has, since 1992 been publishing, 'legislation, court decisions and other document, online available to anyone with Internet access'(Iyengar). However, the Australasia Legal Information Institute (AustLII) has been one of the major players in free access to law movement since 1995 (Greenleaf, et al. 229).

It was on October 2002, a conference, "Law via Internet" was held in Montreal between eight legal information institutes (LIIs), who produced a declaration on 'Free Access to Law'. Thus confirming their adherence to the common philosophy on free access to law, the FALM members are parties to this declaration. The Montreal Declaration (2002) was further, amended at the meetings in Sydney (2003), Paris (2004) and Montreal (2007). India is one of the signatory countries to the Montreal Declaration (2002). There are about 41 LIIs participating in free access to law movement worldwide as of December 2011.

In many of the developed countries the governments have a policy to make public information available to the citizens at free of charge and free from copyright hindrances. The free access to law movement, centered on universitybased legal information institutes, is assisting and encouraging the development of free access to law facilities in many countries in the developing world (Germain).

Some of the significant initiatives related to Free Access to Law Movement at international level are briefly described below.

4.1 Legal Information Institute (LII) (http://www.law.cornell.edu/uscode/)

The LII was launched in 1992 by co-directors Thomas Bruce and Peter Martin. The collection of materials comprises from the Constitution to the U.S. Code and from Supreme Court judgments to the code of Federal regulations. It offers all opinions of the US Supreme Court handed down since 1992, together with over 600 earlier decisions selected for their historic importance, over a decade of opinions of the New York Court of Appeals, and full US Code (LII).

4.2 British and Irish Legal Information Institute (BAILII) (http://www.bailii.org/)

It was launched in the year 2000, it provides access to the most comprehensive set of British and Irish primary legal materials that are available for free and in one place on the Internet (British & Irish). It has over 80 databases covering 7 jurisdictions, comprising over 297,000 searchable documents.

4.3 World Legal Information Institute (WorldLII) (http://www.worldlii.org/)

The AustLII developed WorldLII in the year 2001 and launched in 2002. It has three main aspects: as a portal making multiple LIIs simultaneously searchable; its own databases; and its catalog and websearch. WorldLIIs networking of multiple LIIs makes it the largest free access legal research facility on the Internet because it makes simultaneously searchable the content provided by the other LIIs (Greenleaf). It comprises 1230 databases from 123 jurisdictions via 14 legal information institutes (World LII).

4.4 Australasian Legal Information Institute (AustLII) (http://www.austlii.edu.au/)

AustLII was founded in 2002, it provides free online access to Australian legal information. It publishes public legal information i.e. primary and secondary legal materials created by public bodies for the public use and it has a collection of law journals too. It has 485 databases from all Australasian jurisdictions (AutLII).

4.5 Commonwealth Legal Information Institute (CommonLII) (http://www.commonlii.org/)

The CommonLII was launched in 2006, it has 976 databases from 59 Commonwealth and common law jurisdictions via 8 Legal Information Institutes (CommonLII).

4.6 Asian Legal Information Institute (AsianLII) (http://www.asianlii.org/)

The AsianLII was launched in 2006, it is a non-profit and free access website. It has 309 databases from 28 Asian jurisdictions via 8 legal information institutes (AsianLII).

4.7 Global Legal Information Network (GLIN) (http://www.glin.gov/search.action)

It was established in 2007 and it is operated by the US Library of Congress, is database of official texts of laws, regulations, judicial decisions and other complimentary legal sources contributed by governmental agencies and international organizations (Greenleaf). GLIN members consisting from 40 countries and international organizations contribute full text of their published documents in their original languages (GLIN).

5. Free Access to Law in India – Some Initiatives

India a vast country having multi cultural and multi lingual population. The legal system in India follows the common law model prevalent in the countries which were at one time under British rule or were part of the British

Commonwealth (Srikrishna 242). The Constitution of India, came into effect on 26 January 1950, is the supreme law of the land. It declares the Union of India to be a sovereign, socialist, secular, democratic republic assuring its citizens justice, equality and liberty.

After the enactment of Right to Information (RTI) Act, 2005, for the first time in India, the public authorities not including the judiciary are bound to disseminate certain kind of information in their custody to those who demand by applying in a prescribed proforma given in the RTI Act, 2005. It is prescribed under section 4 sub section 4 of the RTI Act, 2005 that, "the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed" (Sinha, 60). Thereby, it ensures that citizens will always have access to authentic, useful and relevant information. This gave an impetus for free access to law movement in India.

Some of the initiations in Free Access to Law Movement (FALM) in India are discussed as below.

5.1 The Judgment Information System (JUDIS) (http://judis.nic.in/)

It consists of the Judgments of the Supreme Court of India and several High Courts, Tribunals and District Courts. All reported judgments of Supreme Court published in SCR Journal, since 1950 till date are available. The Judgments reported in SCR till 1993 also have head-notes. The judgments reported in SCR in 1994 and later have only text of judgments without head-notes (JUDIS).



5.2 Indian Courts (http://indiancourts.nic.in/index.html)

It's a bouquet of Websites of the Supreme Court and all 21 High Courts and their Benches in India. It provides a single point access to information related to the Supreme Court and any High Courts in India (Indian Courts). It provides

Litigant centric dynamic information like Judgments, Cause lists, Case-status, etc. as well as static Information such as History, Jurisdiction, Rules, Past and present judges, etc.

5.3 India Code (http://indiacode.nic.in/)

It consists of all the Central Acts of Parliament as on date right from 1836 onwards. It provides access to; Act Year, Act Number, Short Title, Act Objective and Full Act Text (India Code). It also gives links to judgments of Supreme Court, 16 High Courts and Allahabad, Chandigarh and Delhi District Courts and Central Administrative Tribunal.

5.4 Supreme Court of India (http://supremecourtofindia.nic.in/)

It gives access to the judgments of Supreme Court and consists detail information about Supreme Court of India.

5.5 India Legal Information Institute (Indlii) (http://www.indlii.org/)

Indiii a free legal web portal was launched on 25th November, 2006. It provides information about central and state laws, judgments of Supreme Court, High Courts and various other courts in the country plus news of the legal world. It is a not for profit institute with a vision to make online and full public access to all publicly available legal information of India (Wikipedia.).

5.6 Indian Kanoon (http://www.indiankanoon.org/)

In the year 2008, Sushant Sinha, began offering free access to judgments of the Supreme Court of India through his website IndianKanoon.org (IK). In the following two years, it has grown in multifold hosting over 1.2 million documents. IK provides free online access to Indian judicial and administrative decisions, debates of India's constituent assemblies, statutes, reports of the law commission of India and articles from selected law journals (IndianKanoon).

5.7 Advocate Khoj (http://www.advocatekhoj.com/)

This portal is established in early 2008. The Law Library module of AdvocateKhoj is a single point source for accessing diverse Indian Laws. It provides access to; Legal Tips, Agreements, Forms, Areas of Law which gives information on specific legal areas on 110 legal categories, Supreme Court Judgments with case numbers, parties name, judges' names and head notes, Bare Acts, Major 55 rules are available with free access to the full-text & Glossary presents over 2300 entries (AdvocateKhoj).

5.8 Indian Legal Info (http://indianlegal.info/default.aspx)

Indian Legal Info, an initiative inspired by 'free access to law' movement. It is a cluster of web portals on Indian law and tax. It consists of a main portal and several micro-sites and provides daily updates of Indian legal and tax developments.

A first-of-its-kind web cluster makes available the full original text of selected Indian legal and tax developments - news, legislation, judgments and rulings, regulatory guidelines and circulars, events, and books and articles (Indian legal Info).

5.9 Legal Information Institute of India (LII of India) (http://liiofindia.org/)

LII of India is the joint project of Eight National Law Schools of India in conjuncture with AustLII (Australasian Legal Information Institute) to provide free online access to Indian Legislations, Treatise, Case Laws, Law reform reports, Legal scholarship, Cases concerning India in International Courts and Tribunals and other legal resources. The portal was open for public use on 25 November, 2010 but it was officially launched on 9 March 2011. Today it has 151 databases and over 750,000 searchable documents, 93 databases related to legislation with about 7,000 items of legislation, 43 databases of Indian case law comprising over 750,000 cases in full text and 13 law journals..... (Greenleaf 340).



The LII of India is a party to the Free Access to Law Movement (FALM). It collaborates with worldLII, AsianLII, CommonLII and other members of the FALM. It supports free access to public legal information in India and also cooperates with other LIIs to create international network promoting free access to law.

6. Challenges and Opportunities

The growing use of open source products, creation of more locally created digital collections, the increasing complexity of licensing issues, and litigation involving the use of materials in course e-reserves and course management systems, reinforce the need for academic libraries to provide value-added intellectual property services (ACRL). Because, open access resources are almost free from copyright restrictions except for commercial use. Thus, the library professionals must keep pace with the emerging technologies and adjust to the

new environment and information use behaviors of faculty, students, academicians, lawyers and judicial administrators. Therefore, legal information sciences centers are today facing following challenges;

- (i) the lack of infrastructure and technical support to create Institutional Repositories
- (ii) misconception of authors about plagiarism and lack of awareness about pre-print and post print publications
- (ii) fear of authors to publish their research work in IR, blogs and OAJs
- (iv) to find out the reputation of the publisher since lot of free information available on Internet

The free access to legal information has thrown many challenges to the law librarians. An efficient approach to dealing with information overload and unfiltered information while doing legal research is to start with authoritative research guides on the web (Germain). The best way to provide authentic and reliable legal information is to access the government and reputed websites.

The swift change in information technology and the escalation of prices in print and non-print materials affected the Indian law libraries considerably. However, OA permits the public to use the legal resources without any restrictions and removes hurdles such as to negotiate licenses, prices etc. It also gives equal privilege to all to access the information and there are no hassles of discontinuation, missing issues etc. OA provides an opportunity to own copies of journals or articles and gives right to archive without special permission or any payment and provides unlimited access.

7. Some Significant OA Legal resources at International Level

- Findlaw (http://www.findlaw.com/)
- LexisNexis Communities (http://www.lexisone.com/lx1/caselaw/freecaselaw?action=FCLDisp layCaseSearchForm&l1loc=L1ED&tcode=PORTAL)
- World Intellectual Property Organization (WIPO Lex) (http://www.wipo.int/about-wipo/en/what_is_wipo.html)
- American Bar Association (http://www.americanbar.org/groups/departments_offices/ legal_technology_resources/resources/free_journal_search.html)
- Bodleian Law Library (http://www.bodleian.ox.ac.uk/law/e-resources/databases)
- Constitution Finder (http://confinder.richmond.edu/)
- Open Access Law: Adopting Journals (http://sciencecommons.org/projects/publishing/oalaw/ oalawjournals/)

8. Peer Reviewed Open Access Journals

- Asian-Pacific Law & Policy Journal (www.hawaii.edu/aplpj/index.html)
- Duke Environmental Law & Policy (www.law.duke.edu/journals/delpf/)
- Duke Journals of Comparative & International Law (www.law.duke.edu/journals/djcil/)
- Duke Journal of Gender Law & Policy (www.law.duke.edu/journals/djglp/index.htm)
- Duke Law Journal (www.law.duke.edu/journals/dlj/)
- ELaw-Murdoch University Electronic Journal of Law (www.murdoch.edu.au/elaw/)
- Electronic Journal of Comparative Law (http://www.ejcl.org/)
- European Journal of Law and Technology (EJLT) (http://ejlt.org/)
- Federal Courts Law Review (www.fclr.org/content/fclr.htm)
- International Journal of Communications Law and Policy (www.digital-law.net/IJCLP/)
- International Journal of Environmental Sciences: (IJES) (http://www.ipublishing.co.in/jesindex.html)
- Law & Contemporary problems (www.law.duke.edu/journals/lcp/)
- Michigan Telecommunications and Technology Law Review (www.mttlr.org/)
- Richmond Journal of Law and Technology (http://law.richmond.edu/jolt/flash_site/flash_home.html)
- The Connecticut Public Interest Law Journal (http://www.law.uconn.edu/journals/cpilj/)
- Yale Human Rights and Development Law Journals (www.yale.edu/yhrdlj/index_enhanced.htm)

9. Some Significant OA Legal Resources in India:

- Central Information Commission (CIC) (http://cic.gov.in/)
- DOAJ (Directory of Open Access Journal) (http://www.doaj.org/)
- India Law Journal (http://www.indialawjournal.com/index.html)
- International Journal of Criminal Justice Sciences (IJCJS) (http://www.cybercrimejournal.com/)

- International Journal of Cyber Criminology (IJCC) (http://www.cybercrimejournal.com/)
- Law Commission of India (http://lawcommissionofindia.nic.in/)
- Law khoj (http://lawkhoj.com/)
- Legal service India. Com (http://legalserviceindia.com/)
- Legalsutra Law students' Knowledge Base (http://legalsutra.org/)
- Ministry of Law & justice (http://lawmin.nic.in/)
- National Consumer Dispute Redressal Commission (http://ncdrc.nic.in/)
- National Human Rights Commission (http://nhrc.nic.in/)
- Parliament of India (http://parliamentofindia.nic.in/)
- The Bar Council of India (http://www.barcouncilofindia.org/)
- The Constitution of India (http://lawmin.nic.in/coi/coiason29july08.pdf)

10. Conclusion

Research process is metamorphosing in manifolds due to change in information and access facilities (Hanchinal 110). Research originating in India often goes unnoticed, even by other researcher of same discipline. Therefore, creating institutional archive and providing OA journals would help reduce the isolation of our scientists (Arunachalam). The University Grants Commission (UGC) realizing the significance of open access has asked all the institutes under its umbrella to create and develop their own IR.

The organizations that are propagating Free Access to Law such as LII of India, Indlii etc., need funding to sustain for longer time as they are not-forprofit. The State should support them by extending necessary facilities. The MHRD, Government of India, has launched an ambitious project called National Mission on Education through Information and Communication Technology (NME-ICT) in 2009. It is funded on 75:25 cost sharing basis between central government and university/colleges respectively. It was decided to link all the academic institutions together to share and exchange the information.

The Open Access has provided more opportunities to the legal information sciences centers by providing access to public information published by the government and scholarly works of the authors at almost no cost and free from stringent copyright laws. The Free Access to Law Movement gained momentum worldwide from 2000 onwards. But, most of the Indian authors are still unaware and have fear to publish their work in Institutional Repositories (IR), Blogs, Open Access Journals (OAJ) etc. The librarians of legal information sciences centers must discuss with authors and convince them to publish their works in such publications to promote free access to law.

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