

# DEMOCRATIZATION OF KNOWLEDGE AND ROLE OF ELECTRONIC LEGAL RESEARCH

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## I. Introduction

The concept of knowledge holds significance and centrality across human cultures and civilizations. Archaeological canvass of the ancient world shows that the human will to knowledge outlive the socio-cultural epochs and bequeaths true eternity to the human actors, who are the true creators of these epochs and times. The works of Confusions, Lao-tse, Moses, Christ, and Buda are an authentic testimony to their contribution to the collective knowledge heritage of mankind (Childe, 1982). However, books and knowledge are more easily available today; thanks to new mode of knowledge acquisition and knowledge sharing, which includes internet, audio and video cassettes, web portals, digital libraries, etc. This has increased the quantum of knowledge manifold, never witnessed before in the history of mankind and guides us to new advances in arts, sciences and technologies.

*“Legal Education is essentially a multi-disciplined, multi-purpose education which can develop the human resources and idealism needed to strengthen the legal system ...A judicial officer, a product of such education would be able to contribute to national development and social change in a much more constructive manner.”*

Viewing from the societal standpoint, there exist an inextricable connection between the developments in law and subsequent advancements in society. Rule of law has an all pervading omnipresence in the Indian Constitution. Any change in the socio- economic structure in India can be brought about only through the process of law because of which law is deemed to be an instrument of social engineering. The role of lawyers and judicial officers is not limited to understanding and application of law, but also includes promoting mass legal awareness, sensitizing people to sectoral as well as national issues, and mobilizing public opinion. The lawyers and judges are torchbearers of the Constitution of India and are authorized to changing the dynamics of societal living by ensuring the implementation of fundamental human rights and consequently, empowering the common man. In this context of socially deprived and marginalized classes, the role of judicial officers in enforcing speedier access to justice has assumed central focus. Legal education determines the quality of the judiciary and has a significant bearing on the rule of law, democracy and socio-economic development of a nation.

Globalization and liberalization of the world economies in conjunction with rapid advancements in information and computer technology has reiterating the

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importance of legal awareness and understanding in emerging areas of law. Law has to deal with problems of diverse magnitudes and a student of law and an advocate has to be suitably trained to meet the challenges of globalization and universalization of law. With the advent of multinationals, influx of foreign investment and volatile capital flows, there is an imperative need for competent judicial officers possessing specialized training in their subject domain of work and revamp the culture of legal education in India.

*Thus, defining democratization of knowledge as the acquisition and spread of knowledge amongst the common people, not just privileged elites such as priests and academics, there is a sound case for introducing reforms like E-Research in Legal Education that democratizes knowledge. In the following paper, the author has emphasised primarily on the role Electronic Legal Research can make in making law students better equipped and ready to enter the real world market. It is undeniable that education will serve its purpose best only when its objectives and applicability is clearly defined. The paper seeks to establish a link between effectiveness in achieving this vision and Electronic Legal research.*

## **II. Legal Research: Then and Now**

### **II.A. Traditional Research Methodologies**

Legal research underpins almost everything that is done in law. Traditionally, legal research includes finding a form, locating a rule, identifying a statute, gaining background information on a regulation, and using law books and legal databases in almost any way. The prevailing paradigms, as contained in “textbooks,” are the fodder of legal research. Through research, we clarify and verify the “laws, theories, and application” of a subject-specialty paradigm to understand their effects on our situation. Legal research is our scientific experimentation; law libraries were, after all, Langdell’s laboratories of the law.<sup>1</sup> As law changes through the revolutions described by Kuhn, as the paradigms of the various fields of law expand, legal research responds with a revolution of its own. Where once we researched in a set of common textbooks, most notably the digests, we now search the universe of information. Its effect on our context is marked.

In years past, legal research was a book-based process. Research was done within the textbooks that memorialized the paradigm of the law, and followed rules-based approaches to research that moved from known facts to a specific legal topic suggested by those facts, and then to concepts and rules within that topic. Legal research required that researchers begin with enough legal knowledge to identify the general area of law involved.<sup>2</sup> Frederick Charles Hicks describes how to teach this process to new law students in his work, *Materials and Methods of Legal Research*, noting that “[t]he instructor must assume such a previous knowledge as will enable the student to analyze his case, determine the principles which probably apply, search out the apposite statutory and case law and locate it in the source books.”<sup>3</sup> Although “the law” was one discipline, divided into many subdisciplines, it was still capable of being researched as a whole.

Student researchers worked within the paradigm of “the law,” using the accepted textbooks of the field. Cases were found in digests. Statutes were identified in annotated codes. Background information came from treatises, encyclopedias, and law review articles. Shared context existed from the beginning. The research process would be repeated, often several times, and research was honed as relevant principles were identified.

Bering notes that legal research became a “mechanical process” because of the West Digest System.<sup>4</sup> This is correct in the sense that one could master the steps of updating a topic and key number throughout the digest system, or using a single topic and key number across multiple digests, or using annotations from statutes to find cases that interpret the sections. It is incorrect, however, in the sense that a researcher also must have knowledge and understanding of the law to find the correct topic and key number in the first place, or even to choose which resources to use. Effective legal research starts within a sophisticated context of background information and knowledge. Considerable analysis and experience are required to understand the meaning and relative importance of authorities, and then to use them to craft a persuasive argument. Hicks notes that “It is a mistake to speak of any of the processes of finding the law as mechanical processes, for one has not truly found the law until one understands it, and this requires a knowledge of substantive law which comes only with the passage of time and much experience.”<sup>5</sup>

The bulk of the resources used in print research (digests, statutes, regulations, treatises) consists of information assembled by judges, legislators, attorneys, regulators, law professors—legal professionals all—who work in a shared context gained through education and practice in the prevailing paradigm. Indexes, tables of contents, chapters, and sections all give visible and accessible structure to print resources. Shared context allowed these professionals to communicate their conclusions. And it allowed legal researchers to investigate and experiment, to find and use information, within the paradigm defined by legal professionals.

## **II.B. Transition of Legal Research Methodology to e-Research**

The entire legal profession is being changed by the introduction of technology. The revolution in legal research is a small piece of this change and is a result of the migration to electronic research. In her popular legal research book, *Basic Legal Research: Tools and Strategies*, Amy Sloan describes a typical approach taught to law students learning research methods today: “No matter where you begin your search for authority, one of the first steps in the research process is generating a list of words that are likely to lead you through each resource’s indexing system.”<sup>6</sup> Sloan goes on to suggest that researchers develop these search terms either as a journalist would—by asking who, what, when, where, why, and how—or by identifying relevant parties, places, and things; claims and defenses; and relief sought.<sup>7</sup>

"Search terms," of course, is a computer phrase. Our students need nothing more than this to understand that electronic research is the way to go. The message is clear. Gone now from research instruction is the almost immediate transition into searching for rules by area of law. Gone with it is the structure of the print legal resources that brings immediate context to the research. While Sloan and other contemporary legal research textbook authors cover print resources fairly and accurately, and often strongly encourage their use, today's law students (and newer attorneys) are already lost to print research.

The research results of today's legal researchers feature a dizzying array of resources gleaned from widespread searching of electronic resources. Researchers may begin with Westlaw or LexisNexis, with Google or Wikipedia, or with the Web site of a special interest group. Documents that were once all but unknown and available only to a select few can now be located and read by almost anyone with a computer. Research today is fast, easy, and wide-ranging, and the resulting documents are rich with information. No longer is the legal research universe finite. In this respect, electronic legal research enriches legal research. (In terms of the choices among faster, cheaper, or better, it is much better.)

This infinite range of resources, however, is not organized in any meaningful way and is claimed to be not the best research methodology for a variety of reasons discussed under. There frequently is little, if any, hierarchy to offer structure to researchers.

Electronic Legal Research is often described by The Frankenstein Fallacy:

*"You pull a beating heart out of a body and put it somewhere else, and indeed, it still is the heart, yet in any meaningful way it is the heart no longer."*

### **III. Need of E-Research in Legal Education**

The legal education in 21st century should consider the globalization and its implications on legal field at national and international levels. The Bar Council of India, the State Bar Councils, the State Governments, the University Grants Commission and the Universities have a great role to play for improving the standard of legal education in the country.<sup>8</sup> They should work in a comprehensive manner without any conflict. New avenues should be explored by the Bar Council of India and The University Grants Commission in the era of computer applications and information technology in the legal fields and potential uses of internet in the practice of law and legal education. They should find out the ways and means to meet the new challenges and provide better tools of research and methodology of learning for the generations to come. Bar Council of India, constituted under section 4 of the Advocates Act, 1961, is an apex body for the entire legal profession in India. The advocates Act, 1961, invests BCI with wide ranging powers to prescribe standards of legal education for the practice of law. In the opinion of Dr. N. R. Madhava Menon, legal education in India should be liberated from the dominant control of the Bar Councils and entrusted to legal academics with freedom to innovate, experiment and compete globally.

#### IV. E-Learning in Corporate Law: The Value Addition of Online Resources

Students are at the heart of learning and there are different resources that may help them achieve their learning goals. Students are encouraged to take control of their learning by using all the resources at their disposal. Each of the four resources available to support student learning will be dealt with in turn.

The *first* is human resources. The academic may play the role of a lecturer or a tutor depending on the structure of the course. Lecturing may be viewed as the 'standard tertiary method of teaching'.

The *second* resource relates to peer learning. Theoretical and empirical research has demonstrated that students' learning is greatly influenced by peer and teacher interaction. The relationship between students is very important because students may learn from each other. Research has shown that students are usually more motivated to learn when they are collaborating with other students than when working independently.<sup>9</sup> Peer interaction allows students to develop their own questions, search together for solutions and to share resources.<sup>10</sup>

The *third* category is paper resources. Textbooks, for example, are prescribed by academics because they help achieve established curriculum objectives. They also reinforce certain learning outcomes. However, over time, these books have come to be used together with a range of supplementary materials designed to enhance student learning. Study guides, learning materials, case books and workbooks have been created and incorporated into the curriculum for most legal subjects.

The problem paper resources have with currency may be remedied through the fourth category of resources available to students — electronic resources. Such resources, if designed appropriately, can be integrated into the curriculum and may enhance the students' learning experiences as they are dynamic resources.<sup>11</sup> They can be updated frequently, allowing learners to keep in touch with the latest developments. In Corporate Law, these resources are abundant. For instance, the Australasian Legal Information Institute (AustLII)<sup>12</sup> allows students to access a huge number of online sources such as Australian cases, legislation at both state and federal level, discussion papers, reports and journals. Similar sites such as the British and Irish Legal Information Institute (BAILII), the Canadian Legal Information Institute (CanLII) and Droit Francophone are available for overseas laws. ComLaw is another general legal website that can allow students to access to both current and repealed Commonwealth legislation.

**Example:** Australian Corporate Law and Online Resources.

The previous sections of this paper described the variety of resources available to help students learn the complex subject of Company Law. To illustrate how the mix of paper and electronic resources can be directly linked, the authors' involvement with the textbook *Australian Corporate Law*, published by LexisNexis, shall be used as an example. One of the reasons this textbook was

selected as an example of the type of resources available is the fact that there was a clear design philosophy relating to e-resources that was behind its original creation. This textbook has a clear focus and pitch, as do most textbooks. However, not all textbooks are accompanied by e-resources that are explicitly designed to be of benefit to all types of learners and also to help academics in providing additional support.

### **A. Designing Philosophy of the Textbook**

As discussed above, the knowledge that students bring to the class affects how they deal with and assimilate new concepts. When designing *Australian Corporate Law*, the authors gave particular consideration to the fact that their target audience is primarily a non-legal one. Accordingly, the textbook clarifies certain legal terms for the students in margin notes throughout the book. The textbook identifies the learning needs of the relevant students and caters to them.<sup>13</sup> The strength of the book's design comes from its student-centred philosophy, complementing face-to-face classes by encouraging students to take responsibility for their own learning. Each chapter has an outline to help students find the material they need. The chapters also have learning objectives. Defining the learning objectives is beneficial to learners as it enables them to understand the desired outcomes. Learning activities, such as revision questions and problem questions, are included for students to test their knowledge and to help them ultimately to achieve those outcomes. The learning objectives are also useful for academics as they allow them to answer the following question: 'Did the student understand, appreciate, or see in a new way?'<sup>14</sup> A key characteristic of the book is that, at the end of each chapter, there is a guide to answering problem-based questions. This may help guide the students when they attempt to solve questions. A unique feature is the final chapter of the textbook which is entitled 'Researching Corporate Law'. This chapter is targeted toward interdisciplinary students in particular, and explains primary and secondary sources of legal authority to them. It also contains further guidelines for solving typical assessment questions such as problem-based questions and essay questions.

### **B. The E-Resources Available**

*Australian Corporate Law* has a website that caters specifically for students' needs.<sup>15</sup> The website is designed and supported by the publisher, LexisNexis, and contains a range of different resources such as case links and journal links. When a student accesses one of the chapters online, he or she is able to check cases relevant to the chapter through LexisNexis. Such a feature is designed to motivate non-law students to go beyond the textbook and check primary sources of the law. Further, the online resources allow students to test their own knowledge through a series of web quizzes. This exercise is very student-orientated because it allows the learner to participate and be personally involved in the learning experience. Ivan Illich confirms that this is a crucial aspect of students' education, noting that 'most

learning is not the result of instruction. It is rather the result of unhampered participation in a meaningful setting. Most people learn best by being “with it”.<sup>16</sup> ‘Students’ needs are therefore at the heart of the textbook and the e-resources available. These resources offer students the tools to learn by ‘depending far more on materials and far less on face-to-face teaching.’ However, at the end of the day, the advantage that learners derive from having all the resources made available to them really does depend on the teaching pedagogy of each academic and, in particular, whether the academic is student-centred or subject-centred. A student-centred academic will explain to students the benefit of each resource. This is important because explaining the goals that may be achieved may motivate students to learn and to use the resources.

### **C. Highlighting the Goals That May Be Achieved**

The selection of different materials to be used in a course usually depends on the learning goals that students need to achieve. These goals, and how the resources will help the students to achieve them, need to be clearly explained by the academic. If learners do not understand why particular resources are useful, they may not use them or they may use them less productively. Accordingly, the academic needs to make the role of all the materials clear.<sup>17</sup> Moreover, students are most likely to be motivated and to want to learn more productively if they understand what the ultimate goals are and how engagement with the selected resources will help them achieve those goals. Therefore, when prescribing an online resource, it is important for academics to do the following: Explain to students why this online resource is important and interesting to them:

- How will it improve their learning experience?
- Define the learning objectives. The performance standards that a student needs to meet to reach the desired goals should be identified.
- Give advice on how students can access the online material. The ability to access the online material and locate the information may be a problem if students do not have clear instructions.

All these elements help students to understand the benefit that may be derived from these materials.

*The basic aim of the above discussion is to highlight the fact that all the resources, whether made available online or not, should be well designed and defined in terms of the objectives they seek to achieve. Making it electronic merely helps achieve this more systematically, effectively and efficiently.*

### **V. Threats to E-Research**

The basic problem is that the transition from print to electronic research sources has created a gulf between today’s teachers and students of the Internet generation. I gained my first insight into this point when I chided a student for the ten-thousandth time to “think hierarchically.” It finally began to dawn on me

that most incoming law students simply do not think about research systematically, much less hierarchically. If the term “minimum contacts” does not appear in an index as a keyword, then it does not appear in the main volumes—never mind that it may appear under a broader term such as “personal jurisdiction.” I do not blame the students. Any student entering law school today is among the best and brightest in our country, if not the world. It’s just that computers have changed the way students approach research.<sup>18</sup>

Working on a model where legal encyclopaedias are an extension of the encyclopaedias they used in college or the Index to Legal Periodicals is an extension of the Reader’s Guide to Periodical Literature has lost much of its relevance because students no longer have exposure to the print sources underlying this model. Making the situation worse, students arrive without the underlying lessons in library science—such as the importance of controlled vocabulary and taxonomies—that employing these sources used to teach. We have inadvertently found ourselves teaching from the outside.

We used to have a fighting chance when LexisNexis and Westlaw did not so closely resemble Google. Now we foist completely foreign print sources on our students in the first few weeks of law school only to allow them to return to their former ways of doing things online by the next semester. The dichotomy they learn is one of format (print = bad versus online = good) as opposed to structure (organized and annotated versus databases). No wonder we never see them again.

The “print first” model had much more significance when we used to teach print products as part of a larger research system—the West system of publications or Lawyers Cooperative Publishing’s Total Client Research System. Then students learned not only what the individual titles were but also how they fit into a larger self-contained research system. As a practical matter, these systems no longer exist in print in the real world. That is to say, with rapidly shrinking print collections, the average attorney will never be exposed to the variety of print titles that formerly comprised a closed system. Thus, we lost one of the main forces behind teaching print first. It would make more sense to begin with the Lexis.com research system and save the explanation of the details of the West system of print publications as a predecessor to it for an advanced legal research class.<sup>19</sup>

The problem for students today is that they live in the midst of an information explosion. The sheer volume of information produced may inhibit a student’s ability to locate, critically evaluate, and understand that information. Coupled with the rise in the amount of information is the Internet-induced decline of student research skills. The Internet has made it so easy to find information that students often do not know how to search for it. On this point, authorities agree. Marylaine Block, a librarian and author of *Net Effects: How Librarians Can Manage the Unintended Consequences of the Internet*, states the problem bluntly: “The Internet makes it ungodly easy now for people who wish to be lazy.” Research guru and future Internet carina Mary Ellen Bates points out that Google is dulling the minds of our youth. As she puts it, Google ... has

taught us that it is no longer necessary to go through the effort of defining our information need. We just put a word or two into the search box and let a search engine disambiguate the query and provide an answer. . . . We have given up the need to think through the reason for our query or to clearly articulate the gap in our information. Rita Vine, president of Workingfaster.com, a firm that helps organizations achieve IT competency objectives made the following comment in a recent article on information literacy in the workplace. With the Internet right in front of them, workers think everything is just a key-word search away. Research becomes an event as opposed to a process. We're faced with mass marketing that's telling us that information is easy to find—"We do all the work for you at the back end, all you have to do is type in your favourite keywords and we'll figure out what the best information is." Today's online research tools may be popular because they are easier to use, but they may be less effective in that they encourage researchers to proceed without thinking. This is a growing danger that legal research instructors must recognize and address.

Also militating against the use of the print-first model is the sad reality that for many of us such a model is no longer administratively feasible. Those who have faced budget cuts in this era of skyrocketing print costs appreciate that maintaining duplicate print subscriptions solely for teaching purposes has become an economic burden. The growth of Web courses sponsored by LexisNexis and Westlaw has made it necessary for students to have passwords from the first day. Last but not least, abandoning the print-first model would avoid the prevalent problem of students' borrowing second and third-year students' passwords to get around print-only requirements.

## **VI. Conclusion**

The Road Map of New Generation of libraries can bring revolutionary changes in contemporary information infrastructure. Technology has enabled diverse distributed collection of contents to become integrated at the metadata and/or content levels, for widespread use through powerful interfaces that will become increasingly personalized. This communication provides true intellectual information access in the form of indexing, cataloguing and classification. Standards, advanced technology, and powerful systems can support a wide variety of types of users, providing a broad range of tailored services. The new generation of libraries glorifies the information access services and optimizes the infrastructure with user's requirement.

As Marylaine Block points out:

"The Internet, PDAs, cell phones, and hand-held computers have changed students information-seeking strategies and their expectations of service.<sup>20</sup>"

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. In the end, we must realize that technology has not simplified legal research—it has just helped and facilitated in making it more market-applicable. As professionals, teachers and trainers we cannot lose sight of this fact.

### Endnotes

1. "We have also constantly inculcated the idea that the [law] library is the proper workshop of [law] professors and students alike; that it is to us all that the laboratories of the university are to the chemists and physicists, the museum of natural history to the zoologists, the botanical garden to the botanists." Christopher Columbus Langdell, Address at Harvard University "Quarter-Millennial" Celebration (Nov. 5, 1886), in 3 L.Q. Rev. 123, 124 (1887).
2. This approach to legal research reflects the prevailing school of jurisprudence at the time, generally referred to as "formalism." In its most basic terms, formalist decision making takes place wholly within the concepts and rules of law or, in Kuhn's words, within the paradigm. Formalism takes little account of non-law disciplines and emphasizes internal coherence. For an introduction to formalism in American legal thought, see Neil Duxbury, *Patterns of American Jurisprudence* 9–25 (1995).
3. Frederick C. Hicks, *Materials and Methods of Legal Research: With Bibliographical Manual* 18 (1923).
4. Berring, *supra* note 6, at 22.
5. Hicks, *supra* note 34, at 17.
6. *Id.* at 19.
7. *Id.* at 19–21.
8. Justice M. Jagannadha Rao was the distinguished member of a three-Judge Committee appointed by Justice M.N. Venkatachalaiah (the then Chief Justice of India) to go into various aspects of "legal education". This committee was chaired by Justice A.M. Ahmadi and Justice B.N. Kirpal was the other member.
9. O'Donnell, Hmelo-Silver and Erkens (eds), above n 21, 63.
10. David McConnell, *E-learning Groups and Communities* (2006) 61.
11. Gregor E Kennedy, David M Kennedy and Norm Eizenberg, 'Integrating Computer Facilitated Learning Resources. Into Problem-Based Learning Curricula' (2001) 3(1) *Interactive Multimedia Electronic Journal of Computer—Enhanced Learning*  
<<http://imej.wfu.edu/articles/2001/1/02/index.asp>> at 2 December 2009.

12. Australasian Legal Information Institute <[www.austlii.edu.au](http://www.austlii.edu.au)> at 2 December, 2009.
13. It is not possible to know whether this book, or any other textbook, adequately addresses this issue of prior knowledge of law.
14. Diana Laurillard, *Rethinking University Teaching: A Conversational Framework for the Effective Use of Learning Technologies* (2nd ed., 2002) 185.
15. LexisNexis, *Australian Corporate Law*, <<http://www.lexisnexis.com.au/aus/academic/LNConnect/Corporations/AustCorporateLaw/default.asp>> at 2 December, 2009.
16. Ivan Illich, *Deschooling Society* (1971) 44.
17. Khan.
18. John Bransford Et Al., *How People Learn: Brain, Mind, Experience and School* 68–69 (2000).
19. Catherine Sanders Reach, David Whelan, & Molly Flood, *Feasibility and Viability of the Digital Library in a Private Law Firm*, 95 LAW LIBR. J. 369, 374 & 375 fig. 3, 2003 LAW LIBR. J. 26.
20. Marylaine Block, *Net Effects*, SEARCHER, at 42, 45, available at <http://www.infoday.com/searcher/oct03/block.shtml>.