„Krytyka Prawa", tom 15, nr 3/2023, s. 14–30, ISSN 2080-1084, e-ISSN 2450-7938, © 2023 Author.

ASHISH KUMAR SRIVASTAVA[1]

Landscape of Indian Legal Research[2]

Submitted: 04.05.2023. Accepted: 07.06.2023

Abstract

Francis Bacon says knowledge is power. The creation of knowledge and its dissemination largely depends on the creation of literary works. The great works of Shakespeare, da Vinci, Homer, Picasso, Milton, Tagore etc. have been a treasure trove of mankind. Human beings have enjoyed the work, been inspired by the work, taken joy and eternal bliss in such works. However, the creation of knowledge is dependent on pre-existing knowledge. Creators create a work which requires hard work, imagination, creativity and which is incentivised by recognition of their work. The legal order of a couth society affords protection to such a work by copyright law & fair use. Fair use allows a person to use a work by duly acknowledging and referencing the work. Issue of plagiarism and abuse of fair use was aggravated by human greed. The economic implication of copyright infringement aggravated the whole issue. Referencing turned into war. The Bluebook, the Maroonbook, the ALWD, the APA and OSCOLA citation styles engaged in some kind of a war. Reference management systems like Zotero, Endnote, Mendeley etc. just fanned the flame. Disruptive and generative artificial intelligence has created a serious challenge to academic research. In this paper, the author attempts to delve into the inter-linkage of academic writing, research, citation, copyright, referencing mechanism and plagiarism in contemporary society, and the aftermath of it. The author attempts to investigate the challenges of writing and the protection of works vis-a-vis referencing tools and techniques.

Keywords: citation, legal research, plagiarism, academic integrity, technology.

[1] Ashish Kumar Srivastava, PhD – Faculty of Law, University of Lucknow, Lucknow (India); e-mail: srivastava_ashisk@lkouniv.ac.in; ORCID: 0000-0002-5300-0704.

[2] The research in this article has not been supported financially by any institution.

„Krytyka Prawa", tom 15, nr 3/2023, s. 14–30, ISSN 2080-1084, e-ISSN 2450-7938, © 2023 Author.

ASHISH KUMAR SRIVASTAVA

Sytuacja indyjskich badań nad prawem[3]

Streszczenie

Francis Bacon powiedział, że wiedza to władza. Tworzenie wiedzy i jej rozpowszechnianie w dużej mierze zależą od tworzenia dzieł literackich. Wielkie dzieła Szekspira, da Vinci, Homera, Picassa, Miltona, Tagore itp. były skarbnicą ludzkości. Ludzie cieszyli się tymi dziełami, inspirowali się nimi, czerpali z nich radość. Jednak tworzenie wiedzy jest zależne od wiedzy wcześniej istniejącej. Twórcy tworzą dzieło, które wymaga ciężkiej pracy, wyobraźni, kreatywności i które jest motywowane uznaniem ich pracy. Porządek prawny społeczeństwa obywatelskiego zapewnia ochronę takiego dzieła poprzez prawo autorskie i dozwolony użytek. Dozwolony użytek pozwala osobie na korzystanie z utworu poprzez należyte uznanie i odniesienie się do utworu. Kwestia plagiatu i nadużywania dozwolonego użytku została zaostrzona przez ludzką chciwość. Ekonomiczne implikacje naruszenia praw autorskich pogorszyły całą sprawę. Style cytowania Bluebook, Maroonbook, ALWD, APA i OSCOLA zaangażowały się w pewnego rodzaju wojnę. Systemy zarządzania referencjami, takie jak Zotero, Endnote, Mendeley itp. tylko podsycały płomień. Przełomowa i generatywna sztuczna inteligencja stworzyła poważne wyzwanie dla badań akademickich. W niniejszym artykule autor próbuje zagłębić wzajemne powiązania między pisaniem akademickim, badaniami, cytowaniem, prawami autorskimi, plagiatem oraz ich następstwami. Autor stara się zbadać wyzwania związane z pisaniem i badaniami naukowymi.

Słowa kluczowe: cytowanie, badania nad prawem, plagiat, uczciwość akademicka, technologia.

[3] Badania wykorzystane w artykule nie zostały sfinansowane przez żadną instytucję.

 DOI: 10.7206/kp.2080-1084.617

Introduction

Humanity thrives on creations. Human beings have always found creations and works to be fascinating instruments, as they serve many purposes in society. Creations and works find solution for problems in society, it entertains society, connects society, informs society, civilises the society. Works encourage, inspire, support the budding creators and authors. Language and script have been integral part of the human civilisation. The invention of writing and the evolution of script and language made expressions easier. Expressions in primitive societies were oral and its transition to 'written' has been phenomenal. The storage and retrieval of expressions was a big issue, hence we find indelible expressions in caves on stones in the form of primitive engravings. However, with the invention of ink and paper this issue was resolved. The Gutenberg press was a panacea for printing of the expressions of authors in convenient and handy formats in millions of copies with ease and comfort. The technology aided with computers and the internet made this facility almost miraculous wherein expressing, creating, storing, disseminating, broadcasting, retrieving in infinite numbers of copies become a reality. Now with blockchain, machine learning, robotics, Industry 4.0, artificial intelligence, the Internet of Things (IoT), the whole process of creation and expression has become vast.

People have enjoyed creations and works. Iconic Shakespearean lines 'You too, Brutus?' and 'Beware the Ides of March' became idiom-like expressions in human conversation. Paintings like the *Mona Lisa*, *The Last Supper*, and musical compositions by Mozart and Beethoven have entertained and inspired mankind. Humanity cannot forget Ennio Morricone's theme music in *The Good, the Bad and the Ugly*, films by Steven Spielberg, Clint Eastwood, Indian films such as *Sholay*, *Mother India* and *Mughal-e-Azam*, Windows, Microsoft Office. These works created a vibrant ecosystem which is a knowledge-led ecosystem. The actualisation of life now lies in creations as there is a natural tendency in human being to get bored. Boredom is a human problem. People are not happy with the mundane affairs of life. Novelty and originality in creations are antidotes to the problem of boredom and problems in society. The idea of originality in creation is a mystical idea. Voltaire says, 'Originality is nothing but judicious imitation.'

Creations and the protection of creation in legal order concurrently evolved. The idea of copyright came in to existence in the nineteenth century. In 1886, the

Berne Convention,[4] the first multilateral treaty for protection of copyright, was enacted. The British Parliament made the Indian Copyright Act (1914) which was repealed by the Copyright Act (1957). Since then, many treaties for protection of copyright like the TRIPS, the WIPO Copyright Treaty (1996), the WIPO Performance and Phonograms Treaty (1996), the Marrakesh Visually Impaired Persons Treaty (2013) etc. have been passed. This intellectual property regime has created two-way protection to creations and works at the domestic level and the international level. At initial phases, copyright protection has been liberal to issues of infringements. The fight between developing and developed nations in terms of intellectual property (IP) protection is the ugliest in patents and copyright, especially in cases of medicine and software. The concept of fair use has been very illusory. Developed nations allege and impute that developing nations have poor IP protection culture. Poverty and copyright violation are directly proportional to each other. Developing nations, which are often populous like India,[5] have their constraint of resources, so Indians heavily rely upon fair use. India did not sign the WIPO Copyright Treaty but is a signatory to the Berne Convention.[6] In last two decades, the Indian copyright scenario has changed. The position that 'copyright protection is a domestic or municipal subject' has changed completely. Now in India, before affording any IP registration, the search is done at the international level, not at the municipal level. As we know, thanks to computers, the internet, AI, ML, Industry 4.0, creations from around the world are accessible to people now, so copyright infringement (taking/stealing/lifting anyone's work) has become child's play.

Referencing

Reading, writing and speaking are a basic and intrinsic part of language and linguistic matters. In the legal order, these human traits play a vital role in the making of law, the enforcement of law and the interpretation of law. Writing brings more clarity. Writing gives words, expressions and thoughts. Some sort of permanence as such is expressed on paper or electronic medium. Academics in law and pleadings and conveyancing have been largely dependent on written submissions. Books, treatises, commentaries, pleadings and conveyancing have evolved over the period of time for creation, storage and dissemination of knowledge, representations

4 Berne Convention for the Protection of Literary and Artistic Works, https://www.wipo.int/edocs/lexdocs/treaties/en/berne/trt_berne_001en.pdf (access: 3.01.2022).

5 The Copyright Act, §52 (1957).

6 India signed convention in 1928, https://www.wipo.int/treaties/en/ShowResults.jsp?treaty_id=15 (access: 3.01.2022).

 DOI: 10.7206/kp.2080-1084.617

of claims on the dispute resolution forum and transfer of interests. The legal order got very systematic in the early nineteenth century due to cognitivism and the scientific advancement of knowledge. Cognitivism, positivism and rationalism introduced the idea of formalism.[7] The form and 'substance' became central but antithetical ideas to each other. In writing, be it academic or in pleadings, certain rules were evolved, such as writing must be concise, complete, compact, pleasant and precinct. The assertion of facts and denial of facts in the legal order got formalised with the evolution of a formal court system in England and in other colonies of Britain. An integrated hierarchical judicial setup enjoyed the power of contempt and writ jurisdiction which evolved the legal writing and pleadings to a more formal, systematic and structured writing. Precedents and writings of academicians, judges, lawyers and law professionals started getting reported in law journals. Reporting of cases started around 1875 onwards.[8] *Corpus Juris Secundum*, *Halsbury's Laws* and William Blackstone's *Commentaries on the Laws of England* started to make foundation of the British common law system which dominates the modern world today. With the evolution of this mammoth resources for law referencing and quoting of theses, authorities became impelling for a variety of reasons, such as more citations and quotations brought authenticity to claim, more citations were used to put claims in pleadings and writings systematically with the use of deductive and inductive method, to avoid copyright infringement, to acknowledge the works of previous stalwarts in law in courtesy to and compliance with the Berne Convention, to bring uniformity in pleadings and writings, as the common law system had a huge judicial setup as the Privy Council in the bygone time heard appeals from all its British colonies, so uniformity and consistency became the obvious choice for authors and pleaders to keep the whole process, sane, simple and sensible. Bringing uniformity in writing was a mandate so that British judges could adjudicate the matter at hand, hence the formal structuring of pleadings and writings became a British mandate and municipal choice.

However, in the modern world, when a beginner in law sees the commentary or petition in the Supreme Court, he or she is overwhelmed to see the size of writing running in thousands of pages.[9] It did not remain simple. Citation guides such as the Harvard Bluebook, the Maroonbook, the Association of Legal Writing

---

7 E. Bodenheimer, *Jurisprudence: the Philosophy and Method of Law*, New Delhi 2011.

8 Indian Law Reports Act (1875).

9 M Siddiq (D) Thr. LRs v. Mahant Suresh Das & Others LNINDORD 2019 SC 1633 (Ayodhya case the judgment runs in 1045 pages and pleadings and proofs were running as deposition of 88 witnesses, running into 13,886 pages, also 257 related documents and video tapes. The earlier court orders run into 4,304 printed pages and 8533 typed pages), https://www.hindustantimes.com/india-news/in-ayodhya-case-over-30-000-pages-awadhi-and-persian-scripts-videos/story-WHlxFhXeOayoWXznuiLnRK.html (access: 3.01.2022).

Directors (AWLD), the American Psychological Association (APA), the Oxford University Standard for Citation of Legal Authorities (OSCOLA) have been invented to make the referencing consistent and uniform. However, the authors and pleaders often face the irony of referencing in their line of work such as rejection of pleadings on lack of formal structure and referencing and denial by publishers for lack of requisite referencing.

Citation Wars

Referencing and citation became mandatory and popular. In 1921, the Harvard Blue Book was published. By 1976 it gained dominance in the American order. In 1999, it became the golden standard. To counter the gain of the Bluebook, the University of Chicago's Manual of Legal Citation acronym as the Maroonbook was launched in 1986. The American Psychological Association, the American Bar Association promoted their own citation styles and guides. The Harvard Bluebook comes with a new edition every five years. The 21st edition has been published in June 2020. The Bluebook is a voluminous document which has blue pages, rules and tables which runs in several hundred pages and makes it a riddle for a beginner. The citation of legal writings is based on five basic principles: access, intellectual property, standardisation, economy, and transparency.[10] The Bluebook introduced too much formalism in legal writings and pleadings, as the American order has always preached being pragmatic and progressive that their way of writing and pleadings is better than that of the British people, which is oriental and dogmatic an approach in writing, quoting, spellings, rules of grammar. Britain is governed by history and America is governed by philosophy, so the British have a natural inclination towards history, precedents, customs, whereas America has an inclination towards modernism and pragmatism. In the modern world, the American legal system has dominated the world. All prestigious law schools are in the USA, like Harvard, Yale, Berkeley etc. The American legal order has heavily dominated the legal writings and pleadings. The Bluebook is aimed to clarity, consistency and concision.[11]

The Harvard Bluebook started behaving like a 'blue-eyed boy' when it self--claimed the gold standard. Annoyed with this, around 2000 AD a counter narrative against the Bluebook started, and in the USA, the Association of Legal Writing

[10] *The Logic of Citation*, [in:] J.R. Walker, T. Taylor (eds.), *The Columbia Guide to Online Style*, p. 32, 2nd ed., Columbia University Press, New York 2006.

[11] *The Bluebook: A Uniform System of Citation VIII*, Harvard Law Review Association, California, 19th ed., 2010.

 DOI: 10.7206/kp.2080-1084.617

Directors (AWLD) came with its own citation guide and at Oxford, the Oxford University Standard for Citation of Legal Authorities (OSCOLA) came into being. In India Law Schools and Courts had their own Bluebooks, e.g. Banaras Law School and the Indian Law Institute (ILI) had their own Bluebook which was used for citation pan India. Recently, national law schools along with the ILI made an attempt to develop the Standard Indian Legal Citation (SILC) to free the Indian writing from the clutches and glitches of the Harvard Blue Book, but it did not gain momentum.[12]

Referencing and citation literally turned into wars known as 'citation wars'. The matter became more rigorous with the introduction of reference management tools, such as Zotero, Mendeley and Endnote[13] – software which with the help of plug-ins in a web browser and Microsoft Office makes the whole referencing process automated. These tools are presented as freeware and the moment an author becomes dependent on them, this software becomes paid and based on a subscription. The economic cost of these tools like Endnote is too much for beginners and researchers in India.[14] Research facilities in most of the law schools are not in good shape. Poor libraries, no or poor information and communication technology infrastructure, poor computer and internet services are some of the bottlenecks.

Copyright

Intellectual property protection started with the Statute of Anne of 1710, followed by the Berne Convention (1886). We classify intellectual property as copyright and industrial property. Industrial property includes patents, trademarks, designs, biological diversity, semiconductor layout circuit design (topographies), protection of plant varieties and breeders' rights etc. Originality, novelty and distinctiveness have been parameters of protection. Out of all these branches, copyright became bigger, as in some jurisdiction like India, software or computer programmes are also protected under the Copyright Act (1957).[15] If software is so inextricably interlinked with hardware that it controls or facilitates its functioning, then patents are granted in India. Copyright protection is available with or without registration. It is a remedial law which is available for the protection of expressions which are

12 *Standard Indian Legal Citation*, https://www.legallyindia.com/tag/standard-indian-legal-citation-silc (access: 3.01.2022).

13 See: https://www.mendeley.com/ (access: 3.01.2022); https://endnote.com (access: 3.01.2022).

14 Rs. 9747 for purchasing software seehttps://buy.endnote.com/1603/purl-buy?_ga=2.81220754.463655900.1604385976-2037410306.1604385976 (access: 3.01.2022).

15 The Copyright Act, § 2(o) (1957). Literary work includes computer programme.

original. The quality of expression is immaterial for protection.[16] The Supreme Court categorically held that copyright protects expression, it does not protect idea.[17] In copyright protection, a balance has been created by allowing fair use.[18] We know that intellectual property creates monopoly in favour of authors or inventors. They are given a term of protection, e.g. in copyright in general, the term of protection is granted for the lifetime of the author plus 60 years and after that the work enters the public domain which may be enjoyed by the public in any manner by maintaining the moral rights of the author. This branch of law simply affords the author's commercial rights of publishing, manufacturing, selling, importing, exporting, supplying etc. He or she may assign all such rights. Copyright is a bundle of rights. The author is even allowed to adapt or translate the work. Copyright protects literary, artistic, musical, dramatic works, broadcasting, photographs, computer programmes etc. Fair use allows for the 'single non-commercial use' of copyrighted works. This creates a balance and promotes academic and personal research.

In R.G. Anand v. Deluxe Films,[19] the Supreme Court held that, 'There can be no copyright in an idea, subject matter, themes, plots, or historical/legendary facts and violation of copyright in such cases is confined to the form, manner and arrangement and expression of idea by the author of the copyright work.' It further said, 'Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. In such a case the courts should determine whether or not the similarities are fundamental or substantial aspects of mode of express, adopted in copyrighted work. If the defendant's work is nothing but a literal imitation of copyrighted work with some variations here and there, it would amount to violation of copyright. In other words, in order to be actionable, the copy must be substantial and material one which at once leads to the conclusion, the defendant guilty of an act of piracy.'

In Eastern Book Company v. D.B. Modak,[20] the Supreme Court categorically held that on the judgments of the Supreme Court there is no copyright of anyone and on headnotes created by a journal, the publisher of journal has a copyright. However, on judgment of a court there is no copyright of anyone. The Supreme Court held that, 'To claim copyright in a derivative work the author must produce the material with exercise of his skill and judgment with a flavour of creativity which

16 The Copyright Act, §2(c)(i) (1957).
17 R.G. Anand v. Deluxe Films AIR 1978 SC 1613.
18 The Copyright Act, §52 (1957).
19 AIR 1978 SC 1613.
20 (2008)1 SCC 1; followed in Relx India (P) Ltd. v. Eastern Book Co. (2017) 1 SCC 1.

 DOI: 10.7206/kp.2080-1084.617

may not be creativity in the sense that it is novel or non-obvious, but at the same time it is not a product of merely labour and capital.'

In legal academics, the commentaries have for long been prepared with the help of cases only. This judgment was a relief for law researchers and lawyers who have always been horrified by infringement issues.

In the Delhi University photocopier case,[21] an interesting issue came before the Delhi High Court, wherein the Delhi University, through its private outsourced photocopier service, was making 'course packs' for its students, according to its curriculum. The course packs meant photocopied material comprising different book chapters, articles, research papers etc. of reputed publishers. This was challenged on the issue of copyright infringement. The university claimed protection of 'Fair Use' under Section 52. The Delhi High Court gave a different dimension to 'single non-commercial use' as we know that 'single non-commercial use' is meant for self or academic or research purpose and it is not infringement of copyright. The High Court held that, 'What can be done individually by a teacher or a pupil can also be done collectively through outsourced arrangement.' The university is protected in Section 52.

Copyright law, especially after 2000 AD, gained momentum, as computers and the internet opened more avenues of creation on digital media platforms. Almost all physical and analogue copies were converted to virtual copies. There are machines which can covert physical copy of a book in PDF format.[22] Audiobooks, pictorial books opened new avenues. Creation laced with technology invokes the requirement of very rigorous protection. We witnessed the same haggling in the TRIPS, the Doha Declaration cases of Novartis, the EBC and the Rameshwari photocopier case,[23] wherein the developed world frequently imputed developing nations as infringing nations. In public offices, we can still see that we do not use licensed copies of software; we can download any work from the darknet.[24] We can make a single non-commercial copy of a licensed copy for ourselves. India does not allow utility patent or petty patents, which raises the bar of patenting and discourages the

---

21 The Chancellor, Masters & Scholars of the University of Oxford & Ors. v. Rameshwari Photocopy Services & Ors (2016) 160 DRJ(SN)678: 2016 SCC OnLine Del 5128

22 Powerful scanners can make softcopies of a book in a very short time, https://www.elarscan.com/in/?utm_source=google&utm_medium=cpc&utm_campaign=cid_1906919704_search&utm_content=aid_349149253356&utm_term=%2Bzeutschel&gclid=CjwKCAiA-f78BRBbEiwATKRRBD4jngXqQChpEMQC_bkMtYu5Rx6ZvPHRHnnjJOq0N0XBFNlfaX-n_xoC6eIQAvD_BwE (access: 3.01.2022).

23 The Chancellor, Masters & Scholars of the University of Oxford & Ors. v. Rameshwari Photocopy Services & Ors (2016) 160 DRJ(SN)678: 2016 SCC OnLine Del 5128.

24 http://libgen.rs/ (access: 3.01.2022) – this site hosts all classic books on law and the domain always changes. Torrents are also used to download copyrighted material.

common man to be recognised as the inventor of the work.[25] In copyright, quality is immaterial. However, in the name of copyright infringement, we can see that in the past two decades, the scenario has changed much.

After the introduction of MOOCs (Massive Online Courses) in Australia, Edex, Coursera and Swayam courses in India, the preparation of courseware required to address the licence issues and there crept in something called Creative Commons which is really difficult for any beginner to understand. Open educational resources (OER) which are available and do not involve the copyright infringement issues mostly do not serve the purpose, as the intended image or file in OER does not have the required quality. Although for now authors are resilient about giving permission for the use of their work by others, they will demand money for it very soon.

The copyleft movement or the 'freeware/shareware' movement was started by zealous non-profit students and groups which led to the creation of CNET site or the Legal Information Institute[26] which provides scores of databases of judgment, articles etc. Some big journals understanding the need for free knowledge made their resources available for free, like *Harvard Law Review*, *Duke Law Review*, *University of Pennsylvania Law Review* etc.

Copyright attempts to create a balance, as it allows the author to reap the benefit of his or her work[27] by assignment and licensing and making royalties from the work, and at the same time it allows fair use for single non-commercial use, such as academic or personal use. The works are so important for the development of human faculties that this ecosystem provides an effortless incubation centre, wherein the citizenry enjoys the works of authors and thereby develops into responsible, value--oriented citizenry without any expenses on account of government coffers/exchequers. We have enjoyed Mozart, Pablo Picasso, Nicholas Roerich, Shakespeare, Emmerson, Tennyson, John Milton etc. and all these works have shaped humanity in every possible positive way.

Indian research and teachings in law schools have been very superficial. Law could not be established as distinctive branch of study. The undergraduate programme is popular being regulated by the Bar Council of India, but post-graduate programmes, research and post-doctoral research programmes have not been in the requisite shape. Research has been unilaterally more or less confined to the Law Commission of India, and up to 2010 maximum research work has been a doctrinal thesis writing. Empirical legal research is in a very nascent stage. At the world

---

25 K.S. Kardam, *Utility Model – A Tool for Economic and Technological Development: A Case Study of Japan*, A Report under aegis of the WIPO and the Japan Patent Office, 2007, http://www.ipindia.nic.in/writereaddata/images/pdf/FinalReport_April2007.pdf (access: 4.01.2022).

26 See: http://www.commonlii.org/ (access: 3.01.2022).

27 The Copyright Act, § 18 (1957).

 DOI: 10.7206/kp.2080-1084.617

level, there is no uniformity, as the law programme is sometimes related to humanities, sometimes to art, and sometimes to social sciences. The Web of Science, Elsevier, Springer, Francis and Taylor have fewer publications in law as a distinctive branch, and only several elitist Indian legal researchers have access to these publications.

Artificial Intelligence and Academic Research

Artificial intelligence has come out like never before. Generative artificial intelligence (GAI) and disruptive technology, which is a language tool (Large Language Model, i.e. LLM tool), have created capabilities like never before. ChatGPT 4.0[28] is capable of writing a general academic essay on any given topic in seconds. In academic assignments, students and research scholars these days use this software like never before. Original and critical academic research writings are seriously threatened by these technologies. However, we are still evaluating the ground realities and this technology will have both positive and negative kinds of impact on academic research. As Ellen S. Kappel observes that it can improve writing, pace up peer review process, bring accuracy in writing and promote new writing and research.[29] GAI has brought the issues of integrity, originality and biases in academic research in focus.[30] The debate is ongoing about whether ChatGPT can be credited to be an author of an academic research.[31] However, there is no doubt that GAI can improve the quality of research sumptuously. It will take time to settle the dust storm created by GAI. Using chatbots, LLM, GAI in pre-printed papers, scientific papers and published papers has become common, but the question is about the level of use and the quality of research work. The regulation of GAI tools will take time.

---

28 https://chat.openai.com (access: 3.01.2022).

29 E.S. Kappel, *How Might Artificial Intelligence Affect Scientific Publishing?*, "Oceanography" 2023, 36(1), p. 5.

30 G.-J. Hwang, N.-S. Chen, *Exploring the Potential of Generative Artificial Intelligence in Education: Applications, Challenges, and Future Research Directions*, "Educational Technology & Society" 2023, 26(2).

31 C. Stokel-Walker, *ChatGPT listed as author on research papers: Many scientists disapprove*, "Nature" 2023, 613, pp. 620–621; D. Kingsley, *Major publishers are banning ChatGPT from being listed as an academic author. What's the big deal?*, "phys.org" 2023, https://phys.org/news/2023-01-major-publishers-chatgpt-academic-author.html (access: 3.01.2022); *Tools such as ChatGPT threaten transparent science; here are our ground rules for their use*, "Nature" 2023, pp. 612, 613.

Plagiarism

Plagiarism has plagued the academic research and writing. Academic integrity has been a given a toss. Indian law schools trained the act of 'cut, copy and paste' in initial phase of learning the law. This is a bad habit which dies hard. Doctrinal research writing has always been like lifting paras from academic works and writings in law schools. However, when it was seen that teaching fraternity, research scholars, students started lifting the whole material *verbatim ac litteratim* (word for word and letter for letter), then it drew the attention of regulators in India. The University Grants Commission in 2018 enacted the 'University Grants Commission (Promotion of Academic Integrity and Prevention of Plagiarism in Higher Educational Institutions) Regulations, 2018'. This regulation aimed to promote 'academic integrity' and 'originality' in research and writing.

This is a small regulation comprising 13 regulations. It defines under Regulation 2(l) *plagiarism* which means the practice of taking someone else's work or idea and passing them as one's own. It also defines under Regulation 2(a) the term *academic integrity*. Academic integrity is the intellectual honesty in proposing, performing and reporting any activity, which leads to the creation of intellectual property. The regulation aims to create awareness about plagiarism. It creates an ecosystem for the promotion of academic integrity and deterrence of plagiarism. It also aims to develop a system for detecting plagiarism. The Regulation provides for 4 levels of plagiarism. Level 0 where similarity is less than 10%, Level 1 where similarity is 10% to 40%, Level 2 where the similarity level is 40% to 60%, and Level 3 where the similarity level is above 60%. The universities have created an ecosystem with the help of Inflibnet service, Shodhganga and Urkund. Anti-plagiarism software such as Urkund and Turnitin[32] is paid software. There is an economic implication for an institution for using and availing such services. Regulation 7 allows exclusions of quotations or duly permitted material, bibliography, footnotes, references, prefaces, tables of contents, all generic terms, laws, standard symbols and standards equations.

If a complaint regarding plagiarism is made, then the Departmental Academic Integrity Panel (DAIP) and the Institutional Academic Integrity Panel (IAIP) will investigate the matter following principles of natural justice and inflict penalty as per regulations. The IAIP will have power to review recommendations of the DAIP. Regulation 12 provides for penalty for students, research scholars and teachers. Students with Level 1 similarity plagiarism will be asked to make a revised submission

[32] Turnitin charges around Rs. 5 Lakh as an annual institutional subscription in India, www.turnitin.com (access: 3.01.2022).

 DOI: 10.7206/kp.2080-1084.617

within six months; in the case of Level 2, the student will be debarred for a year, and in Level 3 their registration will be cancelled. In the case of academic and research publication, if Level 1 similarity is found, then he or she shall be asked to withdraw the manuscript; in Level 2, apart from withdrawal of the manuscript, he or she shall be denied one annual increment and he or she shall not be allowed to take the position of a research supervisor for Masters' and PhD programmes for two years; in Level 3, apart from withdrawal of the manuscript, he or she shall be denied two successive annual increments and he or she shall not be allowed as a research supervisor for Masters' and PhD programmes for three years. It also makes a note that in case of repetitive acts of plagiarism is found, then one level higher punishment may be inflicted on the subsequent occasion. It also notes that in case of the highest level of plagiarism, the higher education institutions may take disciplinary actions, such as suspension or termination of services.

Plagiarism has plagued Indian academics. Vice-Chancellors,[33] faculty members, research scholars, students have been found plagiarising and often been punished for the same thing. The Bombay High Court upheld recall of a degree on account of plagiarism.[34] Recently, the University Grants Commission issued guidelines about self-plagiarism.[35] Due to care list compulsions, faculty members started publishing own previous published pieces. Professor Buxi writes that Indian legal scholarship has been overwhelmingly exegetic and dismally doctrinal. This resulted only in the production of commentaries and producing legal technicians. The Indian legal research diaspora failed to meet contemporary challenges and meaningful status.[36] This happened due to the training at law schools of doctrinal research methodology which trains law professionals mainly in descriptive and analytical research. Professor Moolchand Sharma says that though technological and scientific advances have benefitted mankind in every respect; however, it lacks ethical underpinning which makes it impossible to derive benefits out of it.[37]

---

33 Ex-Vice Chancellor of Delhi University, Vice-Chancellor of Pondicherry University, Vice Chancellor of Central University of Jharkhand, Vice Chancellor of Kumaon University faced charges of plagiarism and few were sent to jail, https://timesofindia.indiatimes.com/india/Ex-VC-of-DU-sent-to-jail-for-plagiarism-released/articleshow/45278628.cms (access: 4.01.2022); https://www.hindustantimes.com/india/kumaon-university-vice-chancellor-resigned-after-being-indicted-on-charges-of-plagiarism/story-yQXnRUrRvGqGS1CrO1M9vK.html (access: 3.01.2022); https://indianexpress.com/article/india/india-news-india/plagiarism-to-academic-fraud-pondicherry-v-cs-term-was-mired-in-controversies-2884455/ (access: 3.01.2022).

34 Shashikant s/o Vishwanathrao Choudhari v. Sant Gadge Baba Amravati University, Amravati & Anr. 009 SCC OnLine Bom 699: (2009) 4 Mah LJ 577: (2010) 2 AIR Bom R 89.

35 See: https://www.ugc.ac.in/pdfnews/2284767_self-plagiarism001.pdf (access: 3.01.2022).

36 U. Buxi, *Enculturing Law*, http://cscs.res.in/dataarchive/textfiles/textfile.2009-04-20.3267055292/file (access: 4.01.2022).

37 A. Lakshminath, S.P. Singh, *Legal Research-Retrospect & Prospect*, "Chanakya National Law University Law Journal" 2013, 1(3).

Issues Unresolved

Writing and researching in the modern Indian legal landscape has become very challenging. The Indian legal landscape is very diverse, plural and stratified. There are national law universities, central universities, state universities, private universities. Barring few, 'research is really in bad shape'. Few institutions are doing well, but maximum law schools have failed to create a niche for legal research. Legal research is mostly the doctrinal one. Problems of the lack of funds, serious scholars, incentive for researchers, the poor infrastructure of digital and real law libraries, poor data analysis, lack of formal training in data analysis, use of software such as IBM SPSS,[38] Endnote, voice-to-text software, poor plagiarism scan software services have resulted in the poor quality of research. In QS ranking 2021, only Jindal Global Law School (JGLS) could secure a ranking in the range of 651–700. JGLS and National Law School Bengaluru could secure the first and second places in India, respectively.[39]

Indian legal academics is facing critical and acute problems. In the world academic order, in front of sciences and social sciences, legal academics could not be established as distinct branch of study. If we explore Elsevier, Thomson Reuters, Wiley, Web of Science or the ORCID platform, then this confusion becomes ocular and opulent.[40] At few places law is under social sciences and at a few in art/humanities. Legal researches have not been taken seriously in the academic world order. Publishers, research funding agencies, higher educational institutions, governments have often been confused to treat law either as a subject of social sciences or a subject of art and humanities. This blurredness of vision has resulted in incoherence and vagueness. A researcher in law often finds himself or herself in an overwhelming situation to explain the scope of research in law. The reason is that law and social sciences are so inextricably interlinked that any doctrinal or non-doctrinal research in law cannot be distinctly called separate research in law. It knowingly or unknowingly becomes a study of social sciences or art/humanities. Law has been seen as a subject wherein you train lawyers for adversarial adjudication in courts. It has never been seen as a subject of academics.

The advent of technologies such as computers, internet, artificial intelligence and 'Digital Divide/Gap' in India also is resulting in poor researches. In doctrinal research the whole exercise these days is just to avoid the similarity index of anti-

38 See: https://www.ibm.com/in-en/products/spss-statistics (access: 3.01.2022). Most of the universities do not even have licensed software of IBM of Statistical Package for the Social Science (SPSS) which is used for data analysis.

39 Quacquarelli Symonds, https://www.qs.com/ (access: 4.01.2022).

40 See: https://mjl.clarivate.com/search-results; https://orcid.org/ (access: 4.01.2022).

 DOI: 10.7206/kp.2080-1084.617

-plagiarism software. Urkund software which is given to Indian universities through the Inflibnet service allows for exclusions and it is being seen that if on the first scan the similarity index goes higher than 10%, then on second occasions, through exclusions and exemptions, the similarity index may be lowered to less than 10%. Subscribing Turnitin is a costly affair for public universities. Paraphrasing has been used to counter the problems of similarity index. Optical character recognition (OCR) software has also created havoc. The researchers search old materials in law school libraries and scanning the pages. The OCR converts the scanned pages in softcopies which makes copying easy and handy.[41] The researchers use the material in abundance that makes the material which cannot be detected in anti-plagiarism software, as the databases of this software does not have print material in its database and same after scan will result in lower similarity index.

Micro-research inculcating the value of quality research work in India has never been truly promoted. Barring few quality studies in India by law schools, the Law Commission of India, the Indian Law Institute, the quality of research in abysmally low. Researchers buy research works, projects, assignments, doctoral theses from shops. In the name of research assistance, many enterprises run 'predatory journals' and run business of selling theses and dissertations.[42] Reforms such as Urkund, Shodhganga, Vidwan are just like drop in ocean and we need a comprehensive reform programme in the legal research diaspora. Although Urkund and Shodhganga have at least been successful in preventing abuse of theses and dissertations submitted in partial fulfilment of awarding post-graduate and doctoral degrees. The population, quantity and diversity of researches are also some of the reasons for the failure of quality control in legal research in India. The number of law schools and students, research scholars, faculties also make it a hydra-headed task to maintain the quality of research work.

The similarity index in India is really problematic. In most of the cases, universities in India are struggling about many issues, as they are still struggling about who owns copyright on dissertations and theses by scholars.[43] One more very pertinent point is that in legal research the 'food for thought' or 'feed of content' comes from judgments and legislations and abundant use of the same thing increases the similarity index. In India, universities still have not formulated any anti-plagiarism policy and have failed to establish any 'Academic Integrity Panel' at the departmental and institutional levels. Cases are being disposed on a casual basis.

41 See: https://www.onlineocr.net/ (access: 5.01.2022).

42 See: https://www.chanakya-research.com/phd/thesis-writing-services/ (access: 8.01.2022).

43 Law school, Banaras Hindu University makes the research scholar transfer his or her copyright to the university. See: https://www.bhu.ac.in/academic/research/phd_ordinance.pdf (access: 7.01.2022).

Allegations and proof depend solely on the similarity index of software which seems to be totally faulty. Similarity and plagiarism are distinct issues taken as one.

Conclusion and Suggestions

The legal research landscape in India is not in very good shape. This situation needs a deep and pervasive reform from upside down. Repetitive doctrinal studies have to be avoided. A culture of value-based quality research has to be promoted and fostered. Students are to be trained in drafting a good research plan, focusing on the research problem, literature review, hypotheses, research methodology. Doctrinal and non-doctrinal research methods comprising qualitative and quantitative analysis of data have to be detailed out at the very early stage of learning of law. Law schools have to develop the necessary infrastructure and ecosystem for quality and sumptuous legal research. If we do not do so now then establishment of quality research educational institutions in India will be a distant dream. Based upon above discussions following suggestions may be submitted for betterment of Indian legal research landscape:

1. Training and awareness programmes relating to academic integrity and plagiarism must be organised for training beginners and mid-level researchers;
2. Indian law schools must include research methodology at under-graduate--level syllabus which often is taught at the post-graduate level;
3. Researchers of any level must be committed to the quality of research work and believe in ethical practices adopted for doing research;
4. All stakeholders in the legal research landscape must promote and inculcate the culture of quality legal research;
5. Repetition in doctrinaire study must be avoided with the help of Shodhganga;
6. Training in empirical data analysis, software, SPSS, questionnaires, sampling, scaling etc. must be done for all stakeholders of researchers;
7. The Internal Quality Assurance Cells (IQACs) of universities must adopt an anti-plagiarism policy keeping special needs of the stream of knowledge. In doing so, the 'one size fits all' formula must be avoided;
8. Indigenous local research suited to Indian ecosystem must be promoted;
9. Proper databases, infrastructure and ecosystems must be developed by all stakeholders of the legal landscape. Zero tolerance policy must be adopted against plagiarism;

 DOI: 10.7206/kp.2080-1084.617

10. Use of technologies like anti-plagiarism software, SPSS, voice-to-text software, reference management systems, learning management systems etc. must be promoted for ease of doing research;
11. Training for submission to foreign publications houses, clash of interests, publication of funded research paper, ORCID, digital object identifier etc. must be done for Indian faculties;
12. GAI tools regulation is a must. The amount and level of use of LLM tools and GAI technologies must be well regulated.

Bibliography

Bodenheimer E., *Jurisprudence: the Philosophy and Method of Law*, New Delhi 2011.

Buxi U., *Enculturing Law*, http://cscs.res.in/dataarchive/textfiles/textfile.2009-04-20.3267055292/file (access: 4.01.2022).

Hwang G.-J., Chen N.-S., *Exploring the Potential of Generative Artificial Intelligence in Education: Applications, Challenges, and Future Research Directions*, "Educational Technology & Society" 2023, 26(2).

Kappel E.S., *How Might Artificial Intelligence Affect Scientific Publishing?*, "Oceanography" 2023, 36(1).

Kardam K.S., *Utility Model – A Tool for Economic and Technological Development: A Case Study of Japan*, A Report under aegis of the WIPO and the Japan Patent Office (2007), http://www.ipindia.nic.in/writereaddata/images/pdf/FinalReport_April2007.pdf (access: 4.01.2022).

Kingsley D., *Major publishers are banning ChatGPT from being listed as an academic author. What's the big deal?*, "phys.org" 2023, https://phys.org/news/2023-01-major-publishers-chatgpt-academic-author.html (access: 3.01.2022).

Lakshminath A., Singh S.P., *Legal Research-Retrospect & Prospect*, "Chanakya National Law University Law Journal" 2013, 1(3).

Standard Indian Legal Citation, https://www.legallyindia.com/tag/standard-indian-legal-citation-silc (access: 3.01.2022).

Stokel-Walker C., *ChatGPT listed as author on research papers: Many scientists disapprove*, "Nature" 2023, 613.

The Bluebook: A Uniform System of Citation VIII, Harvard Law Review Association, California, 19th ed., 2010.

The Logic of Citation, [in:] J.R. Walker, T. Taylor (eds.), *The Columbia Guide to Online Style 32*, 2nd ed., Columbia University Press, New York 2006.

Tools such as ChatGPT threaten transparent science; here are our ground rules for their use, "Nature" 2023, 613.