AN OVERVIEW OF THE USEFULNESS OF RESEARCH IN THE FIELD OF LAW

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ABSTRACT

Legal research refers to a detailed study and investigation of the different phenomena of law. Particularly speaking, a researcher has to examine the role of various aspects of the concerned legal factors with respect to given societal behaviours. Moreover, it aims at reaching a conclusion in order to bridge the gap that exists between existing legal principles and desired outcomes. In the current work, the author has carefully studied the role and usefulness of legal research. To that end, an effort has been made to explain the concept of legal research, its objective, the various kinds of it and ultimately its significance in a socio-legal perspective. The various methods of legal research that are often employed by a researcher includes positive method, experimental method, evolutionary method, historical method, hermeneutics, field study, case study, survey, anthropological, ethnography, ethnomethodology, generic, literary method, economics method, statistical method, Marxist, jurimetrics, feminist legal, realist legal method and critical legal method. Legal research is an umbrella term and includes within its fold the many factors that are essential for finding out the truth following extensive inquiry, both theoretical and practical. Light has been thrown on the views of distinguished jurists and scholars regarding the matter of legal research. The author has put forward the necessity and various aspects of conducting quality research in law for strengthening the subject so that society can be served by it to the maximum extent.

Keywords: Legal research, inquiry, methods, socio-legal.

Legal Research

Research means a critical and careful inquiry of critical facts and principles. It is a diligent investigation for reaching certain conclusion. If we look into the academic world, we find that research is a systematic investigation of some existing knowledge or fact related to a particular matter with the purpose of extracting the truth.

Bentham's theory of knowledge is presented as a blend of three philosophically associated theses; an empiricist epistemology, a materialist metaphysics and a representational theory of meaning.[1] Legal research is a systematic investigation to increase the knowledge of law. It means systematic study of the legal principles, rules, theories, concepts, decided cases, doctrines, issues, questions, legal problems or legal institutions or a combination of some or all of them. Legal research takes into its ambit a systematic study for ascertaining a particular law with a view to advance the science of law. Advancement can be made by making recommendations to the government about how to fill existing legal gaps or lacunas. Science of law refers to the jurisprudence or principles of a certain branch of law, for example, environmental jurisprudence, company jurisprudence etc.

According to Webster's International Legal Dictionary, the systematic investigation of problems and matters concerned with law such as codes, acts etc. is legal research.

Manhem Henry L, in his "Sociological Research Philosophy Methods" which was published in the Illinois Dorsy Press (1977), said that, research is a diligent exhaustive investigation of a scientific subject matter with the growth of human's education and understanding as its goal.

According to Redman and Mory, research is a systematic effort to gain knowledge. (The Romans of Research, 1923)

According to the definition given in the Oxford Advance Learner's Dictionary, research means a careful study of a subject, especially to find and discover new knowledge.

There are many sub-divisions or disciplines of law, like, procedural, substantive, public and private. In a research when only one discipline is involved, it is called a mono-disciplinary

[1] James E. Crimmins, *On Bentham* 14 (Cengage Learning India Private Ltd, 1st Indian reprint, 2008).

research.

Now, there can be many motivating factors which motivate a scholar to perform a particular research. An individual who has a curiosity to know something, will do a systematic investigation in the quest of acquiring the knowledge of it. Curiosity drives a researcher to explore and make an in-depth study to know the unknown factors behind socio-legal phenomena. A researcher must have a keen desire to solve unsolved and unexplored problems. His desire might also be directed to verify old laws with empirical evidence. His desire can also be to find out cause and effect relationship of widespread legal issues. A researcher is not supposed to react emotionally to acute socio-legal problems. There might be sudden appearance of novel and unanticipated situations. The researcher has to act promptly in order to find the cause of it and provide appropriate remedy.

In most situations a researcher finds extreme intellectual joy for performing some creative work. It gives joy to his intellectual faculties. It is always a creative work and a service to society through contributions of one's own research. Again a researcher has a desire to earn a Research Degree which has its consequential benefits.

Objects of Legal Research

The objects of legal research are primarily two-fold. One component of legal research in law is scholarly while the other one is utilitarian. Acquiring knowledge in the search for truth is the primary purpose of research. Human beings associate knowledge with objectives such as welfare, justice, self-perfection, and happiness, or to have knowledge for only knowledge's own sake. [2]

The scholarly mission of law research is revealing the fundamental principles of human societies as well as legal entities. Its aim is to analyse all relevant issues and investigate the emerging and existing problems.

The utilitarian object of legal research is related to the purpose of utility. Its aim is to perceive social lives and gain control over social behaviour. Bentham's Theory of Utilitarianism is important in this respect. According to Bentham's definition, utility is a principle through

[2] P. Ishwara Bhat, *Idea and Methods of Legal Research* 66-67 (Oxford University Press, 1st edition, 2019).

which our own happiness and that of others must be realised only in relation to experiencing pleasure and pain.

The other objects of legal research can be discussed as follows:

(a) A legal research ascertains the purpose, nature and objectives of the legal rules and principles which govern a specific situation, thereby, determining their efficacy, adequacy, relevance and utility. For example, the laws designed for the protection of children from abuse.

(b) It studies the precedents of courts and tribunals with an aim to ascertain their scope of application in any particular situation.

(c) It examines the legal theories and doctrines in order to find their validity and truth. For example, studying the concept that tough laws deter people from committing crimes.

(d) A legal research identifies the weaknesses and defects of an existing law and calls attention to the areas that are not covered or may be partially covered by it.

(e) Legal research examines the nature and constitution of a legal body, the objectives for setting it up, how effectively it works, if any changes would be necessary etc.

(f) It compares the existing provisions of a certain legal system with that of another legal system and finds out the similarities and dissimilarities between in order to propose solutions and ideas for improvement.

(g) It can discover new facts and develop a whole new theory.

(h) It can even verify old facts to arrive at some general conclusion.

(i) It can develop new research tools.

(j) It studies the reasons that led to the adoption of a certain law and can predict the consequences of its application.

(k) It can explain and evaluate legal theories and principles. It helps to analyse their nature and operation in a particular society.

(l) A legal research often examines certain social phenomena to point out the opinions, values, ideals and behaviour of certain group of people and thus relate the results with relevant aspects of law. This facilitates to understand deviant or criminal behavioural patterns and suggest new approach or ideas to minimise the occurrence of such incidents.

Methods of Socio-legal Research and Parameters to be applied in a Socio-legal Research

Research design means a technique for data collection. Various methods are available for performing a socio-legal research which are elaborated as follows:

(a) Positive method: The term positivism was introduced by the French philosopher Auguste Comte. Positivism means "what law is". Positivism is contrary to the natural school of law which believes in "what law ought to be". Positivism considers social facts as things or objects. The belief systems, customs, institutions of society, and the facts of the social world, should be considered as things in the same way as the objects and events of the natural world.[3] It has been observed that positivism can flourish when the social conditions are stable. Difficulties in separating "what is" and "what ought to be" arise when the society faces turmoil.[4] Positivism rejects the notion that legislations can be created by any implicit will. Rather it believes that legal rights exist only as a result of explicit political decisions or explicit social practice.

Since 1960, positivism has been subjected to social attacks from sociologists like Karl Popper and Thomas Kuhn and this resulted in an intellectual attack on natural science of social research and on procedural rules for certifying knowledge as reliable and objective.

***(b)* Experimental Method:** According to Munroh Smith, social science of justice articulates expression.[5] In making rules and principles, the legal experts have been experimental. All principles and rules of any case have been regarded as hypotheses and each new case an experiment. Any rule which yields negative results or leads to

[3] M.Haralambos and R.M.Heald, *Sociology: Themes and Perspectives* 495 (Oxford University Press, 14th edition, 2012).
[4] R.W.M.Dias, *Jurisprudence* 331 (Aditya Books Butterworths, 1st Indian reprint, 1994).
[5] Munroh Smith, *Jurisprudence* 21 (Columbia University Press, 1909).

injustice, would be reconsidered and modified. If rules derived from a principle do not work well, the principle itself must be re-examined.[6]

(c) **Evolutionary Method:** Henry Maine is called the Social Darwinist and he started anthropological research in law. He observed that law has evolved through a number of stages to reach the present stage. Prof. A. Lakshminath opined that judicial review is an evolutionary method in both civil and common law systems. During the period of "natural justice", the Acts of Crown and Parliament were subject to a higher form of unwritten law. After the Glorious Revolution in England and The French Revolution, the concepts of "positivism" or "legal justice" gained prominence. This era of "positivism" or "legal justice" was characterised by the importance of legislature or written statute. This carried a new flag to the citadel of justice: the "principle of legality".[7]

(d) Historical Method: A historical researcher studies the past events chronologically to find a vivid description of the happenings of the past. The areas of historical research are mainly political, intellectual, cultural and social. Sources of historical research are primary and secondary. Primary sources are those which existed at the time of the event in question. It includes letters, photographs, speeches, contemporary newspaper articles etc. While secondary sources usually interpret the primary sources. It can be a written assessment of a historian from the past.

The social science researchers generally confine themselves to three major sources of historical information: documents and various historical sources to which the historian himself has access, materials of cultural history and of analytical history, personal sources of authentic observers and witnesses.[8]

The historical school of legal research originated at the beginning of 19th century as one of the many reactions to the natural law theory.[9] In the historiography of common law, the jury system was an instrument of legal change but the jury was not of much interest as their verdicts were not regarded as law. In the 1970s the critical legal studies

[6] Benjamin N. Cardozo, *Nature of the Judicial Process* 23 (Martino Publishing, 2011).
[7] A.Lakshminath, *Judicial Process: Precedent in Indian Law* Page V Preface (Eastern Book Company, 3rd Edition 2012).
[8] Pauline V. Young, *Scientific Social Surveys and Research* 155 (PHI Learning Private Limited, 4th Edition 2010).
[9] R.W.M.Dias, *Jurisprudence* 373 *(*Aditya Books Butterworths, 1st Indian reprint, 1994).

movement led to the production of new and provocative legal histories. The historical school of legal research laid bare the connection between law and social environment. Prior to the advent of historical legal research in the 19th century, maters of health, education, welfare and economics were not of any concern to the State. But now the state started taking these issues seriously. So legal history started readjusting itself by taking into account such preoccupations.[10]

Granvile Austin's research work on the Constitution of India[11] and George H. Gadbois Jr.'s research work on the Supreme Court of India[12] are excellent examples of historical methods of legal research made in India.

(e) Hermeneutics: The term was first introduced by German philosopher Wilhelm Dilthey in late 19th century. Then Max Weber used it as an alternative approach positivism. This term was broadly applied by German philosopher Martin Heidegger in his investigations. This method interprets meaningful human behaviour and action. It does not follow the model of natural science and thus does not focus on any kind of external manifestations. It seeks to interpret subject matters which are essentially meaningful in nature. Hermeneutics separated all disciplines from natural sciences. It studied society, history and human beings separately from natural science.

(f) Field Study Method: This method is entirely an empirical inquiry. William I. Thomas was first to introduce scientific thinking in socio-legal research and stressed on field study. He revolted against speculative armchair philosophy which was practised by American scholars studying under German sociologists.[13] Franz Boaz is regarded as the founder of American Anthropology and he taught at Columbia University. He went in an expedition to Baffin Island to perform field study on Inuit i.e. Eskimo.

(g) Case Study Method: It is applied to qualitative as well as quantitative research. However, it mostly applied in qualitative research. It is a thorough examination of a particular instance. Its source may be both external and internal. Case studies were initially employed in social science by Frederic Le Play. It means an empirical study of a real-life phenomenon. Case study is an in-depth, qualitative study of one or few

[10] R.W.M.Dias, *Jurisprudence* 420 (Aditya Books Butterworths, 1st Indian reprint, 1994).
[11] Granvile Austin, *Indian Constitution: Cornerstone of a Nation* (Oxford University Press, 1st edition, 1966).
[12] George H. Gadbois Jr., *Supreme Court of India: The Beginnings* (Oxford University Press, 1st edition, 2017).
[13] Pauline V. Young, *Scientific Social Surveys and Research* 39 (PHI Learning Private Limited, 4th Edition 2010).

illustrative cases and is about detailed examination of one setting or a single subject, a single depository of documents, or one particular event.[14]

(h) Survey Method: Survey is a medium for data collection. Most survey research falls within the framework of non-experimental or correlational research designs in which no independent variable is experimentally manipulated.[15] The survey procedure entails gathering a large number of facts in an orderly and methodical manner. The object is to report a social problem or the status of certain facts in a given society. It has a specific set of scales and questions. The Government of India has many survey offices which are engaged in doing surveys of populations and natural resources. For instance, the All India Citizens Survey of Police Services (Ministry of Home Affairs), the Zoological Survey of India (Ministry of Environment, Forests, and Climate Change), etc.

(i) Anthropological Method: Development of social anthropology in England was influenced by positivism. Again, anthropological study of primitive legal systems is of modern origin and influenced by historical school. Maine said that a progressive society develops through equity, fiction and legislation.[16] In many of the tribal societies studied by anthropologists, custom is sufficient for the need of the society. [17]

(j) Ethnography: The foundation of social and cultural anthropology is ethnography, which is basically field research and observation.

Anthropologists perform field study and produce ethnography.

(k) Ethnomethodology: This term was coined by Harold Garfinkelin in his book Studies in Ethnomethodology (1967). It concerns itself with those structures of social interaction that would be invariant to the revolutionary transformation of a society's institutions.[18]

(l) Generic Research: It is characterised by methodological flexibility. A generic

[14] Bruce L. Berg and Howard Lune, *Qualitative Research Methods for the Social Sciences* 325(Pearson, 8th edition, 2012).
[15] Susan R. Hutchinson, Survey Research *Foundation for Research* 285 (Lawrence Erlbaum Associates Publishers, London, 2004).
[16] R.W.M.Dias, *Jurisprudence* 388 (Aditya Books Buttherworths, 1st Indian reprint, 1994).
[17] M.D.A.Freeman, *Lloyd's Introduction to Jurisprudence* 1085,1088 (Sweet & Maxwell, 8th edition, 2008).
[18] M. Francis Abraham, *Modern Sociological Theory: An Introduction* 259 (Oxford University Press, New Delhi, 19th impression 2014).

inductive approach or generic qualitative research is not defined in any strict sense and is not guided by any established set of presumptions. A research genre that does not fall under any particular qualitative research, will be broadly known as a generic qualitative research. The researcher of a generic research will develop new tools, techniques and research designs according to his given subject matter.

(m) Literary Method in Legal Research: Law and literature are overlapping disciplines. Literature can provide lawyers, judges and law students with valuable background knowledge concerning subjects of legal regulation and with fascinating hypothetical situations for testing legal principles.[19] In this field, "law in literature" and "law as literature" are two approaches. "Law in literature" denotes identifying law in literary texts. Richard Posner[20] pointed out, "a surprising number of literary works- some immensely distinguished, some much less sore about legal proceedings in the sense that such a proceeding, plays a pivotal or climactic part in the work and is typically some kind of trial. Conversely, a "literary approach to legal writing" is what is meant by "law as literature". [21]

(n) Economics Methods in Law: In this kind of research, law is studied from the point of view of economics. It is concerned with "ethics" and "engineering" but ultimately both will be studied in context of politics. This view was developed in Aristotle's *Politics.* The aim of this research is to analyse the role of law in shaping an economic behaviour. The study of the behavioural analysis of law has become increasingly popular in legal scholarship in recent years.[22]

(o) Statistical Method: In statistical method, statistical tools are used in a socio-legal research. After collection of all data, analysis and interpretation are very vital. Mean, median, mode and correlation of data from empirical study are used in this form of research. This method is deployed in action research, explanatory research and survey research and gives more scientific and interesting results.

(p) Marxist Legal Research: Marxism is a political doctrine and it studies and society by

[19] Richard A. Posner, *Law & Literature* 1 (Universal Law Publishing, 1st Indian reprint, 2011).
[20] Richard Posner, *Law & Literature: A Misunderstood Relation* (Harvard University Press, London, 1988).
[21] K.Dolin, *A Critical Introduction to Law and Literature,* (Cambridge University Press, 2007).
[22] Frans L. Leeuw, Hans Schmeets, *Empirical Legal Research: A Guidance Book for Lawyers, Legislators and Regulators* 32 (Edward Elgar Publishing Limited, UK, 2016).

following an economic approach. This theory can crudely be described as an economic theory of law and state. Marx searched the elements of a capitalist society. He studied the way in which it developed, its ability to produce itself as an economic and social system, and its destiny.[23]

(q) Jurimetrics: Jurimetrics is a modern form of legal research. It is a combined study of science and jurisprudence. Jurimetrics is the study or analysis of legal issues using scientific or empirical techniques, such as measurement.[24] Activities involving the study of legal issues have been referred to as "jurimetrics." [25]

(r) Feminist Legal Method: Postmodernism offers insights for those pursuing feminist legal theory.[26] Katharine Bartlett examined feminist research methodologies, including (i) asking women questions, or recognizing and contesting aspects of current legal thinking that exclude or disadvantage women and members of other marginalized groups, and (ii) feminist practical reasoning, or thinking from an ideal where legal decisions are practical answers to real-world problems rather than fixed decisions between opposing, often mismatched perspectives, (iii) consciousness-raising, or seeking insights and enhanced perspectives through collaborative or interactive engagement with others bases upon personal experience and narrative.[27]

(s) Realist Legal Method: It is the most modern and empirical method of legal research. It mainly deals with judges and their views, thinking, behaviour and trends. In the 1960s, many American legal researchers got involved in studying case law books which were entirely based on judgements. Law is perceived properly when analysed through decided cases. According to this method, study of law must be pursued through how it grew and evolved.

(t) Critical Legal Method: It is typically an orthodox approach. In India it is basically identifying the defects and lacunas of existing laws and suggesting proper modifications

[23] Wayne Morrison, *Jurisprudence: From the Greeks to Post-Modernism* 262 (Cavendish Publishing Ltd., 1st publication 1997).
[24] *Black Law Dictionary* (9th edition).
[25] Lee Loevinger, "Jurimetrics: The Methodology of Legal Inquiry", *Law and Contemporary Problems* 8 (1963).
[26] M.D.A. Freeman, *Lloyd's Introduction to Jurisprudence* 1297 (Sweet & Maxwell, 8th edition, 2008).
[27] Wayne Morrison, *Jurisprudence: From the Greeks to Post-Modernism* 485 (Cavendish Publishing Ltd., 1st publication 1997).

and reforms.

Importance of Legal Research

Approaches to legal research may be broadly be of two types, doctrinal and socio-legal research.

Doctrinal research is predominantly a library-based work and is theoretical in its form. It involves discussions and explanations of a legal question. This method requires obtaining data systematically in order to arrive at a conclusion. Its objective is to study the facts and provisions of certain existing legal concept. Thereby, it suggests reforms and changes.

On the other hand, a socio-legal research is non-doctrinal in nature. It is an empirical in nature or field study. Generally it aims to identify whether a particular law is adequate or not. It also examines whether an entirely new law is essential for certain situation. It suggests if efficacious use of certain legal provisions can offer answers to any issue or problem and whether a law can be used as an instrument of reform.

Gradually it is being realised that legal research should not be about purely legal studies, it must involve sufficient degree of study of the society in question. Law and society are intrinsically interrelated and studying law is an inseparable subject from the study of the society.

In light of this above discussion, the importance of legal research may be explored as follows:

(a) Legal research ascertain laws on a given subject or topic.

(b) It is carried out to find out “gaps” and “ambiguities” in a particular law. It is performed to identify “gaps” and ‘ambiguities” in a certain law.

(c) It critically studies the coherence, consistence, and stability of a certain area of law and legal propositions.

(d) Legal research aims to undertake “social auditing of law” i.e. it examines pre-legislative forces and post-legislative impacts of the law.

(e) It suggests reforms or developments in law by following various modes.

The various modes may be discussed as follows:

Legal research identifies "GAP" between the "Legal Ideals" and "Actual Practice". "Actual Practice" means ground reality i.e. what is ought to be.

Again, it is used to understand the "effectiveness" or "impact" of law in given social set-up at a given time.

It examines whether a law has social value and is serving the needs of society.

It makes suggestions for reforms in law on concrete proposals and formulations.

A legal research also predicts future trends of law.