

Legal Reserch - An Inter Disciplinary Approach

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ABSTRACT

When the courts were disinclined to take much notice of arguments and ideas that were to be found in the exegetical literature, the ordinary practitioner did not normally need to dig much deeper than was required to ascertain the state of the law. But the courts are now much more receptive to such literature particularly perhaps material with a comparative perspective. It is also part of the purpose of this paper to assist the students who wish to research more deeply. The internet has made an extraordinary change and in a remarkably short time. If, anything the problem no, is that there is altogether too much material available, and the difficulty for the researcher is how to manage such a potentially huge flow of information. This article discusses some of the important aspects of socio-legal research especially inter disciplinary approaches to research. It also briefly touches upon the meaning, features, need, importance and various characteristics of socio-legal research.

Key words: *legal research, inter-disciplinary research, trans-disciplinary approach to socio-legal research, need and importance of socio-legal research.*

INDRODUCTION

George III has famously said that lawyers do not know much more law than other people, but they know better where to find it. The observation is if anything even more true today, as the sources of the law become more and more diverse, and it is still an essential part of legal learning that the student should know how and where to find the relevant law.

The expression "legal research" as used in the title of this article has two different senses. It can be used to refer to the task of ascertaining the precise state of the law on a particular point. All lawyers need to be able to do this, and the skill is of particular importance to the practicing lawyer. Thus, various bars and institutions on the foundations of legal knowledge say that the criteria for Legal Research are: the ability to analyze a problem involving a question of law, and through research to provide solution to it. This involves the ability to identify and find relevant legal sources and materials to extract the essential points from those legal sources and materials, to apply the law to the facts of the problem so as to produce satisfactory answers to the question posed, and to communicate the reasons for those answers, making use of legal sources and materials."

All of these basic skills should be acquired in the academic stage of study. But "legal research" also denotes the sort of work undertaken by lawyers often but not exclusively academic lawyers who wish to explore at greater length some of the implications of the state of the law, the end product of which is then made publicly available in the form of books, whether they be treatises,

monographs, textbooks, or more encyclopedic works, periodical articles and case notes. Here, the task is not so much ascertaining the state of the law, but exploring some particular facet of the legal phenomenon that is being placed under the legal microscope—to "analyze, criticize, sift and synthesize", as Professor Birks has put it.

There are so many articles and books written to help the reader to a more intimate knowledge of the law library and the online resources, and also to guide the first steps of the research worker. Whatever a researcher writes, must remember that one of the prime qualities of a good legal writer is accuracy. As a law researcher or a practicing lawyer, all your quotations must be verbatim; all your citations must follow accepted forms, all your statutes must be checked to make sure that they have not been amended or repealed; and if there is any doubt, your cases must be checked to make sure that they have not been reversed, overruled, or questioned.

FUNDAMENTALS OF LEGAL RESEARCH

Broadly defined, research is a process of planning, executing and investigating in order to find answers to our specific question. In order to get reliable answers to our questions, we need to do investigation in a systematic manner so that it is easier for others to understand the logic of our findings, Thus research is a systematic and refined technique of thinking. It starts off with a specific problem; collects facts or data analyze them critically and reach decisions based on actual evidence. It is a scientific endeavour of human mind directed towards discovery of facts, development of facts and verification of those facts.

Webster's international dictionary (1985) gives a very inclusive definition of research as "a careful critical diligent inquiry or examination, especially the investigation or experiment aimed at the discovery and interpretation of fact, revision of accepted theories of laws in the light of new facts or practical application of such new or revised theories or laws". Mere collection of existing knowledge is not research. Real research lies in creative analysis and synthesis of primary materials in terms of impact or effect of each,

In common parlance, research, refers to a search of knowledge it is an endeavour to discover answers to problems, which may be intellectual or practical, through the application of scientific method to the knowable universe, It is essentially a systematic enquiry, seeking facts through objective variable methods in order to discover the relationship amongst them and to deduce from them broad principles or laws, It comprises defining and redefining problems, formulating hypothesis or suggest solutions, collecting, organizing and evaluating data, making deductions and conclusions and, at last, carefully testing conclusions to determine whether they support the formulated hypothesis.

Legal research is a multi-faceted study distinctive in some aspects from research in humanities or social sciences. However, it would be erroneous to hold it wholly different from researches in other discipline, as there are some elements common in both.

Slesinger has defined social science research as "the manipulation of things, concepts or symbols for the purpose of generalizing to extend, correct or verify knowledge, which helps in construction of theories" It is thus a systematized effort to gain knowledge.

“According to Bacon, research is a careful inquiry or critical analysis of principles for unearthing of new facts or new interpretation of already existing facts or issue.”(NV Paranjape, 2016)

Inter-disciplinary Approach to Legal Research

Legal problems mostly originate from the society and its changing dimensions. Since the function of law is to regulate human behavior in the society, it has to keep pace with the changes and developments that take place in the society. In fact, societal legal norms change faster than the law and therefore, law has to take up the new legal problems that the society is facing and find solution to these problems. It is for this reason that the law has to deal with, are social problems. The problems need the support of several other disciplines such as social of economics, business, commerce, psychology, culture, history, technology etc are possible through interdisciplinary approach to the problem undertaken for reaserch study. For instance, any research work on immoral traffic of women and would not only need a dispassionate analysis of the relevant laws which seek to protect and rehabilitate women and children against their exploitation or abuse but also a probe into historical, psychological and social conditions which drag women to this illegal prohibited social vice. Similarly, any legal research on inside trading would require an analysis of the relevant commercial/business laws and many also need reference to information technology law.

Therefore, any inter-disciplinary approach to legal research lies in the fact that it provides a vision for a better future law or legislation and helps in formulating policies and plans for the solution of socio-legal problems which the society faces in adapting itself to the transforming patterns.

LEGAL RESEARCH-ITS USEFULNESS AND IMPORTANCE

There is a common belief that research is an academic activity undertaken researcher adopting systematic procedures and approaches of advanced knowledge suggested by the research processes, which serves as a systematic procedure for legal problem solving. It involves decision making or problem solving through systematic analytical investigative approaches.

As human conditions are constantly changing for the better, there is greater need for pursuit of knowledge, whether it is in the field of law, technology, history literature, psychology, management, space or any other discipline of learning. Therefore, promoting high quality research in diverse fields at the university level is the need of the time so as to shape the society to meet the challenges of modern innovative world, the modern civil societies have acquired ability to improve of quality of life which has put new pressure leading to great challenges, and it is for this reason that learning and knowledge, both have to be advanced for human society and there can be no better instrument than 'law' to achieve objective. The legal research therefore, has assumed special significance in time,

Since legal research is a systematic effort to gain new knowledge in the field of law, the researcher must make an endeavour to contribute to the development of law and legal institution. Legal research tends to the development within a given branch of law and may also prove useful for legislative purposes.

The subject matter of legal research, namely, 'Law' being a dynamic concept, has to adapt itself responding to the rapidly changing norms of a progressive society. Therefore, the utility and importance of study and research in the field of law as a special branch of knowledge hardly needs to be emphasized. Highlighting the need and importance of legal learning and research, the National Knowledge Commission of India observed: "Creating a tradition of research in law schools and universities is imperative if India has to transform itself from being only a consumer of available legal knowledge to being a leading producer in the world of new legal knowledge and ideals"

The Knowledge Commission has suggested that four autonomous Centers for Advanced Legal Studies & Research (CALSAAR) should be set up in India for enhancing institutionalized interaction between law schools and universities.

Generally speaking, a legal research deals with inquiry which relates to law alone, or law in relation to society. Legal research begins with the analysis of facts of a problem and concludes with the results of the investigation. Thus, it is different from a scientific research in the sense that legal issues and subject matter thereof is generally different from those involved in a research of a subject of science.

The basic purpose of legal research is to explore the possibilities of improving the existing law and make it more effective and result-oriented, and/or suggest a law on issues of facts for which there is no law existence. Legal research may therefore, be described as a process of identifying and retrieving information on various facts of human conduct and examine and analyse them in their legal perspective so as to solve the problems arising there from.

A genuine legal research study should reflect researcher's originality to discover new facts or fresh interpretation of law in an existing branch of legal knowledge. It should be taken as an interesting exercise and not as a tedious philosophical discovery or recitals of formalities. It should be a significant contribution to the existing legal deliberation on the subject. For instance, the Supreme Court in *Rathinam* held that right to life under Article 21 of the Constitution includes right to dig and therefore, attempt to commit suicide under section 307 of the Indian Penal Code is not an offence and as such this section is *ultra vires* the Constitution. But in its subsequent decision in *Gyan Kaur v. State of Punjab*, the Apex Court gave new interpretation to right of life under Article 21 and held that this article talks of protection of life, and therefore, it cannot permit destruction of life and as such, right to life does not permit right to die and hence an attempt to commit suicide under section 306 of IPC not unconstitutional and it does not stand repealed.

The doctrine of prospective overruling propounded by the Supreme Court of India in *Golak Nath* case and the theory of basic structure introduced *Kesavanand Bharati* are some other examples of new theories being innovated in the realm of law. Similarly, the *Nirbhaya* case and the rising incidence of rape case being committed by adolescents and juvenile has given rise to review the definition of , 'juvenile' in terms of age and their insensitivity to this ghastly crime.

Thus it would be seen that research is an endeavour towards pursuit of knowledge in a specific area. It enables scholars and brilliant students a better comprehension of law in which they want to specialize themselves.

The reasons for utility and importance of legal research in modern time may briefly be summarized as follows:-

1. The conclusion and suggestions made in a standard legal research are immensely useful for legislators to introduce law reforms by repealing the obsolete and outdated laws or amending the existing law to suit the prevailing social conditions for the welfare and betterment of people in general.
2. Law as an instrument of social control may function more effectively through the process of research which may draw attention of legal experts towards deficiencies in the existing law and its procedure and come out with new interpretation or innovation of new legal doctrines.
3. An analytical approach to legal research which deals with 'what the law is', when studied in the context of historical and ethical content (i.e. what the law was and what it ought to be,) may help in understanding the whole gamut of a law which is being researched and thus help in its improvement to suit the needs of the society.
4. Socio-legal research may prove to be especially useful in eradicating the social evils prevailing in the society and suggesting progressive measures for social welfare.
5. Though strictly speaking, Judges do not make laws, they only interpret them but many a times, while dealing with a case, they are confronted with ticklish problem for the solution of which no law exists or if it exists, it is blatantly obscure and illogical. Under these circumstances, they are required to conduct a research to find out the tact and arrive at a definite conclusion. The problem emanating of surrogate motherhood, spouses living together without a valid marriage, adoption of children by foreigners, trafficking human organs, on-line privacy intrusions etc. are some of the areas which require extensive research of the relevant law before pronouncing the judgment in the case.

However, it is rather agonizing that the quality of legal research at present is at cross-roads and mostly confined to mere collection of texts from different sources and compiling them in a thesis form without any new discovery of facts or fresh interpretation of law. Most authorities describe 'originality' implies that there is some novel twist, fresh perspective, new hypotheses or assumption or new or innovative method of handling an already existing law and legal concept that makes the study a distinctive contribution. Unfortunately, this is wanting in most of the students who pursue research studies for a Ph.D degree in law from the university.

SOCIO-LEGAL RESEARCH

Undoubtedly, legal research has been immensely useful for the advancement of Indian jurisprudence as also the contribution of law to the progress of society. The research seeks to analyze different legal concepts and relevant statutory provisions of law and decided cases in order to formulate new principles or theories by adopting a deductive or inductive method as suited to the nature of has research work. Some researches are problem oriented which activate researchers to identify the problem and work out solution for them, 14 which may be useful for the legal profession and for the Judges in deciding cases . However, such researches may be labeled as 'monodisciplinary' as they deal with a single discipline i.e. law. It may relate to a

specific branch of law such as substantive or procedural law, public or private law, civil or criminal law, penal or remedial law.

MEANING OF SOCIO-LEGAL RESEARCH

Every research whether it is related to law and any branch of knowledge, involves the process of scientific investigation into facts and formulation of policy on the basis of cause and effect relationship of these facts. But law being essentially concerned with human behaviour, it cannot afford to be an insular one. As observed by Professor Lon Fuller, "all intellectual disciplines that treat these factual situations relating to man's actions have a necessary connection with other disciplines such as history, psychology, philosophy, economics, religion, physical and social sciences". Therefore, it becomes necessary for law researchers to extend their range of investigation into other allied disciplines beyond "law" adopting an inter-disciplinary approach to socio-legal research. For instance, any legal researcher undertaking research on law of tribal's may have to use the available anthropological, sociological or religion literature on tribal's and their customary rights etc. Similarly, a research related to any aspect of taxation law may necessitate adequate knowledge of public finance and even accountancy. Thus, any legal research based on involvement of some other allied discipline along with knowledge of law is generally characterized as inter-disciplinary research.

Any trans-disciplinary research existing in the fields of social sciences is characterized as 'socio-legal' research. However, the range of subjects comprising social science subject but itself consists of a number of branches such as diplomacy, international relations, nuclear warfare etc. Similar is the case sociology, which includes within its criminology, victimology, anthropology etc. which these selves are treated as independent branches of knowledge.

Socio-legal research is essentially non-doctrinal and empirical in nature and generally involves extensive field-study. It refers to a study that combines legal research with investigation of a problem which is of a 'social' nature. The purpose of such research is to evaluate and analyse the extent of adequacy or otherwise of the existing law and find out whether amendment or change or substitution of a new law can offer solution to the social problem under study and provide relief to the people.

CHARACTERISTICS OF SOCIO-LEGAL RESEARCH

Any research in law involving some social problem or social phenomenon investigation into some social variables may be placed in the category of socio-legal research.

The main characteristics of a socio-legal research may briefly be stated as follows:-

1. The result or findings of the research report should not only capture the attention of legal fraternity but of also policy maker or social reforms. It other it should be intelligible and useful for non-legal persons as well or to the society whole.
2. The research conclusion or findings should be acceptable to the legal fraternity including Bar, Bench and academic lawyers and law practitioners in their profession and provide new direction to the legal academicians.

3. The research should be equally helpful for the legislatures and law-makers solving the socio-legal problems of the people and formulating adequate Id policies to overcome the prevailing social problem.
4. Socio-legal research should be designed to highlight the character particular branch of law chosen for study pointing out its ambiguities inconsistencies and also the problems which are being faced in its implementation and enforcement. It should extend the range of investigation beyond la\ into related disciplines so as to probe into the wider implications of legal applicable to other social conducts.
5. In the context of socio-legal research, it must be pointed out that law and society have a two way relationship. There is sort of give and take relationship between law and social conditions. Law helps to create social conditions and at the same time social phenomenon provides bases for formulation of Law and legal principles.
6. By the virtue of the casual nexus underlying social maladies, socio-legal research provides a secure basis for effective remedial measures. Sociological approach to law provides sound guidelines for appropriate legal measures of social welfare oriented reforms.

SOURCES ARE TECHNOLOGY BASED

Many of the tasks performed by the researchers can now be undertaken at the computer. The speed of change in this area is astonishing. Much officially produced information is published electronically, and is available, often free, by using the internet. Most important case law in the world is now available online, and there is a free Statute Law Database. A great deal of information is available by subscription only, and the ever-improving databases make the material available in increasingly accessible and comprehensive formats. Of course, law school library should have a detailed list of what is available to law students on this basis, and should be able to let you have the relevant passwords and identifiers to enable you to secure access to it Having sung the praises of the internet, let me mention some words of warning. it will assist your search considerably if you are familiar with the structure and general contents of the database that using; if you know that what you are looking for is a statute rather than a law report, etc. The second point is that not everything that useful is necessarily on the internet. Much of the periodical literature, not to say the books and works of exegesis, is available only in paper form. Old-fashioned it may be, but you risk overlooking sources of real importance if you suppose that all your research can be undertaken entering the portals of the library and prowling the shelves.

The type of legal research that most practicing lawyers need to carry out is into the law relating to a case that they have on hand. The experienced practitioner carries a mental list of the names of the best works on the subjects with which he or she usually deals, and the sooner the student gets to know some of them the better.

CONCLUSION

The essence of legal research lies in the fact that the researcher does not preach or believe that a particular social activity or event in relation to its legality is good or bad; he just analyses, presents and explains the law. In fact, a researcher has a number of assumptions/speculations at

the starting point of his research but he should not accept or reject them unless after critical analysis, he has logical and reliable explanations to accept or reject them. The researcher should be objective as far as possible in proceeding with his research study. A researcher in legal studies may have different orientations, from objective generalisable problem solving to specific practical problem solving and draw conclusion based on empirical evidence where he adopts inductive reasoning. In the present era of raising aspirations and falling values, the principal goal of legal research should inspire researchers to adopt creative, inventive and innovative approach with a view to evolving new legal concepts so as to establish institutions within in-built capability to deal with changing societal norms.

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