

Legal Education and Research Methodology - An Analysis

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Abstract: A well - known proverb states, "A man without education is a strange animal. "Dr. Babasaheb Ambedkar believed that education would liberate all people, so he urged everyone to learn, unite, and fight against society's odds. Legal education is referred to in the encyclopedia of education as a "skill for human knowledge that is universally relevant to the lawyer's art and which deserve special attention in educational institutions. " Former Justice Dada Dharmadhikari has made the pertinent observation that "legal education makes lawyer an expert who pleads for all like the doctor who prescribes for all, like the priest who preaches for all, and like the economist who plans for all. " Education is more than just getting a degree or "accumulating information. " The student's motivation is what shapes his character and personality and makes him a good person. Education frees a person from ignorance, superstitions, and narrow - minded self - centeredness and leads, respectively, to progress, liberation, and social behavior. Even a well - known adage from Sanskrit states that education leads to liberation; liberation from mind - obscuring ignorance; emancipation from superstitions that impede efforts; emancipation from prejudice, which prevents one from seeing the truth.

Keywords: Legal, Struggled, Research, Assumption, Education, Liberation, Institutions, Authority, safeguard, International & Investigation etc.

1. Introduction

In general, it can be seen that the gathering of evidence or information for the purpose of confirming a hypothesis or proving an assumption is the primary objective of all research. Therefore, research is an investigation to verify a novel theory or to add new knowledge to existing theories. In point of fact, there is no research that can be completely new because even original discoveries are just an extension of the search that has already been done and are typically shaped as expressing agreement, refutation, or just addition. The goal of legal research is to protect society's overall interests by safeguarding its physical or mental health. Legal research is a continuum of inquiry about the law that examines the rules, concepts, and institutions of the law and the legal system as a whole for the purpose of validating a hypothesis.

Definition

Research is defined as "a careful inquiry or examination in search of fact or principles, " according to the Webster's International Dictionary. thorough investigation to determine something.

"Research is a power of suspending judgment with patience of mediation, with pleasure of asserting with caution, of correcting with readiness, and of arranging thought with scrupulous plan, " according to Francis Bacon.

Objective of research

"Every aspect of human behavior or fact of life has a problem, " society's intellectuals have always been inclined to look for empirical facts and reveal the truth from the beginning of human history. There have been problems in society, there will be problems, and we must find solutions to those problems.

To put it another way, research is a requirement for a dynamic society. Research plays a significant role in solving problems and advancing society. Since research is always conducted for the advancement of society, it is socially oriented in every study. It might test previously known facts or discover new ones. The goal of research is to discover the truth that hasn't been discovered yet and is hidden or unknown. The research has uses and functions. We research either to make our system work more efficiently, to increase the quantity and quality of information, to add to what is already there, or to make comfortable material conditions. We also become unique in this way. To put it another way, research needs to have a purpose.

Legal research in general

Research is any methodical investigation, inquiry, or search for information. Legal research is systematic investigation of legal - related issues and problems.

Any issue pertaining to legal philosophy, legal history, comparative law study, or any positive law system can be better understood through legal research. It is also very important for writing texts and teaching because it lets you know the right rules within the limits of those rules.

Objective of Legal Research

Analyzing the law by reducing, breaking, and separating it into distinct components is one of the purposes of legal research. It can be as straightforward as examining and describing brand - new statutes and statutory schemes or as complicated as describing, interpreting, and critiquing particular statutes or cases.

"To fuse the disparate elements of cases and statutes together into coherent or useful legal standards or general rules" is an additional motivation. This study produced a legal standard that is in line with, explains, or justifies a group of particular legal decisions.

Types of Legal Research

- a) Historical Research,
- b) Doctrinal Research (or) Traditional Research,
- c) Non - Doctrinal (or) Socio - Legal (or) Empirical Research,
- d) Comparative Research,
- e) Induction and Deduction Research,
- f) Other Kinds of Research,
- g) Case Law Analysis,
- h) Oral Advocacy.

Doctrinal Research (OR) Traditional Research

Legal doctrinal research into legal doctrines, principles, or concepts. It entails a thorough, methodical presentation, investigation, and critical appraisal of the relationships among legal norms, principles, or doctrines. It provides thematic parameters for an orderly arrangement of the existing laws. It also involves critical analysis of laws, decision - making procedures, and the policies they support.

Doctrine is the sole focus of the conventional legal approach to the law. Academics in the field of law are aware that judicial opinions' language reflects the law. Doctrinal research was the most common type of legal scholarship. In this type of research, a researcher looked at the content of a legal opinion to see if it was well - reasoned or to see what it meant for future cases. The descriptive premise that reasoned argument from doctrinal premises actually explained judicial decisions served as the foundation for doctrinal research. To put it another way, this kind of research might also be referred to as "Traditional Research."

Sources of doctrinal research

In doctrinal research, conventional legal sources are typically utilized. A scholar conducting doctrinal research collects secondary data that supports his argument. His sources include not only statutes or enactments, but also committee reports; judgment, legal history, etc. This group of sources includes legislation enacted by parliament and state legislatures. The aforementioned sources also include decisions made by the Supreme Court and other high courts. They hold the utmost authority. Textbooks, periodicals, and commentaries are also sources of doctrinal research, but they are not as authentic as original sources like cases and enactments published by authorized publishers.

Suitable example with case laws

Judges, lawyers, and law professors all engage in this kind of research. The Law of Torts and Administrative Law are the two most significant examples of traditional research. Judges have developed these two areas of law rather than theoretical researchers. "Law or legal propositions are not final or absolute, " Cardozo asserts. They are undergoing transformation. The veracity and authenticity of accepted norms or principles, whether statutory or as a principle of justice, equity, and good conscience, are repeatedly tested. It may be modified or altered to meet the current requirement if it is determined to be unfair.

For instance, the Indian Penal Code of 1860 states that anyone who makes an attempt to kill themselves is guilty of an offense and can be punished for it. However, in Nagbushan Patnaik's case, the Supreme Court ruled that this

provision violates Article 21 of the Indian Constitution, which guarantees citizens the right to personal liberty. According to the Supreme Court's interpretation, the article's right to personal liberty includes the right to die, so a suicide attempt cannot be punished by the Indian Penal Code.

The Supreme Court has observed as follows

To humanize our criminal laws, Section 309 of the Penal Code ought to be removed from the statute book. This provision is cruel and irrational, and it may result in reprimanding a person who has suffered agony and would be ignored for not taking his own life. Then, an act of suicide cannot be said to be against religion, morality, or public policy, and an act of suicide or an attempt to commit suicide does not harm others, so states should not interfere with the individual's right to personal liberty. As a result, IPC Section 309 violates Art.21 and so. It is empty. It should be noted that such a viewpoint would advance not only humanization, which is a pressing issue today, but also other causes. But negative sociological effects of globalization also come from the death of the person in question, not from someone who tried to kill themselves. Indeed, those who fail in their attempts are made available to serve the family in a similar capacity. Therefore, the person who should be punished is the one who took his own life, but because he is outside of the law's reach, he cannot be punished. A person who ought not to be punished should not be punished for this.

The problem of suicide cannot be refuted. For a long time, debate has centered on the issue of whether a person has the right to choose how and when they die. Life is considered the most precious commodity, and every effort must be made to preserve it, as the most recent Supreme Court decision on the matter, Gian Kaur v. State of Punjab, lays out. In this case, the Court made it abundantly clear that the right to life, which includes the right to live in dignity, would continue to exist until the natural death of a person. This also includes the right to a dignified death and the right to a dignified death procedure. In the Rathinam Case, the Supreme Court also reversed itself and ruled that the right to life does not include the right to die.

Commenting on Administrative Law, Grundstein has observed

"A social achievement is the creation of a body of law where none existed previously. It is going to be a significant accomplishment. It also serves as a reminder of the fact that, at specific points in the history of law, the inventive formulation of legal doctrine was both essential and justifiable to be a top priority for legal research.

Aside from this, our statutory law has been replaced by terms or vocabulary that do not provide a definitive solution to every circumstance. "Just and equitable, " "public order, " "reasonable opportunity of being heard, " "reasons to believe, " "rash or negligence act, " "reasonable apprehension, " "industry, " and so on are examples of social needs that the courts can interpret and apply. The judiciary itself has established ambiguous and adaptable norms for interpreting these phrases. which can be made certain and practical through the development of a principle based on research. The goal of our welfare society is to balance the competing interests of different parts of the community by

using the "reasonable classification" principle. However, the question of what constitutes a reasonable classification is itself up for debate. Here, the researcher can determine what standard constitutes a reasonable classification. It is also unclear what exactly constitutes the Constitution's "basic structure." If you investigate it thoroughly, you can figure it out. A doctrinal researcher's job is more than just mechanical. He can use logic, ethics, and current requirements to infer a principle from the knowledge that is available in the research area. Out of several options, he chooses the best one. i. e., the one that best serves society's interests. In today's context, the doctrinal researcher must identify and propose the principles, rules, and regulations that can serve Roscoe Pound's concept of "social engineering" as well as the existing doctrines and principles of law in order to achieve social goals.

By applying the principle of review, revision, or overruling, the researcher, if a judge, can give the legal principles concrete shape and stability. This viewpoint can be supported by a number of examples, such as the cases of Shanker Prasad and Sajjan Singh, which were overruled by the Golak Nath case, which was then overruled in the Keshavanand Bharati case. In A. K. Gopalan's case, the Supreme Court also gave the right to personal liberty outlined in Article 21 of the Constitution a specific shape. However, the Court was convinced that the meaning and scope of the right to personal liberty have significantly expanded since its decision in A. K. Gopalan's case, so its scope was expanded in Menaka Gandhi and subsequent cases. Not only has the Court made changes to the Constitutional Law, but also to the Laws of Labor, the Laws of Criminal Procedure, and the Laws of Property. The courts have decided that the death penalty should only be used in the most exceptional of cases when the crime of murder is established. Life in prison is now the norm instead of the death penalty. Not only is it considered barbaric to execute the death penalty in public, but the person sentenced to death also deserves procedural fairness until the last breath of his life. As a result of the Court's recognition of the right to die, suicide attempts are now considered crimes. However, the Supreme Court recently ruled in Gyan Kaur v. State of Punjab and Others that attempting suicide is a criminal offense and reversed this decision. Doctrinal researchers usually come up with some concrete solutions to problems, but sometimes they don't work. This happens when the subject is growing quickly or when the research was just done to see if a proposition was logically consistent and technically sound.

Essential characteristics of doctrinal research

- 1) The analysis of a legal idea or proposition is the goal of this kind of research.
- 2) Doctrinal research can include legal propositions from enactments, administrative rules or regulations, and court cases.
- 3) Data is sourced from conventional sources.

Doctrinal research looks at the following issue.

- 1) The objective of preferable values
- 2) The difficulties posed by the gap between the policy goal and the state in which it is currently achieved.

- 3) The availability of thoughtful choice for achieving goals.
- 4) The outcomes and prediction that were made.

Basic tools of Traditional Researcher

A doctrinal legal researcher's fundamental tools are:

- 1) Statutory materials,
- 2) Case reports,
- 3) Standard textbooks and reference books,
- 4) Legal periodicals,
- 5) Parliamentary Debates and Government Reports, and
- 6) Micro films and CD - ROM.

It is possible to reclassify these tools as primary or secondary sources of information based on the information they contain. The National Gazette and Case Reports are included in the first group, while the remainder are included in the second.

Non - Doctrinal (OR) Socio - Legal (OR) Empirical Research

Doctrinal legal research, on the other hand, has recently experienced a significant jolt as a result of a shift in political philosophy of law from laissez - faire to welfare state that envisions socioeconomic transformation through law and legal institutions, the consequential new substantive and functional facets of law, and certain compelling pragmatic considerations arising from this metamorphosis.

The focus of non - doctrinal research is on facts. "takes either some aspect of the Legal decision process or the people and institution supposed by regulated law, " according to a legal researcher conducting non - doctrinal research.

Sociology of Law

Where does a doctrinal researcher obtain his or her social facts, values, and policy? The answer comes from his own experiences, observations, reflections, and research into what others have done in situations that are comparable to his own. However, if he has the chance to test his ideas using sociological data, it will undoubtedly add value to his research. To put it another way, the goal of the sociology of law is to use empirical data to find out how attitudes toward law and legal institutions affect society. The sociology of law also focuses on identifying and raising awareness of emerging issues that require legal intervention.

The author will use the term "sociology of law" or "socio - legal" for semantic reasons, since "empirical and sociological data" are the primary tools of a legal researcher. This is different from sociological jurisprudence, which requires a doctrinal researcher to be a sociological jurist because of the wide range of options available to him in today's world for deciding on values.

Although sociology of law has great potential, there are some caveats that must be taken into account here. First, sociological research takes a lot of time and money. "Socio legal research is more expensive and requires additional training; in addition, it necessitates significant time and effort investments in order to produce useful outcomes, either for the formulation of policies or theories.

The human affairs decisions. However, doctrinal research has value and utility because it cannot wait for the results of such studies and must always be made. As a result, "doctrinal legal research. . . has had the practical purpose of providing lawyers, judges, and others with the tools needed to reach decisions on an enormous variety of problems, typically with very limited time at disposal, " according to the statement.

Second, solid doctrinal research is essential for socio - legal research. "Law - society research cannot thrive on a weak infrastructure base of doctrinal type analyses of the authoritative legal materials, " according to Upendra Baxi, is a valid point.

The rationale is clear. The primary goals of the sociology of law are to demonstrate through empirical investigation. Improve the structure and operation of legal institutions, whether they are involved in the administration of the law, the enforcement of the law, or the resolution of disputes, as well as the substantive and procedural aspects of the law.

Thirdly, although sociological research can assist in the development of general theories, it appears insufficient when it comes to the development of the law from case to case and the resolution of specific issues. For instance, since "power corrupts and absolute power corrupts absolutely, " it is axiomatic in general theory that governmental powers must be checked, but too much checking could make the government ineffective. Because of this, when a case involving allegations of executive power abuse is brought before a court, pragmatic considerations should guide the decision - making process. It is not sufficient to theorize that either there should be insufficient control over governmental action or that there should be no control at all because the law regulating governmental action changes from case to case. In light of this, the following has been said about the ultra vires doctrine, which serves as the foundation for judicial review of writs:

The half - way review, whose scope is not always clear, creates uncertainty regarding judicial intervention in administrative action. The ultra vires doctrine provides a basis for judicial review between review in appeal and no review at all. Due to their strong convictions regarding the injustice of the situation at hand, the courts may at times consider intervening; They sometimes want to respect the administration's expertise and uphold the decision when they are unsure of the extent of the injustice. The author is unable to comprehend how sociological research can enhance the ultra vires doctrine's contents.

Fourthly, the role of the law in society is not only to conform to or follow public opinion, but also to lead it and shape it. Even though sociological research may be of some informational value to the decision - maker, when the law should follow one course or another may not always be answered based on sociological data but rather on one's maturity of judgment, intuition, and experience.

Fifthly, when proposing solutions to particular issues, we may once more fall back on our own preconceived notions, prejudices, and emotions due to the complex settings

(particularly relevant to economic data) and variable factors. For instance, there has always been the issue of government or non - government control over businesses. individual liberty or governmental authority, as well as private or public enterprise (or the efficacy or inefficacy of either); Science may not be able to provide answers to these fundamental questions for any society.

Kelsen states: For instance, "the issue between liberalism and socialism is, in great part, not really an issue over the purpose of society; rather, it is one as to the correct way of achieving a goal on which men are generally in agreement, and this issue cannot be scientifically determined, at least not today. "

Sixth, despite the fact that law - sociology research is relatively new, it is common knowledge that, despite the fact that this type of research has primarily been conducted in the United States, it has yet to demonstrate its potential for translating findings into legal propositions and norms. The failure to select subjects with such potentialities may have been one reason, among other things. Any information has some value, but if a lot of money is going to be spent on collecting sociological data, it might be best to focus on well - planned topics where the research could ultimately improve the law's content. Davis makes the following observations regarding research on decision - making: Many people, including Professor Grundstein, are interested in research on decision - making, and the amount of such research is staggering. A sizable volume is occupied by a single bibliography on research on decision making.

He further says

Concerning research on decision - making, the straightforward Behavioral Research Council concludes: Until the testing (and, in some cases, the stating of the theories in testable form) has been completed, little can be said about the field's utility. The major result in the field thus far has been the development of a variety of theories, the testing of which has only just begun.

The distinguishing characteristics of a non - doctrinal legal research are

- 1) It lays down a different and lesser emphasis upon legal doctrines and concepts,
- 2) It seeks answers to a variety of broader questions,
- 3) It is not anchored exclusively to appellate case reports and other traditional legal sources for its data, and
- 4) It invariably involves the use of research perspectives, research designs, conceptual frameworks, skills, and training not peculiar to law trained personnel.

Basic Tools

- 1) Empirical data can be gathered in a variety of ways for social - legal research. In a face - to - face interaction, the required information can be obtained from the identified respondents by administering a set of predetermined questions to them or by using sketchy questions that the respondent has prepared. The terms "interview" and "schedule, " respectively, are used to describe these data collection strategies.
- 2) The respondents can also be asked the predetermined questions indirectly via email, fax, post, or any other

suitable means of communication. The "questionnaire" method of data collection is this one.

- 3) The required data can also be gathered by systematic "observation" of a phenomenon, the behavior of his respondents or institutions that are the focus of his study, or by looking at other existing records that reflect the phenomenon under investigation by a socio - legal researcher.

The basic tools of data collection for a socio - legal research are

- a) Interview,
- b) Questionnaire,
- c) Schedule,
- d) Interview guide,
- e) Observation, participant or non - participant, and
- f) Published or unpublished materials

Demerits of Socio - Legal (or) empirical research

- 1) It takes a long time and costs money. For meaningful results, it requires additional training and a significant time and effort commitment.
- 2) A solid foundation of doctrinal research is required. A solid foundation of legal doctrines, case law, and legal institutions is essential for the researcher.
- 3) It does not do a very good job of solving the problem at hand; In a similar vein, when the law is to be developed case by case, it is ineffective.
- 4) It is not able to direct the law in a manner that would be useful.
- 5) Because acceptance of a new legal system in India is contingent on a variety of factors, including awareness, value, capability, and a pattern of adaptation, it cannot remain unaffected by human vices, upbringing, and thinking.

2. Conclusion

It goes without saying that "Legal Research" plays a crucial role in the enactment of new laws aimed at socio - legal development, enforcement, and the protection of society from social ills. In point of fact, legal research paves the way for law students and scholars to participate in the creation of new ideas and concepts in order to provide legislators with crucial support in acquiring them and enacting them as new laws for the benefit of society and the nation as a whole. Having conducted extensive research on the topic, I am convinced that the present presentation would serve as a starting point for the study and framework on legal research and the New Generation in preparation for the new golden era in law.