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Legal Research - Meaning, Definition and Types of Legal Research

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1. Introduction

The function of the lawyer is not only to know the law but, also to resolve conflicts when the law is not clearly knowable and prediction cannot be certain. The purpose of the law is not only for what it is but, also it ought to be as said buy the natural law philosophy. The purpose of the law is social engineering as said by the Roscoe found. The legal research must be founded upon the norms and standards to be followed in the society.

2. The Growth of Legal Research

In 1955 conference at the University of Michigan on aims and methods of legal research was organised the acceptance of responsibility for basic research figured again. In 1959, the conference on legal education at the University of Michigan was held the same theme of the responsibility of the law schools for research has promoted a rush of articles in periodicals such as the ,'journal of legal education' has been launched.

In December 1959 the Association of American law schools adopted a standard for member schools that affirmatively imposes responsibility upon faculty members;

a) To advance an ordered knowledge
b) Proclaims an obligation upon member schools
c) To assist its faculty to discharge this responsibility.

The recent growth of project research work with student's assistance [1] and the UGC sponsored major and minor research projects also playing an immense role in the field of legal research in the country. The happier trend in the legal research is the movement towards closer working relationship between legal scholars. In August 1956 the interdisciplinary work in law and behavioural science conference was held at the Centre for Advanced study in Behavioural Science, 11 social scientists represented including the law professors from Columbia, Pennsylvania, Stanford etc.

Corwin.D.Edwards [2] a economist has recently tried to trace the impact of cease and desist orders of the Federal Trade Commission'. The political scientists have begun to investigate the impact of judicial decisions. Murphy's 'Lower Court Checks on Supreme Court Power(53) and American Political Science Revision(1017) of 1959 and civil liberties and the Japanese American cases in 1958 stated about the principally decisions rendered by the US Supreme Court.

Richard Arens &Harold D. Lasswell [3] recently published a definitive treatment of the need for studying impact. The Sociologists are also making a contribution to the study of the legal order. [4] Morroe Berger [5] made an enquiry into legal attempts to control prejudice and discrimination is rich with suggestions of hypothesis for research.

The main hurdles and pitfalls of socio-legal research is a great deal of legal progress which the researcher will undertakes and explains the relevant juridical concepts, analyses statutory provision and picks out significant judicial dicta. The researcher also undertakes the multi and interdisciplinary linkages in legal research which relevant to the present conditions.

3. The Types of Legal Research

The legal research is different from other social science research in the manner of its application of legal language and legal idioms in legal writing. The researcher should undergo with the judicial pronouncements in interpreting and analysing the date with relevant legislations. The legal research also considered as social research but it differs from the scope and its ambit. The stability and certainty of law are the desirable goals and social values to be pursued, to make doctrinal research to be of primary concern of a legal researcher.

3.1 Doctrinal and Non- doctrinal legal research

The doctrinal legal research involves the analysis of case law, arranging ordering and systematising legal propositions. The study of legal institutions, the legal reasoning and rational deduction of the legal documents are the main concern of the doctrinal legal research. The judges did not create the law but, they merely declare it. The law is a normative science, which lays down norms and standards for human behaviour in a specified situation or the situations enforceable through the sanction of the State. The law regulates human conduct and relationship is the normative character.

Mc Conville &Wing [6] in their book, 'Research methods for law(2007) july,6th have divided the legal research into doctrinal and non-doctrinal research. The doctrinal legal research involves;

1) The analysis of the legal doctrine, how it has been developed and applied.
2) The tracing of legal precedent and legislative interpretation.
3) A critical conceptual analysis of all relevant legislation and case law.

4) The rules of statutory interpretation
5) The tacit discipline knowledge such as- the difference between civil and criminal law etc.
6) The various tests of liability along with the acknowledged reasoning methods
7) The borrowing if ideas from philosophy and logic such as induction and deduction etc.

Thomas S. Kuhn [7] had viewed the paradigms as a shared frame of reference among researchers. The paradigms will determine;
1) What topics are suitable
2) What methodologies are acceptable
3) What criteria may be used to judge success etc.

In 1987, the **Australian Pearce Committee** highlighted doctrinal as the category in its research taxonomy which provides;
1) A systematic exposition of the rules governing a particular legal category
2) Analyses the relationship between rules
3) Explains areas of difficulty and perhaps, predicts, and future developments.

The **Council of Australian Law Deans** states that, the doctrinal research at its best involves;-
1) Rigorous analysis and creative synthesis
2) The making of connections between seemingly disparate doctrinal stands
3) Challenge of extracting general principles from primary materials.

In 2006 **Martha Minow**, Dean of Harward law school had identified that, the doctrinal restatement as one of the main contributions of legal scholars to make within their research.

In 2011 **Rob Van Gestel &H.W.Micklitz** [8] had described the process in similar terms stating that in doctrinal work, arguments are derived from authoritative sources such as;
a) The existing rules
b) Principles
c) Precedents
d) Scholarly publications

The two outstanding examples of the creativity of doctrinal research are the law of torts and administrative law. The judicial control of administrative actions and the laissez faire to welfare state are the main areas of the doctrinal legal research.

According to Justice Holmes, the life of the law has not been logic, it has been the experience. The felt necessities of the time, the prevalent moral and political theories institutions of public policies are the life of the laws. The prejudices which judge's share with their fellow men had a good deal more to do than the syllogism in determining the rules by which men should be governed.

The legislature has given discretion to the courts to develop the law from case to case like;
a) Just and equitable- section 433 of the Companies Act,1956
b) Public Order-section 3 of Maintenance of Internal Security Act,1971
c) Inexpedient- section 7A of the U.P.Control of Rent and Eviction Act,1947
d) Reasonable opportunity of being heard- article 311 of the Constitution
e) Nullity of marriage
f) Excessive delegation of powers
g) Vicarious liability
h) Polluter pay principle

These are the area of doctrinal research the researcher may undertake in the field of law.

1.2. Non- Doctrinal or Empirical research

To obtain accurate information in the field of law the non-doctrinal research requires the field study as a matter of inquiry to the concerned subject matter in which the researcher has undertaken. According to Upendra Baxi, [9] 'Nor do we have much data on the social profiles of national and state legislator', how the information will be of qualitative value to law researcher. Some kinds of educational or professional test to be laid down to the legislators in the field of law like;-
a) Disciplinary proceedings against government servants- A case study
b) Administrative procedure in Conciliation Proceedings under Industrial Disputes Act,1947
c) Inter-state water disputes in India
d) Inter-state trade barriers and sales tax laws in India
e) Presidential Assent to state Bills-A case study

The above examples require the researcher to undergo some kind of field visit through questionnaire, interview, sampling methods etc.

4. The role of legal research in reforming the law

The role of law is to reform the society with positive impact and refine the society by removing the lacunas in the existing system. An eminent jurist opines that, the role of law is social engineering. [10]

4.1 Research as tool of law reform

The purpose of legal research is to make suggestions for improvements in the law on concrete and easily identifiable matters and the formulation of those proposals in precise terms. The principal end is to arriving at certain conclusions on the relevant aspects of the subject. To make proposals for law reform is no doubt occasionally found at the end of the study paper but they would not be the sole objective of the research. One can even describe these proposals as a bye-product of the research undertaken.

The major portion of legal research for the purpose of law reform is of three categories they are;-
a) Analytical- is concerned with what the law is
b) Historical- with its history and evolution
c) Comparative- with comparable position in other countries

The above types of legal research are depends on the nature of the subject, the status and quality of available official academic and other material.

According to Bruce. G.B uchanan and Thomas. E. Headrick [11] ' we know too little about the styles and structures of legal research strategies'. Therefore published materials on legal writing and research do not adequately recognise the importance of the research analysis.

The types of research needed in reforming the law

The law is a social science which requires the social methods of research which lacks the scientific methods of data collection and investigation. To reform the law is a difficult task to be undertaken by the researcher with the mode of fact findings through inquiry. The following methods can be followed by the researcher to make the legal research as fruitful to the society.

1) Statistical- collection of statistics to show the working of the existing law
2) Critical- finding out the defects in the existing law and suggesting reform. The criticism has to be based upon the followings;-
   a) Public opinion
   b) Reports of previous committees or other bodies
   c) Practical experiences
   d) Judicial decisions
   e) Academic literature
   f) Changed conditions
   g) Scientific developments
   h) Need for harmonization with other laws passed in the meantime's

5. Conclusion

The purpose of the law is to reform the social evils and to make the society to be free from exploitation. By undertaking legal research will benefit the society to cure the diseases existing in the society to ensure the open and welfare country. The legal research also helps the policy makers, students, to undertake further investigation and enquiry in the field of law to meet the contingence situations. Thus the legal research is a tool for reforming the law.

The legal research must be based on the current problems, issues; crisis where the urgent need of stability in the society is the priority must be highlighted by the researcher. The legal research should become a fruitful to the next researcher to concentrate on the issues not resolved by the earlier researcher. The ultimate result is to balance the society by applying the legal code of conduct.

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