

TOWARDS UNDERSTANDING NUANCES OF LEGAL RESEARCH¹

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“If we dig in the garden we use a spade. If we search for oil, we employ a rockdrill. In other words, the choice of tools depends on the depth to which we intend to probe.”²

Abstract- All sciences, including social sciences(jurisprudence), are in reality a culmination of the process of research. It is a continuous process and helps to identify and understand the issues better and find suitable solutions thereto. Research may, however be formal or informal, doctrinal or non-doctrinal, but to be effective it has to be methodical and a researcher should have requisite acquaintance with the problems and technique, failing which the desired goals may not be achieved. The study of law is closely associated with legal research. “Legal research serves as an indispensable foundation for the entire legal community, including practitioners, the judiciary, academic scholars, and students. It is a fundamental skill required to navigate the complexities of the law and ensure that legal arguments and decisions are grounded in sound evidence”³. Much has been written on the techniques which researcher in law should follow to achieve both depth and clarity. The aim of this paper is to focus on the essential elements of legal research. The primary objective of this study is

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² Geroqe Schwarzenberger,” Reflections on the Law of International Institutions”. 13 Current legal Prob. 276 at 289(1960)

³ Otuturu, Gogo George, Legal Research Methodology: Major Stages in Legal Research

to facilitate the comprehension of legal research techniques to researchers and especially to the students the practical 'know-how' and theoretical insights necessary to understand the complexities of legal methodology.

In general, Research is defined as the systematic collection of information used to test specific assumptions or validate theoretical hypotheses. It functions as a rigorous inquiry aimed at either confirming new theories or expanding existing knowledge by introducing fresh data. Fundamentally, no research is entirely isolated or "new"; instead, all original discoveries represent a continuation of previous investigations, serving to support, challenge, or supplement existing academic work.

Keywords- *information, evidence, data collection, enquiry, knowledge*

Types of legal research

a. Doctrinal and non- doctrinal legal research

Doctrinal research primarily focuses on the legal rules, doctrines and principles. It is solely library-based research and fundamentally analyzes statutes, case laws and legal principles to find out *what is the law?* At the other hand non-doctrinal research is empirical or socio-legal research that focuses the impact of law on the society. The significance of doctrinal research extends beyond the mere categorization and analysis of judicial precedents and institutions; it is a creative force that shapes the law through the application of logic and rational deduction. Historically, even during the era of analytical positivism—when it was argued that the judiciary merely "discovered" rather than "created" law—significant judicial innovation was occurring. The historical development of the common law system serves as a primary example of how judges function as active law-makers. As

mentioned by Justice Cardozo⁴, that “law or legal propositions are not final or absolute but are in the state of becoming”. He quotes Munroe Smith:

“The rules and principles of case law have never been treated as final truths, but as working hypothesis, continually retested in those great laboratories of the law, the courts of justice. Every new case is an experiment; and if the accepted rule which seems applicable yields a result which is felt to be unjust, the rule is reconsidered. It may not be modified at once, for the attempt to do absolute justice in every single case would make the development and maintenance of general rules impossible; but if a rule continues to work injustice, it will be eventually be reformulated. The principles themselves are continually retested; for if the rules derived from a principle do not work well, the principle itself ultimately is re-examined.”⁵

The two outstanding examples of the creativity of doctrinal research are the law of torts and administrative law. About the latter, for instance, it has been remarked:

“The creation of a body of law where none had hitherto existed is a social achievement. It is an achievement not to be under-estimated. It also serves as a reminder that at particular periods in the history of law the creative working out of legal doctrine is both necessary and critical and justifiably a paramount concern of legal research”.⁶

With the emergence of the sociological school. The creative role of lawyers and judges has come to be recognized explicitly. As propounded by Justice Holmes:

⁴ . in his work *The Nature of the Judicial Process*

⁵ . Quoted in *The Nature of the Judicial Process* 23 (1921).

⁶ N D Grundstein,” *Administrative Law and the Behavioral and Management Sciences*”, 17 J legal Ed

“The life of the law has not been logic: it has been experienced. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconsciousness, even the prejudices which judges share with their fellowmen, have had a good deal more to do than syllogism in determining the rules by which men should be governed”.⁷

“The task of law as that of social engineering has come to be accepted as a dogma by the civilized societies all over the world including India. The chapters on fundamental rights and directive principles of state policy of the Constitution of India embody this philosophy. The concern of law as an instrument of economic and social justice has grown to such an extent that there is hardly any human conduct which has been left untouched by law. Thus, it can be concluded that the Doctrinal legal research has had the practical purpose of providing lawyers, judges and others with the tools needed to reach decisions on an immense variety of problems, usually with very limited time at disposal”.⁸ Whereas the non-doctrinal research is concerned with the action of law and its impact on the society. To identify the gaps between the law and practice. For e.g. “The Muslim Women (Protection of Rights on Marriage) Act, 2019” criminalized the practice of instant triple talaq the non-doctrinal research will help to find out its impact on the society at large. To examine the fact whether the enactment in real has brought down the practice of instant divorce in India. Hence, we can conclude that the purpose of law is simply not to mirror or adjust to the public opinion when identifiable, but also to guide and transform public opinion.

b. Analytical research

⁷ Oliver Wendell Holmes, *The Common Law* 1(1881)

⁸ Vilhem Aubert(Ed), *Sociology of Law* 9(1969)

This research aims primarily at an exploration of what is the existing law. Where the law to be reformed consists of statute law, this research would mainly means locating the relevant statutes. “At the central level, the relevant statutes would generally consist of central legislation, read, of course, with the relevant case law. However, very often state legislation on the particular subject may also have to be consulted”.⁹ A good research would, therefore, be expected to cultivate reasonable familiarity with the scheme of distribution of legislative powers between the Centre and the states under the Constitution. A good researcher is a person who is also well versed with the exceptions of the Statutes for e.g. both Hindu law and Muslim law, the overriding importance of custom has been well recognized for about a century. “In Hindu law, customs which are at variance with the Shastric law can still override the specific texts (in absence of a statutory provision), if they are valid customs. The Hindu Marriage Act 1955, for example, expressly preserves the validity of custom to a limited extent”.¹⁰ On the matters of personal law (these are the matters that very often come up for law reform) the legal researcher is expected to undertake a preliminary enquiry in this regard (i) the extent to which a particular statute on the subject has preserved the customary law, and (ii) the actual content of the customary law relevant to the topic under consideration, assuming that its operation has been preserved.

c. Historical Research

Historical legal inquiry is not merely a task of cataloging past rules for intellectual satisfaction or record-keeping¹¹. Instead, it serves as a critical

⁹ P.M.Bakshi, “Legal Research and Law Reform”.

¹⁰. Section 29 of the Act

¹¹ Nasution & Manurung, 2025, Introduction, Function, and Purpose of Legal History: A Conceptual and Practical Review, Journal MUDIMA

analytical tool when contemporary statutes or legal principles present complex queries that require an exploration of their developmental origins¹². Frequently, investigating historical data reveals the underlying rationale for the specific phrasing or structure of current provisions, which can resolve ambiguities or provide a justification for laws that might otherwise seem obscure.¹³

Furthermore, this method can uncover past debates where certain legal alternatives were considered and subsequently rejected, offering insight into why modern reforms might succeed or fail¹⁴. It also highlights when a provision that was once justifiable has lost its validity due to shifting social or political contexts. Thus, historical research extends beyond "pure law" to include traditional sources and factual materials that offer a broader perspective on the evolution of legal thought.¹⁵

d. Comparative Research

Scholars have expressed different view on the definition and scope of comparative law research. As per Professor H.C. Gutteridge¹⁶, "Comparative law denotes a method of study and research and not a distinct branch of department of law". Some scholars for their convenience have coined an expression "applied comparative law" an expression that was long ago used by eminent criminologist in his study of habitual criminals".¹⁷ In present

¹² P. Ishwara Bhat, *Historical Legal Research: Implications and Applications*, Oxford University Press

¹³ Nasir Majeed, *Doctrinal Research in Law: Meaning, Scope and Methodology*, Bulletin of Business and Economics (BBE)

¹⁴ Ibid

¹⁵ Dmitry Pashentsev, *Conceptual Foundations of Historical and Legal Science: From Classical Traditions to Modern Innovations*, Journal of Russian Law

¹⁶ *Comparative Law* (1974 reprint)

¹⁷ Norval Morris, *The Habitual Criminal* 227(1976 reprint)

day this research has gained a lot of significance and impetus. Legislature across the globe imitate each other while trying to learn from each other's experience. The old name of comparative research method was comparative jurisprudence.

Major steps involved in research

The steps involved in research can broadly be divided into six categories. These are: “(i) A statement of purpose made in the form of formulation of the problem. (ii) A description of the study designs. (iii) Designing of the technique of sampling. (iv) Specification of the methods of data collection. (v) classification and tabulation of data. (vi) Conclusion and interpretation i.e. report writing”¹⁸

(i).Formulation of the problem- The philosophy of formulation of problem can be understood by an analogy which says, “a problem well put is half solved”. A formulation of problem can be done by framing the problems in the form of common-sense questions. The initial phase of any scholarly investigation—the formulation of the research problem—is widely regarded as the most challenging yet critical stage of the entire enterprise. Defining a precise question requires significant intellectual patience, as a poorly articulated problem often leads to insignificant or meaningless results. In many ways, the act of correctly framing a problem is more intellectually demanding than finding its eventual solution.¹⁹

a. Distinguishing Social Problems from Research Problems-It is essential to differentiate between a "social problem" and a "research problem." While a social problem is defined by the specific values and grievances of a community, a

¹⁸ Alphonse, N. (2023). The Main Stages of the Research Process , *International Journal of Research and Review*, 10(7), 671–675.

¹⁹ Holweg, WHY THERE IS NO “INSIGNIFICANCE” FOR A RELEVANT QUESTION, *Journal of Supply Chain Management*

research problem is an academic construct shaped by the investigator's analytical framework. For instance, a phenomenon like an increase in crime may be a practical "social problem" for law enforcement or social workers, but it only becomes a "research problem" when a scholar formulates it to test a specific theory or investigate a particular variable.

b. The Subjective Factor and Intellectual Experience - A common critique in social science research is the reliance on externally assigned problems—such as those given by supervisors or editors—rather than problems emerging from the researcher's own intellectual or lived experience. Selecting a topic based solely on external lists can lead to "bogus" or superficial research. Ideally, a research problem should be rooted in the researcher's inner curiosity and personal goals, as this "touchstone of experience" often yields more meaningful and sustainable academic contributions.²⁰

c. Methodological Approaches: Deductive vs. Inductive

There are two primary paradigms used to structure the formulation of a research problem:

The Deductive Approach: Rooted in positivist epistemology, this "top-down" method begins with established theoretical premises. The researcher derives a set of specific hypotheses a priori and then collects empirical evidence to validate or refute them. This approach necessitates a structured research design, including defined variables and representative sampling.

The Inductive Approach: Conversely, the inductive method emphasizes a "naturalistic examination" of the social world. Rather than starting with a

²⁰ Maxwell, 2009; "Qualitative Analysis and Documentary Method: In International Educational Research," 2010

hypothesis, the researcher enters the field with an open mind to acquire a deep familiarity with the subject. As the inquiry progresses, the focus is sharpened, allowing the research problem and eventual theory to emerge directly from the empirical data

Whereas research questions are the precise and explicit questions that a researcher seeks to find out through his study. These research questions are derived from the formulated problem only. The purpose of problem formulation is to explain and elucidate the issue whereas research questions split that issue into precise inquiries for investigation.

ii. A description of study design or research design

“Broadly speaking research design refers to the visualization of the entire process of conducting empirical research before its commencement. It is possible to design a research project beforehand if the investigator is aware of the major stages and techniques in conducting research and of the purpose of the investigations. Although in its complete formulation every research design is unique, it resembles all other design in the broad outline of conducting research. On the other hand, research design aimed at fulfilling different research purposes differs from one another in some of their salient features”.²¹

iii. Design of sample

A vital phase in socio-legal studies is the selection of a representative sample²². Because it is often physically and financially impossible for a researcher to conduct a census—contacting every individual affected by a social issue—

²¹ Victor S . D’Souza, Designs of Study in empirical research

²² Kalpana V. Jawale, Methods of Sampling Design in the Legal Research: Advantages and Disadvantages, Online International Interdisciplinary Research Journal, 2012

sampling becomes a practical necessity.²³ For instance, a social inquiry into dowry legislation would require an overwhelming investment of time and capital if every citizen were interviewed.²⁴

Moreover, identifying every member of a specific population is frequently unfeasible.²⁵ The primary advantage of utilizing a probability-based sample is its ability to produce highly accurate results while significantly reducing the expenditure of time, money, and labor.²⁶

iv. Sources of data collection

The primary tools utilized in social surveys are the schedule and the questionnaire.²⁷ While these instruments are fundamentally similar in nature, they differ in their administration: a schedule is typically used during direct interviews where the researcher records the answers, whereas a questionnaire is usually distributed to respondents who complete and return it independently.²⁸

For qualitative or in-depth studies, researchers often employ an interview guide, which outlines broad thematic headings rather than rigid questions. Regardless of the tool chosen, the objective is to use a standardized format to ensure the data collected remains objective and consistent across the study.

v. Classification and tabulation of data

Before information gathered through interviews or observations can be interpreted, it must be organized into a structured format. In its raw state, data is often

²³ Fricker, *Sampling Methods for Web and E-mail Surveys*, SAGE Publications Ltd eBooks 2008

²⁴ Rahman, *Sampling Techniques (Probability) for Quantitative Social Science Researchers: A Conceptual Guidelines with Examples*, SEEU Review 2022

²⁵ Ibid

²⁶ Ibid

²⁷ Otuturu, Gogo George, *Legal Research Methodology: Major Stages in Legal Research*

²⁸ Ibid

disorganized and unsuitable for drawing meaningful inferences. The process of classification involves grouping these raw findings into specific categories based on their similarities or functional relationships, allowing for a coherent analysis the object of the classification are; (a) to express the complex and scattered facts into concise and intelligible form. (b) to make points of similarity and dissimilarity clear;(c) to afford comparative study;(d) last but not the least to clear any ambiguity.

There are two types of classifications: Qualitative classification or classification according to the attributes; and quantitative classification or classification according to the variables.

vi. Report writing

The culminating stage of the research process is the formal preparation of a comprehensive report .²⁹This final phase begins only after the gathered data has been systematically analyzed and interpreted—frequently employing statistical methods—to establish broader generalizations and findings. ³⁰The fundamental objective of this report is to provide stakeholders and interested parties with an in-depth account of the study's outcomes.³¹

Furthermore, the research report serves as a vital tool for the broad dissemination of knowledge, ensuring that the findings are available for wider academic and practical application). Importantly, the documentation of these results acts as a catalyst for future intellectual inquiry; by presenting a clear synthesis of the current findings, the report establishes the necessary framework for formulating new hypotheses and initiating further research into related legal or social issues.

²⁹ Otuturu, Gogo George, Legal Research Methodology: Major Stages in Legal Research

³⁰ Nasir Majeed, Doctrinal Research in Law: Meaning, Scope and Methodology

³¹ Ibid

The Role of Logical Reasoning in Jurisprudence

Logic is concerned with the general and formal principles of valid reasoning. Logic in the legal field is concerned with the specific principles that ensure sound reasoning and valid decision-making. The existing body of legal materials forms a complex framework used to evaluate legal inferences.³² However, legal systems are inherently "open-textured," meaning they are not entirely consistent or closed systems; they allow for the creation of new principles and the evolution of old ones.

This flexibility suggests that judges are not merely mechanical tools for deriving conclusions, but active participants who exercise a creative function, especially when competing rules apply to the same facts. The challenge for normative jurisprudence is to establish rational standards that guide this judicial creativity while maintaining the integrity of the legal system.³³

Conclusion

In the words of Philip Selznick, "the major problem of legal sociology remains the integration of jurisprudence and social research. Unless jurisprudential issues of the nature and functions of law, the rotation of law and morals, the foundations of legality and fairness, and the role of social knowledge in law are addressed by modern investigators the sociology of law can have only peripheral intellectual importance". Legal research in itself not only benefits the researcher but also to the society at large in the words of Mr. Justice Holmes, "A man may live greatly in the law as elsewhere, that there, as well as elsewhere, he may wreck himself upon

³² Timoshina, Kraevsky, Law and Logic: E. Bulygin's Deductive Pattern of Judicial Reasoning, 2021

³³ Baldini, Benedetto, The open texture of 'algorithm' in legal language, AI & Society, 2024

life, may drink the bitter cup of heroism, may wear his heart out after the unattainable”.³⁴

Again, it is research that brings to us the awareness that the law is a flowing river, never standing still though it may have the outward appearance of a placid lake. As Wigmore has pointed out: “To any student, it is an important intellectual stage when he first realizes that all law is in a state of constant motion like kaleidoscope- do not remember when this realization came to me. I know it was not while in the law school; but as I look back, I note a great difference in ‘all my opinions about law since the time of that realisation’.”³⁵

³⁴ Quoted by Sol M. Linowitz, “Our changing society: The Lawyer’s Challenge”, 54 ABAJ 445, 450(1968)

³⁵ John H. Wigmore, “Nova Methodus Discendae Decendaeque Jurisprudentiae” XXX Harv L Rev 812 at 823(1917)