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Production of Courseware  
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Paper : RESEARCH METHODOLOGY

Module : LEGAL RESEARCH





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### DESCRIPTION OF MODULE

Items	Description of Module
Subject Name	Law
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## LEGAL RESEARCH

**Research** *noun* investigation, inquiry, study, analysis, probe, review, examination, exploration, inspection, scrutiny, assessment, testing, fact-finding, experiment, experimentation, groundwork, documentation, *verb* investigate, inquire into, look into, inspect, probe, search, assess, review, study, analyse, examine, explore, scrutinize, test, experiment with.<sup>1</sup>

### Prologue

The idea of research puzzles us and seems to be an insurmountable task at times, but the reality is that we do it all the time. It is going on around us, every day. Many of us will at some point participate in some or the other enquiry. May it be about a recipe, a preferred brand of clothes, or even as to whom one plans to vote in the elections. Even when some may choose not to participate in the research, still results outcome do have an impact indirectly upon people. Policy decisions, laws, are based on research findings. The research is done in the universities, policy think-tanks who suggest the findings based on a systematic process and informs the policy makers about the desirable changes. Hence it is of incredible importance to people. It can be

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<sup>1</sup> See Rosalind Fergusson, Martin Manser, David Pickering (eds.) The New Penguin Thesaurus, Penguin Books, (2000) at 496.



easily imagined that research touches every area be it law, be it marketing, technology be it even food habits.

### **Learning Outcomes**

The module has a primary objective of introducing the audience to a broad overview what?, how? and why? of legal research. That highlights some characteristics with an intention of introducing legal research to non legal researchers and intends to serve as a first step towards an enduring enterprise, that is, legal research which is rewarding, fulfilling and beneficial not only for the researcher but even the society at large.

### **The Road Map**

1. Research: What does it mean?
2. The Purpose of Research.
  - 2.1 *To contribute to knowledge in a specific discipline.*
  - 2.2 *To inform policy making.*
  - 2.3 *To address a specific problem or question.*
3. Legal Research.
4. Purpose of Legal Research.
  - 4.1 *Ascertaining the Law.*
  - 4.2 *Highlighting Ambiguities and Gaps.*
  - 4.3 *Determining Coherence, Stability and Consistency.*
  - 4.4 *Social Auditing of Law.*
  - 4.5 *Suggesting reforms.*
5. Broad Nature of Legal Research
  - 5.1 *Quantitative Legal Research.*
  - 5.2 *Qualitative Legal Research.*
6. Kinds of Legal Research
  - 6.1 *Descriptive and Analytical Legal Research.*
  - 6.2 *Applied and Pure Legal Research.*
  - 6.3 *Quantitative and Qualitative Legal Research.*
  - 6.4 *Conceptual and Empirical Legal Research.*
7. Other Major Methods of Legal Research
  - 7.1 *Doctrinal Legal Research.*
  - 7.2 *Non-Doctrinal Legal Research*
  - 7.3 *Comparative Legal Research.*



8. The Process of Legal Research
  - 8.1 *Choosing a focal point of Research.*
  - 8.2 *Review of Literature.*
  - 8.3 *Formulation of Hypothesis.*
  - 8.4 *Research Design.*
  - 8.5 *Data Collection.*
  - 8.6 *Data Analysis.*
  - 8.7 *Interpretation of Data.*
  - 8.8 *Report.*
9. Sources of Information
  - 9.1 *Primary Sources.*
  - 9.2 *Secondary Sources.*
10. Major Problems in Legal Research
11. Conclusion

### **1. Research: What does it mean?**

A term can be best understood with reference to the purpose it seeks to achieve. The purpose of research is either to know about or to contribute something new to the existing state of knowledge. The former can be described as the ‘disinterested search for knowledge and understanding for its own sake’<sup>2</sup>, while the latter is an application based approach to the problems in the real world. The prefix *re* before research signifies a continuum which verifies or supplements existing knowledge. It involves a systematic, careful, diligent and thorough investigation into a specific question with a primary objective of contributing to the existing knowledge. A directionless, unspecific, unsystematic and mere surface brushing would give us results that cannot reveal realistic outcomes.

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<sup>2</sup> See David Wilkinson (ed.) *The Researcher’s Toolkit*, Routledge, (2000) at pg. 2



## 2. The Purpose of Research

Apart from general understanding, of knowing that is, pure, basic or fundamental research or to find something new as in form of a solution that is applied or action research, putting in broader terms a research fulfills one or more of the following objectives:

*2.1 To contribute to existing knowledge in a discipline (for example, law).*

Research can give us new set of perspectives at looking at things. For example, historical events are continuously revised and reviewed on the basis of research. Therefore, the version of history might not be the same for two different set of generations. Given that many of us would believe them to be unchangeable given they are facts but still it can be argued that they can be viewed from a different lens. This had a positive impact on existing state of knowledge in a particular discipline, in the sense that it expands its horizons.

*2.2 To inform policy making (for example, crime, housing, education).*

Research also informs policy questions. For example, research can be used to address socio-economic issues say education as to how it can be given a direction as to ensure growth in a nation, or say as to how to best avoid food wastage and can there be a space for law to tackle these issues? These kinds of researches inform policy making which ultimately reflects in the law and decision making.

*2.3 To address a specific issue or question (for example, substance abuse in campus).*

Research findings are also used to answer a specific issue at hand. It stemmed from the concerns that the conventional researches were not having much impact and, thereby, new approaches that were seen as being more relevant and practical in the real world settings were developed. It can be action research which is both diagnose a specific issue and attempt to solve it, thereby, to improve practice in some way. Also it may be evaluation which assesses the existing state of affairs in an era wherein the accountability has increased. That requires a constant reassessment about the worth or usefulness of a particular service, policy or other intervention.

## 3. Legal Research



Taking a cue from the discussion above legal research can be understood as a systematic finding or ascertainment of law on an identified topic or in the given area as well as an inquiry into law with a view of making advancement in the science of law.<sup>3</sup> This is not an easy task to find the law in a vast mass of statutes which are constantly amended and supplemented by rules regulations, orders, directives, ordinances, judgment of courts, and bye-laws. Also for making advancement in the science of law requires a systematic probe into the underlying principles of and reasons for law. Thus, legal research has a broad ambit to it. It has to be continuously done by legislators, a judge, a lawyer, a law student and a law teacher.

#### 4. Purpose of Legal Research

Law does not sit in a vacuum instead it operates in a complex social context. It reflects attitudes and behavioral norms, and also control and mould them. However as these norms are also temporo-spatial, that is changing with time and space, it is desirable that law has to adapt and be dynamic in order to cope with the changes. Thereby, legal research becomes essential for ascertainment of law, to point out ambiguities and weaknesses of law, to critically examine the laws in order to ensure coherence, consistency and stability of law and its underlying policy, to conduct a social audit of the law, and to suggest reforms in the law<sup>4</sup>. Taking them one by one:

##### 4.1 *Ascertaining the law*

In a complex mass of legal statutes and coupled with allied legal material it is not always easy to find the law on a particular point. They are scattered and a single issue may involve application of various laws. Judicial pronouncements add to the complexity. A researcher needs to locate, analyze and understand these pronouncements. So the process involves an intensive analysis of legal instruments and judicial pronouncements.

##### 4.2 *Highlighting ambiguities and gaps*

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<sup>3</sup> S.N. Jain, *Legal Research and Methodology*, 14 *Jr. of Ind. L. Inst.* 487 (1990) at 490.

<sup>4</sup> See P.M. Bakshi, *Legal Research and Law Reforms* in S. K. Verma and M. Afzal Wani, (eds.), *Legal Research and methodology* (Indian Law Institute, New Delhi, 2<sup>nd</sup> Ed., 2011 ) at 111.



A law is not designed to address every contingency that might arise in future. Because it's the nature of law that it is reactive it answers to problems which had arisen and seldom is it that it is proactive. Secondly even the phraseology of a provision may not fit with the legislative intent or may not match with other provisions of the Act. Research highlights these gaps and inbuilt ambiguities.

#### *4.3 Determining coherence, stability and consistency*

Via a process of critical evaluation of the law a researcher can exhibit the consistency, coherence and stability in the law. This helps in future designing and development of law, legal provision or doctrine, as the case may be.

#### *4.4 Social auditing of law*

It's a pre-legislative step done in order to understand and appreciate the social factors that had an impact on the making of the law. It enables one to know the stakes the law intends to protect or change and reasons for the same. Such an audit helps to identify gap, if any between the legal ideal and the social reality and to know the reasons responsible thereof. It also enables us to predict the future of law.

#### *4.5 Suggesting reforms*

In the light of the research reforms can be proposed in precise terms. These outcomes can be on the basis of an analytical, historical and comparative research.

## **5. Broad Nature of Legal Research**

On the basis of data collection and analysis two broad categories can be used to describe different approaches:

### *5.1 Quantitative Legal Research*

The quantitative research is characterized with surveys, structured interviews, experiments, tests as tools for data collection. It produces data which can be made subject to statistical analysis. So the findings can be presented in numerical forms. For example, a questionnaire asks respondents to tick the appropriate box in order to answer the question as to whether they agree or disagree with a particular proposition. This gives an opportunity to the researcher to quantify the data and calculate how many people made a particular point.

### *5.2 Qualitative Legal Research*



Participant observation, unstructured interviews, or life histories are some of the qualitative research methods. The outcome is presented in the form of descriptions. The reason it became important was the feeling that quantitative research does not take into account the differences between people and the objects of natural science.<sup>5</sup> It seemed to be artificial and distant from everyday life that the findings might not represent the reality. These led many researchers to adopt more qualitative methods which allow researchers to get closer to the people they were investigating.

## 6. Kinds of Legal Research

The basic types of research can be broadly classified in various subsets wherein they can be understood in comparison with another kind of research. Those are:

### 6.1 *Descriptive and Analytical Legal Research*

The former describes the state of affairs as it exists. It describes the phenomenon, reporting what has happened or what is happening, without going into the reason or cause for the same. The tools used are surveys, comparative and co-relational methods and fact-finding enquiries. But it does not establish any relationship between the variables. The analytical research however uses the facts and information available to make a critical evaluation.

### 6.2 *Applied and Pure Legal Research*

The aim of the former is to find a solution to a pressing practical problem at hand. Research is putted in a practical context. The latter focuses on generalization and formulation of a theory. Its aim is to broaden the understanding of a particular field of investigation. The researcher does not focus upon the practical utility of the results

### 6.3 *Quantitative and Qualitative Legal Research*

As mentioned the former is about quantity or amount, that is, what can be expressed in numerical form of results. The latter however aims at garnishing views and opinions to give outcomes. It relies on reasons behind a particular behavioral aspect.

### 6.4 *Conceptual and Empirical Legal Research*

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<sup>5</sup> Shipman 1985:11





The conceptual research is related with an abstract notion or an idea. Generally resorted to by the philosophers and thinkers to develop new concepts or re-interpret the existing concepts. The latter however relies upon experience and observation alone. It is data based, coming up with results that can be verified by observations or experiments.

## **7. Other Major Methods of Legal Research.**

The other major methods used in legal research are:

### *7.1 Doctrinal Legal Research*

The central question of enquiry here is ‘what is the law?’ on a particular issue. It is concerned with finding the law, rigorously analyzing it and coming up with a logical reasoning behind it. Therefore it immensely contribute to the continuity, consistency and certainty of law. The basic material can be found in the statutory material i.e. primary sources as well in the secondary material. However, the research has its own limitations, it is subjective, that is limited to the perception of the researcher, away from the actual working of the law, devoid of factors that lie outside the periphery of law, and fails to focus on the actual practice of the courts.

### *7.2 Non-doctrinal Legal Research*

Also known as socio-legal research, it looks into how the law and legal institutions moulds and affect the society. It employs methods taken from other disciplines in order to generation an empirical data to answer the questions. It can either be answering a problem, like to find the gap between idealism and social reality, could be tracing the results legal decisions, also can assess impact of non-legal factors upon legal processes or decisions, or may be a reform based approach. It is about viewing law from the perspective of a different discipline to keep it organic and growing, that is, to put things in a context. Being empirical it is vital and valuable in revealing and explaining the legal practice and procedures and their impact on range of social institutions, like family, businesses, citizens, consumers.

### *7.3 Comparative Legal Research*

This involves a comparison of legal doctrines, legislations vis-a vis foreign laws. It highlights the cultural and social character of law and how does it acts in different



settings. So it is useful in developing and amending, and modifying the law. But a cautious approach has to be taken in blindly accepting the law of another social setting as an ideal because it might not act in the same manner in a different setting.

## 8. Source of Information

The various sources of information can be classified into:

### 8.1 Primary Sources

The sources that contain authoritative records of law made by law making bodies is a primary source. They can be legislation, rules, regulations, orders, bye-laws by delegated authorities, and the authoritative decisions of the courts.

### 8.2 Secondary Sources

The secondary sources are the one that refer and relate to the law while not being themselves primary sources, for example, legal commentaries, abstracts, dictionaries, encyclopedia and index.

## 9. Process of Legal Research

Research is a process involving backward and forward movement between different stages so they cannot be as neatly separated. Nevertheless, they can be divided into the following for understanding the different stages:

### 9.1 Choosing a focal point of Research

Identifying and formulating a research problem is the first step in the process. If ill-defined and not properly formulated the researcher is bound to lose interest in the research. The researcher has to have a precise goal in sight. For that purpose it is necessary for the researcher to identify an area of general interest from that field an area of specific interest and within that area of specific interest a particular aspect that he would like to inquire into. That would signify the focus and direction of his inquiry. That has to be based on study done from the secondary sources like a commentary, a scholarly article, like Blackstone's Commentaries on the Laws of



England. Secondary sources would point a researcher to the primary sources of the law namely, legislative texts and judicial decisions.

### *9.2 Review of literature*

That is necessary because it would make the results to be both valued and valuable. It is a survey of the existing related works in order to find out as to what has already been discussed on the particular aspect; it will also give an understanding as to what has not been discussed. The researcher's aim is to contribute something new to the existing state of knowledge so therefore he has to choose from the latter area. This also justifies his research and makes it an original contribution. It also helps in avoiding the possible pitfalls, and informs areas that might have been neglected in the research questions.

### *9.3 Formulation of Hypothesis*

On the basis of an extensive literature survey, a researcher might rephrase or reformulate the problem. That can be depending upon the nature of research can be in the form of a mere statement or a proposition indicating relationship between variables, the validity of which is not known. Such propositions are known as hypothesis. So it is a tentative statement the validity or invalidity of which has to be tested on the basis of research. The manner in which it is formulated gives a hint of methods required, kind of data needed and the method of analysis required for the research.

### *9.4 Research Design*

It signifies the structure of the research. It is characterized by a logical systematic planning of the research, a blue-print. Though it may be tentative, as the researcher cannot foresee all the contingencies that might arise and thus he can adapt as required which would increase the efficiency and reliability of his findings.

### *9.5 Data Collection*

It involves decision making as to the method to be employed to collect the data. That determines the fate of the research. For determining the appropriate method a researcher has to keep in mind the objectives of the research and the scope of the inquiry. Data may be primary or secondary. Data collected by primary sources is primary. While one collected from some other agency or available in some published form is secondary. A data has to be relevant and authoritative that would primarily depend upon the scope and focus of the research question.



### *9.6 Data Analysis*

The next task after collection of data is its analysis. The raw data has to be putted to analysis so as to reflect the direction and trend. Analysis happens before interpretation. There is no clear cut demarcation between the two as analysis is not complete without interpretation and interpretation cannot precede analysis. They are thus interdependent. Analysis involves processes like classification and categorization (arranging data in classes according to their resemblance or affinity), coding (assigning symbols or numerical to every class so that it can be counted or tabulated), and tabulation (arranging data in requisite rows and columns, this can show relation between variables and also facilitate comparison). In a legal research cases are also required to be analyzed, however, with a caution that two different set of facts can lead to different outcomes, or may be for the reason that an earlier case law can be distinguished on the basis of question of law raised.

### *9.7 Interpretation of Data*

It is drawing inferences from the collected data. That can be inductive or deductive. Inductive is inference from particular propositions to general propositions, while deductive is inferences from general proposition to particular propositions. The interpretation gives the broader meaning to research findings and as well trigger new researches. However, caution must be exercised in interpreting the data it needs to be impartial and objective. A wrong interpretation can lead to inaccurate and misleading conclusions.

### *9.8 Report*

The last phase is report writing. Though, this he communicates his work to the audience. Report contains significant facts, those are the problem, method used and the findings arrived at by the researcher. It has to be original and with precise clarity in communicating the results.

## **10. Major problems in Legal Research**

The major problems while undertaking a legal research are as following:

1. Cultural problems
2. Structural and procedural problems (for example, unsympathetic attitude of authorities.)



3. Lack of resources, (for example, Access, money etc.)
4. Incompetence (For example inadequate planning etc.)
5. Lack of networking and forums

## 11. Conclusion

Legal research is a systematic understanding of the law with a view of its advancement. The purposes of the same are very important to the people and society because law acts within the society and they both had an impact on each other. Every kind of research method had its own value. However, while undertaking a research a researcher might face some hurdles but they can be avoided by proper planning of the research process.

