

## 4. Analytical Study of Legal Research

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### 4.1 Abstract:

The word 'research' is derived from the word 'recherch', which is French. It means that, 're' indicate the 'again' and 'search means to test or examine. In other word, research means to search for new facts or modify the old or existing facts. While doing research in any area, it requires the careful and systematic study along with, the critical inquires, diligent investigation to discover something. The 'legal research' means the organized investigation of problems or situation and concerned with laws thereof. The term 'law' is wider in nature and it includes the various Acts, Rules, Regulations, Codes, and Constitution etc. The legal research take into account the social and behavioral phenomena and try to discover new legal facts as well as makes the verification of previous one, to give suitable solution to the legal problems. The legal research work has played and playing very crucial role in the development of human being and society. Law being an instrument of social change, whenever, legal research take place, it found something new, which is beneficial for the society, resulting smooth working in the society by governing the human behavior. For that, researcher should always be inspired for the research work and capable of doing all the required hard work, analysis of research topic by following the ethical standard in his research work. He should not get involved in any kind of plagiarized act and due acknowledgement must be given for the references or use of other material, if any. And also, he should not make violation of copyright. The legal research should follow every steps of research, with scientific attitude or mind, high degree of imagination to understand the intangible aspect of society, patience and perseverance, clarity in thinking. Apart from these, the researcher should have the thorough knowledge of subjects, various techniques and choose the most suitable technique, curiosity in research topic with unbiased attitude. After all, we should not forget that, in the research work, it is expected to produce original outcome.

**Keywords:** Research, Legal Research, Ethics, Research Problem, Hypothesis, Research Design, Type of Legal Research, Data Collection and Analysis.

### 4.2 Analytical Study of Legal Research:

#### 4.2.1 Introduction:

The word 'research' is derived from the word 'recherch', which is French<sup>1</sup>. It means that, 're' indicate the 'again' and 'search means to test or examine. In other word, research means to search for new facts or modify the old or existing facts<sup>2</sup>.

While doing research in any area, it requires the careful and systematic study along with, the critical inquires, diligent investigation to discover something. The term 'research' is defined by the Encyclopedia Britannica, as a "Research is an act of searching into a matter closely and carefully, inquiry directly to the discovery of truth and in particular the trained scientific investigation of the principles and facts of any subject based on original and first hand study of authorities or experiment.

There is another simple definition given by the Redman and Mary<sup>3</sup>. They have defined the term 'research' means systematized efforts to gain knowledge.

#### **4.2.2 Meaning of Legal Research:**

The 'legal research' means the organized investigation of problems or situation, concerned with laws. The term 'law' is wider in nature and it includes the various Acts, Rules, Regulations, Codes, and Constitution etc.<sup>4</sup> The legal research take into account the social and behavioral phenomena and try to discover new legal facts as well as makes the verification of previous one, to give suitable solution to the legal problems. There are numbers of appealing factors behind the legal research such as, interest about the unknown, craving to understand the cause and effect of legal problems, due to arrival of unusual and unanticipated situations, sometimes the researcher might be the desire, to verify the old laws or to discover the new procedure suitable to govern the behaviors in the civilized society.

#### **4.3 Objectives:**

The legal research can be done with object, to get acquainted with the knowledge of human society and how it give rise to the legal matter or issue. And to know the operation of law in such society. Because, we must understand that, the law is an instrument of any kind of social change. It is closely connected with the society. And increasing evils in the society such as rape, murder, suicide etc. forces to have through study of human organization of society and its actual working. This scenario encourages to do the legal research. Apart from these, the other reasons behind the legal research can be, to discover something novel facts, to acquaint with new legal situation, to develop the new legal concepts, to study any law with critical view, to get the knowledge of consequences of any new law, affecting largely to masses. In other word the legal research can be done with an objective of evaluative, explicative, impact analysis, predictive, interactive, interpretative, collective etc.<sup>5</sup> The primary purpose of any kind of research is to search for the truth<sup>6</sup>. And other purposes are, to discover or interpret and thereby develop the human knowledge for the betterment of society.

#### **4.4 Importance of Legal Research:**

The law, being a tool, regulate the human behavior in the society by setting certain norms. And if required, the law mold the social attitudes and people's behaviors in order to get the expected atmosphere in the society. Whereas, the society get changed with the passage of time, the law also required to be changed suitably. It means that, law should be dynamic as per the required society. Because, many times, the existing legislations get failed to handle the social evils or problems in better manner.

Therefore, such situation forces them, to have legal research upon it to ascertain the current laws, to focus on the ambiguity, to critically examine the present laws and to make suggestions for the creating better situation by developing the law. The legal research deals with questions of law or facts in relation to problems of society or human behaviors<sup>7</sup>. The research plays two noticeable roles like contributing to insight of knowledge and to resolve the issues or problems of society<sup>8</sup>. It is the intellectual activities and it became the integral part of academic activities and also currently connected with sociology, economics and political sciences, management etc.

**Ethics:** It is rightly said that, every action or activity should done by following the ethical norms of it, so that, the public would benefit from it, truly. Likewise, in legal research and other research too, the ethics is an important part. There are several benefits, if the researcher follows the ethics, while doing research. The ethics, promotes the truthful knowledge and avoid the error. Moreover, it encourage, the trustworthiness and accountability as well as fairness and ensure that, the researcher can be held accountable for his work to the public at large. In addition to this, the ethical standard in legal research help to produce the quality research, which resulted in public support by way of fund for research project<sup>9</sup>.

The researcher should not involve in plagiarism and copyright violation. When researcher, plagiarize it means he cheat for himself, by showing intellectual dishonesty and intellectual immoral<sup>10</sup>.

There are some general ethical principles, which should be present for any kind of research activities including in legal research. First and foremost, the honesty should be in the data, result, research methods etc. And it should not be the fabricated or misrepresented research work. The bias should be avoided and the researcher should act sincerely and carefully to avoid the careless mistakes and negligence. The research should be open to criticism and not to use the unpublished data. If any data or information is get used, then it's should be acknowledge properly. Researcher should maintain the confidentiality about the communications, personal records, military secrets etc. and should respect the human privacy and autonomy if needed. He should help, to educate and advise the students as and when required. Moreover, while doing research the researchers should keep in mind the social responsibility i.e. his research work should contribute for the social good and mitigate or prevent the social evils or harms through research. He should be aware about all the prevalent laws, governmental policies etc. while doing research<sup>11</sup>.

#### **4.5 Identification and Formulation of Research Problems:**

As the research activity involves the many steps, the identification and formulation of research problem is one of the steps therein along with the formulation of hypothesis, collection of data, and analyzing the data collected etc. It is the topics that the researcher is interested to make through study thereof to find the answer to the problem<sup>12</sup>.

Therefore, the legal research problem, must be valuable for study with social and legal relevance, and also it should provide the practical solution to that problem or issue. Moreover, the legal research problem must be verifiable and testable having originality and clarity in scope with availability of required data needed for the research<sup>13</sup>.

While formulating the general topic into the specific research problem, the researcher should, after reading of required literature should note down the questions that comes in his mind and thereafter, review those questions and think over it, whether it is useful or not, the scope of it, the availability of time and funds. And in the end, the important questions should segregated from the other subsidiary questions, which would be the research problem for research<sup>14</sup>.

**A. Hypothesis:** When the researcher choose the problem in legal research, the next step is to formulate the hypothesis on the basis of material studied. It is a one kind of suggestion of tentative solution to problems in the form of preposition, which can be testified, is called the hypothesis. The term 'hypothesis' is the combination of two words 'hypo' and 'thesis'. The 'hypo' means under or tentative and the word 'thesis' means general statement or opinion about the solution of problem<sup>15</sup>. As per the Webster, it is the guesses made by the researcher, which either solve the problem or guide him in further investigation<sup>16</sup>. The process of formulating the 'hypothesis begin with the observation and thereafter it reflect in statement or preposition by following either deductive thinking or inductive thinking.

In the end the researcher get verification of it, by actually testing to solve the problem. Therefore, the hypothesis has wider importance in legal research, without it, the research can be unfocused and less useful. It provide the basis for the research methodology and make the result of legal research more accurate and explicit in nature<sup>17</sup>.

**B. Research Design:** After formulation of hypothesis, the research design is used to make proper planning, while doing research work. Due to such logical and systematic plan, the researcher get the clear-cut idea about the specific objectives, methodology to be adopted, and the outlines for collection of data along with the depth analysis of collected data. Due to such research design, the research operation goes smoothly and provide the maximum information in economic manner in less time with less energy. It helps, to understand the availability of resources and time as per the objective of research.

The research design helps to produce maximum inaccuracy in research by adopting particular required methodology resulting to decide suitable method. It makes the efficient research. It is the firm foundation for the entire edifice of the research work<sup>18</sup>. It seems that, the research design has very much importance in the research work and it is used just like master plan for the research activity. However, sometimes due to under estimation of research design value, the researcher gives the misleading conclusions, which get resulted in failure of a related research. Hence, utmost care should be taken by the researcher, to form efficient and correct design so that, research work does not becomes useless.

#### **4.5.1 Types of Legal Research:**

To perform the research operations, researcher has to use certain techniques or methods while conducting the research. It requires, to follow the research methodology, which is the way to solve the problem of research<sup>19</sup>. There are different methods to do the legal research and the most common types of methods used in legal research are doctrinal or non-empirical and non-doctrinal or empirical methods. In case of doctrinal legal research, the work start by taking one or more legal statement or preposition, for the focus of study.

In such type of research it mainly focuses upon the library, to get the material which generally known as the secondary data such as statutes, judgment, journals, case laws, magazines, books. Apart from this the researcher also get reference of committee reports, legal history etc. which are conventional sources. After collection the required material the researcher start to analyze it, to formulate the conclusion of his research topic.

On the other hand, in case of non-doctrinal or empirical research, involves the field work or in other word first hand study by the researcher, because its majority of data can be college by studying primary data, which is not available mostly, in the traditional legal sources. Its primary focus is upon, to assess the impact of non-legal event on legal principles/doctrines or vice-versa<sup>20</sup>. Such type of research, emphasis upon the consequences of law on the society or sometime for the passing of any law. To ascertain the impact of law, there is need to have the primary data to have first-hand study, which can be collected by way of, case law method, questionnaire, interview, schedule etc. Although, these two types of methodology get used in legal research, the difference between them, is almost invisible. Because, in most of the times, somewhere the doctrinal and non-doctrinal methods takes place while doing legal research<sup>21</sup>.

#### **4.5.2 Data Collection and Analysis:**

This is the important steps of any kind of research work. Without collection and analysis of it, the research work can't get completed. There are two important sources of data, primary data, which can be collected by way of interview, survey, questionnaire etc. and secondary data from books, committee reports, case laws, statute etc. The secondary data could be used in majority of time in doctrinal legal research and first hand or primary data is useful in case of non-doctrinal legal research.

Hence, researcher should choose, proper data collection tools, which should be objective and precise in nature. Data can be in the form of facts, figures or in any other form, which became the basis of research study and useful for the analysis. By analyzing, such raw data the appropriate inference can laid down in the research. The researcher uses the collected data for the testifying the hypothesis formulated at the beginning of research. The maximum availability relevant data produces the maximum accuracy in research work<sup>22</sup>.

#### **4.6 Conclusion:**

The legal research work has played and playing very crucial role in the development of human being and society. Law being an instrument of social change, whenever, legal research take place, it found something new, which is beneficial for the society, resulting smooth working in the society by governing the human behavior. For that, researcher should always be inspired for the research work and capable of doing all the required hard work, analysis of research topic by following the ethical standard in his research work. He should not get involved in any kind of plagiarized act and due acknowledgement must be given for the references or use of other material, if any and also he should not make violation of copyright. The research should follow every steps of legal research, with scientific attitude or mind, high degree of imagination to understand the intangible aspect of society, patience and perseverance, clarity in thinking.

Apart from these, the researcher should have the thorough knowledge of subjects, various techniques and choose the most suitable technique, person interest or curiosity in research topic with unbiased attitude. After all, we should not forget that, in the research work, it is expected to produce original outcome.

#### **4.7 References:**

1. Monoj Kumar Sinha (Ed), "Legal Research Methodology", LexisNexis, Haryana 2017 at P 4
2. Ibid. See also The P.V. Young defines, 'Social research' as the systematic method of discovering new facts or verifying old facts, their sequence, inter-relationship, casual explanations and the natural law, which govern them."
3. Dr. S. R. Myneni, "Legal Research Methodology" Allahabad Law Agency, Faridabad, 3<sup>rd</sup> Edition 2009 at P 13
4. Ibid
5. Id
6. See Supra
7. Monoj Kumar Sinha (Ed), "Legal Research Methodology", LexisNexis, Haryana 2017 at P 6 CF S.K. Verma, Doctrinal Legal Research: Methods and Methodology", Chapter I at PP 3-6
8. Rattan Singh, "Legal Research Methodology" LexisNexis, Gurgaon 1st Edition 2013 at P 6
9. Renu Mahajan, "Ethics in Legal Research" Chapter 4 at P 42. CF Rattan Singh, "Legal Research Methodology" LexisNexis, Gurgaon 1<sup>st</sup> Edition 2013
10. Prof. Dr. K.L. Bhatia, "Textbook on Legal Language and Legal Writing", Universal Law Publication Co. Pvt. Ltd, New Delhi 2<sup>nd</sup> Edition 2013 at p 65
11. Ibid at PP 43 to 44
12. The term 'problem' is derived from the Greek word 'Proballein', which means, 'a question proposed for answer' CF See Infra
13. Dr. Anshu Jain, "Identification and Formulation of a Research Problem" Chapter 6 at PP 65-67 CF See Supra
14. Ibid
15. Dr. Mona Purohit, "Legal Education and Research Methodology", Central Law Publications, Allahabad 1st Edition 2010 at P 120
16. Ibid. According to M.C. Guigan, "Hypothesis is a testable statement of a potential relationship between two or more variables that is advanced as potential solution to the problem".
17. S. R. Myneni, has mentioned that, "In the absence of hypothesis the researcher is like a sailor on the wide sea, without compass or rudder"
18. Kothari C. R. "Research Methodology, Methods and Techniques", New Age International Pvt. Ltd, New Delhi 2nd Edition 2010 at p 32
19. See Supra at foot note 7 p- 9
20. See Supra at foot note 14 pp-144-145
21. Ibid
22. Rattan Singh, "Legal Research Methodology" LexisNexis, Gurgaon 1<sup>st</sup> Edition 2013 at P 167