UTTRAKHAND OPEN UNIVERSITY ***LM-110***

SCHOOL OF SOCIAL SCIENCE विधिक शिक्षा एवं शोध विधि

(LEGAL EDUCATION AND RESEARCH METHODOLOGY)

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UTTRAKHAND OPEN UNIVERSITY
HALDWANI

LL.M.-12

विधिक शिक्षा एवं शोध विधि

(LEGAL EDUCATION AND RESEARCH METHODOLOGY)

LL.M. Part-2

Subject: LEGAL EDUCATION AND RESEARCH METHODOLOGY

Block I- Introduction
Unit-1- Objectives of Legal Education

STRUCTURE

1.1 INTRODUCTION

Prof. Madhav menon rightly observed in Transformation of Legal Education –A blue paper, published by the Harvard Law School Program on the Legal Profession 2012 “One might ask about the outcomes resulting from the influence of the above factors and the future direction of legal education in India given the level of economic development and globalization. Never since Independence has legal education received the attention it receives today from society, government and the private corporate sector. This has resulted in better infrastructure, greater private participation and increased investment, though yet inadequate for quality legal education. India today has the largest legal profession in the world (1.3 million attorneys), though not all of them are in legal practice in the conventional sense (i.e. litigation-oriented practice). If solo practice has been the dominant pattern in the past,the trend today is more towards partnerships and large firms involving multiple areas of specialization.Though the legal profession has been the monopoly of the male gender in the past, women are now joining legal practice in increasing numbers and are finding their places in the judiciary as well. The steady influx of people from the lower socioeconomic strata to legal careers is changing the composition of the profession, and strengthens democracy and rule of law in the country. Legal practitioners are finding lucrative ways to practice outside courts and litigation, compelling reforms in organization, management and disciplinary control of the profession. On the negative side, one must mention the paucity of competent teachers even in the best of law schools to guide the growing body of motivated students. There are vacant positions in every law school. Bright law graduates do not join post-graduate studies in Indian law schools nor are they attracted to teaching and research positions in them. Many of them migrate to U.S. and U.K. law schools for LL.M. education and either do not return to India or agree to take up teaching positions in India. This situation has led policy planners to consider restructuring post-graduate legal studies (the LL.M. degree is still a pre-requisite for teaching position in law schools) making it a one-year programme geared to teaching, research and specialization (the proposal is under consideration of the University Grants Commission which regulates post-graduate programmes in law). The Bar Association of India and Society of Indian Law Firms have come forward to address the shortage of teachers, offering to send senior advocates to act as adjunct faculty in selected law schools. Some law schools have started recruiting teachers from outside India, paying them attractive service conditions distinct from the rest. Others are entering into exchange arrangements under which students and teachers are provided opportunities to learn in different environments under credit transfer arrangements. Everyone now realizes that

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In India University Grants commission and Bar Council of India are exercising their power and responsibility to prescribe and maintain the standard of legal education. Bar Council of India has been laying down rules from time to time by giving effect to legal education according to the needs of the society. "The rules which the council brought into force from June 1982 and 2008 distinguish professional education other forms of legal education, recognize the importance of discrimination of legal knowledge for promotion of democracy and constitutional government."

1.2 OBJECTIVES

In the dynamic and progressive society academic (traditional method) education is becoming irrelevant. Professional type of education through empirical method or practical method has become imperative. The National knowledge Commission, while deliberating on issues related to knowledge concepts recognizes legal education as an important constituent of professional education. The object of this lesson is to provide justice-oriented education essential to the realization of values enshrined in the constitution of India. In keeping with the vision, legal education must aim at preparing legal professionals who will play decisive leadership roles, not only as advocates practicing in courts, but also as academics, legislators, judges, policy makers, public officials, civil society activists as well as legal counsels in the private sector, maintaining the highest standards of professional ethics and a spirit of public service.

1.3 LEGAL EDUCATION

1.3.1 Research Foundation for Governance: In India (RFGI)

Study on legal education Justice Delivery is dependent on the lawyers and judges in a society. To improve the standards of justice delivery in any country, it becomes crucial to oversee the way legal education is imparted. It is the responsibility of legal education to impart ideals of justice, equality and fairness in

the society, and train bright young minds to become lawyers and judges for tomorrow. A recent survey conducted by the Research Foundation for Governance: in India (RFGI) on the quality and nature of legal education, has revealed some shocking results on the quality of legal education imparted in law colleges in Ahmadabad .Barring a few, mainly the National Law Schools Providing 5 year integrated legal education, all law colleges need serious reforms, if the legal system of the country is to be improved. The Existing Structure: Traditionally, in India, legal education has been offered as a 3 Year graduate degree. The only eligibility requirement to enroll for LLB has been that the applicant should have a Bachelor's degree in any subject from a recognized institution. This structure changed with the advent of a -year integrated law degree in 1987. The National Law Universities offering a 5 year integrated law degree, although only a handful in number, are a path breaking reform offering a multi disciplinary and integrated approach to legal education. Despite these specialized universities, as many as 97% law - colleges in India offer three year Law degrees. The Bar Council of India (BCI) is the supreme regulatory body which regulate she legal profession and education in India, and has laid down certain norms In order to understand the functioning of these 3 -year law colleges, Research Foundation for Governance: in India conducted a study on legal education. We took the city of Ahmadabad as the sample for our study. During our survey, we met and interacted with principals, teachers and students of all 11 law colleges in the city of Ahmadabad. The norms of the BCI, especially the ones concerning minimum faculty/library Requirements/teaching load, are being flagrantly violated by the law colleges and yet the affiliation with the Council continues. As per the norms of the BCI, the law colleges are supposed to have at least 4 cores full -time teaching staff in the first year, 6 in the second and 8 in the third year. However, none of the colleges surveyed were meeting this criterion 90% of the colleges do not even have a appointed principal and are being managed by in-charge principals Some colleges, appallingly, were run by only one person, serving as peon to in –charge -principal. As per the requirement of BCI, each class should have the strength of 60 students, while the UGC requires each class to be 80 students strong. The Government of Gujarat requires the class to be of 130 -170 students. The vacancies of the teachers are granted by the Government on the basis of the work load of 130 -170 students. However, this disqualifies the colleges to obtain the grants of the UGC or even to meet the basic criteria of BCI. The Bar Council in the part IV, schedule III, number 17 explicitly states, "...if any institution of a University, which was already affiliated to the University and approved to run professional courses...by the Bar Council of India, after inspection of the University, falls short of required full time

faculty, the new admission in courses may be required to remain suspended until new required number of faculty is procured." "Provided further that if while inspecting the University it was found that in any institution of the University, adequate number of full time faculty was not there in the staff, the Bar Council after giving notice to the University might give a public notice directing the University not to admit students in the new academic year in that institution. There is, thus, complete lack of coordination between the norms of BCI, UGC and the Government as far as legal education is concerned. The position of law colleges was that of a 'sandwich' between the rules of the Bar Council of India, the University Grants Commission and the Government, who are unable to impart quality legal education or even train students to the highest standards of professional ethics. Colleges are finding it impossible to arrange lectures and classes for students on regular basis. The classes are held only with the help of visiting faculties, who are paid as less as Rs. 75 to Rs 100 per lecture. Many of the visiting teachers take the classes out of personal favors to the principals or the management. The traditional law degree has become a part -time degree, failing to attract students who sincerely wish to pursue the knowledge of law. It is also considered a degree which is 'extremely difficult to fail.' Unfortunately, the present system enables law graduates with little knowledge or skill to argue a case to represent a client before the court of law. It has become a degree for those who wish to have an additional certificate, or to have a part time activity after work or even to essential the waiting period before marriage. The premises of these colleges made it apparent that not only were the hygiene conditions inappropriate, even the basic facilities such as the building, classrooms, academic apparatus were found to be inadequate. These are very serious issues, which create irreparable damage to the quality of justice -delivery. Unfortunately, many products of the 3 -year law colleges, who neither have knowledge of law nor the skills to practice, end up in litigation. Their lack of skills and knowledge about the system ends up creating many folds problems for the clients, the system and to the quality of 'justice'.

Legal education should also prepare professionals equipped to meet the new challenges and dimensions of internationalization, where the nature and organization of law and legal practice are undergoing a paradigm shift.

Before undertaking research, a researcher is supposed to possess necessary legal knowledge legal knowledge includes the definition of law; how it comes into existence; if it is codified, what is the significance of various expressions used in

the Act; how a codified law is interpreted etc. If it is uncodified either customary or precedent, then how it should be interpreted; to what extent it is relevant etc. What are the various terms and phrases which are used by the legal experts to express their views or to state and explain the existing situation, etc?

What is law? - The definition of 'law' has passed problem for the jurist's right from the beginning, but no unanimity has so far been reached. Some have defined it from the point of view of its origin, some from the point of view of its use, some from the point of view as to how courts pronounce it and some as to how it exists. For a layman law, is a rule of action to which men are obliged to make their conduct conformable; a command enforced by some sanction to acts or forbearances?

1.3.2 Relation Ship between Law, Ethics and positive Morality

These definitions have been criticized by many on the ground that they are abstract in nature. A law devoid of ethical element is not a good law. Ethical elements in law raise the standard of law. Ethics concentrates on principles affecting man's conduct so as to determine the standard of right and wrong. In contrast to this, law is concerned with social relationship of men and the social consequences ensuing there from. According to Paton, ethics pertains to 'motive', whereas law deals with conduct. In other words, ethics deals with absolute ideal which is not binding, whereas law deals with actual behavior.

Duguit: "Law is essentially and exclusively a social fact. The foundation of law is in the essential requirements of community life and the most important fact of social life is the inter-dependence of men.

Inhering: "Law is the form of the guarantee of the conditions of life of society, assured by the state's power of constraint."

Holmes: "The prophesies of what the Courts will do, in fact and nothing more pretentions are what I mean by law."

The above definitions or the attempts to define law draw our attention to the fact that they have been given keeping in views the legal system of which the jurist giving the definitions had the experience. A definition is meant to give a complete picture of the thing it defines, but none of the definitions fulfils this criterion and hence none of them can claim to command universal acceptance. Apart from this, in our present day society, the concepts of state, sovereign and law itself have considerably changed.

Whatever be the definitions of law, it is social institution. It presupposes a society and in that society it operates. Therefore, it must be such as to command social acceptance. A law which fails to secure social acceptance, or a law which is imposed on the society arbitrarily cannot become effective. The primary aim of enforcement of law is or secures 'justice' in ideal sense, but truly speaking, it is really the 'justice' as perceived by those who have control over the legal order. Because of the variable content of law, no definitions of it can be provided which could be true for all time to come. In its present day form it must contain the following elements:

1. Law presupposes state.
2. The state makes it, recognizes it or sanctions it.
3. For its effective enforcement, it might be supposed by sanction.
4. Its purpose must be served the entire humanity or a group of people or to achieve a definite purpose.

In contrast, morality or positive morality occupies place in between the two, law and ethics. Positive morality consists of the actual standards adopted in any community which are enforced by the sanction of public opinion. The distinction among them has been explained by Paton as follows:

"Law ,positive morality and ethics are overlapping circles which can never entirely coincide, but the hand of man can move them and determine the content that is common to all or to two or confined to one. We do find a close relationship between rules of law and those of positive morality, for the latter determine the upper and lower limits of the effective operation of law. If the lags behind the popular standards it falls into disrepute; if the legal standard is too high, there are great difficulties of enforcement."

The relationship between law and morals has perplexed the jurists a great deal. Famous philosopher Kant is of the view that law prescribes the external conduct whereas morals prescribe internal. This distinction is most obvious because, if every time, law is required to conform to morals, then it would not be in a position to function effectively. But it cannot be denied that one influences the other, a deterioration of one will almost inevitably produce deterioration in the other.

Lord Denning regards that law must have concern for morals. He stresses his viewpoint by putting himself as follows:

"I would say that without religion there can be no morality and without morality there can be no law."

But the most important problem in this regard is as to the standard of morals and to what extent the law should follow morals.

1.3.3 Classification of Law

To classify law is a very difficult task. However, some sort of classification is necessary to have a full view of it. First and foremost classification has been made keeping into mind its jurisdiction. According to this notion, it is divided into the following two categories:

1. International law, and

2. Municipal or national law.

Then keeping in view, the body of persons to be affected by it, they are divided into two categories:

International law:

(a) Public International law
(b) Private International law.

1.3.4 Sources

Books. - A researcher, desirous of using library should be acquainted with the procedure to use it. A reader begins work with text books and reference books. Books are arranged in the library subject-wise and each book is assigned a number as per the classification scheme adopted by the library. Two catalogue cards for each book are prepared. One card is prepared according to the subject or call Number and the other in alphabetical order of the authors and titles. A researcher, desiring to locate a book kept on shelf of the library should, first of all find out the catalogue card prepared and arranged in alphabetical order. From the card, he would be able to find out call number of the book and from that number he can easily reach to the book. Whether the books are kept on open shelf or closed shelf, ascertainment of call number is essential for locating the book.

Law reports:

So far as periodicals and law reports are concerned, they are stacked separately and independently from the rest of materials in library. Reports of the judgment of

Supreme Court and High Court, A.I.R. are stacked year-wise and in each year Supreme Court judgments occupy first place and the judgments of the High courts are arranged in alphabetical order. Other reports pertain to Supreme Court judgments such as Supreme Court cases, Supreme Court journals. Supreme Court report is kept separately and they, too, are arranged year-wise and if in each, there are more volumes than one, then they are arranged in the ascending order, vol.1, vol.2, vol.3 etc. A.I.R Manuals are published in alphabetical order containing the statues passed by parliament. Where there are difference between the central Act and the state Act, that difference is also included in it. A.I.R. Manual is a very important literature for locating the central and state laws on a subject or difference between the two. Law report may relate to specific subject such as labour law, taxation, company law a, Rent law, criminal law, such as labour reporter, Factory law journal, income tax reporter, sales tax cases, company cases, criminal law journals, etc. These reports are kept separately from A.I.R., S.C.C., S.C.R., A.I.R. Manuals. They too are arranged year-wise in ascending order and volume-wise, if there are more volumes than one. These may be foreign reports as well e.g. All England law reports, United States court report. Similarly periodicals are stacked separately in one sequence by the title. To trace a law report or periodicals is not usually difficult because of their arrangement.

Official declaration, Acts or statutes are published first of all in the Gazette of India or the Gazette of the state. While consulting Gazette in library one has to look to the Act section of it. But a bill can be found in part2, section II of the Gazette.

Legal Periodicals

In the field of legal study, reports etc. play very important role. Apart from these, there are a number of legal periodicals or journals published by various institutions engaged in the study of law. These periodicals and journals contain mostly articles of imminent persons belonging to the field of law, comments on cases, legislative materials, as well as book reviews. They are more important from the point of view of forming opinion, in assessing the drawbacks of legislative and loop-holes in cases decided by the courts. These articles and comments pave the way for improvement in future. The prominent periodicals are the journal of the Indian law Institute, Modern law review, Michigan law review, Yale law journal, Harvard law review, Stanford law journal, Columbia law review, oxford law journal, Cambridge law journal, current legal problems, comedian law

review, American journal of international law, Australian law journal etc.Then libraries also contain index to Indian legal periodicals and index to foreign legal periodicals. These indexes help a great deal in locating a law: They too, are kept separately and year-wise so that a researcher may easily locate them.

Government Publications

In a legal research, the Government publications whether of the state or central in the form of reports of various committee and commission such as the law commission of India, the commission for scheduled caste and scheduled tribe, the commission fro Backward classes, the committee on public undertaking, pay commission, Finance commission, planning commission, etc, are of much importance. The policy of the Government expressed in these reports tells us about the shape of the thing to come in future. A researcher, by going through by these materials can formulate his conclusions; he can approbate or reprobate the same.

1.4 SUMMARY

Prof. Madhav menon rightly observed in Transformation of Legal Education –A blue paper, Published by the Harvard Law School Program on the Legal Profession 2012

“One might ask about the outcomes resulting from the influence of the above factors and the future direction of legal education in India given the level of economic development and globalization. Never since Independence has legal education received the attention it receives today from society, government and the private corporate sector. This has resulted in better infrastructure, greater private participation and increased investment, though yet inadequate for quality legal education. India today has the largest legal profession in the world (1.3 million attorneys), though not all of them are in legal practice in the conventional sense (i.e. litigation-oriented practice). If solo practice has been the dominant pattern in the past,the trend today is more towards partnerships and large firms involving multiple areas of specialization.Though the legal profession has been the monopoly of the male gender in the past, women are now joining legal practice in increasing numbers and are finding their places in the judiciary as well. The steady influx of people from the lower socioeconomic strata to legal careers is changing the composition of the profession, and strengthens democracy and rule of law in the country. Legal practitioners are finding lucrative

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1.5 SUGGESTED READINGS

1. H.N. TEWARI, Legal Research Methodology.

2. S.K. VERMA, Legal Research Methodology Indian Law Institute publication.

3. MADHAV MENON, Transformation of Legal Education –A blue paper, published by the Harvard Law School Program on the Legal Profession 2012

1.6 TERMINAL QUESTIONS

1. What are the objectives of legal education in India?
2. How we can achieve legal education in India?
3. Write an essay on morality, law and ethics with special reference to Indian perspective.
4. What are the sources of law to understand legal education?

LL.M. Part-2

Subject: LEGAL EDUCATION AND RESEARCH METHODOLOGY

Block I- Introduction
Unit-2 The Seminar Method of teaching; Examination system and problems in evaluation - external and internal assessment

STRUCTURE

2.1 INTRODUCTION

Seminar is a technique of instruction by which circumstances are created for reflection level of understanding. Students are more active in reflection level and teacher is there to assist or guide them. In higher education teacher should use those techniques in which student can play an important and active role. Seminar method is one of them. It is a presentation and discussion among selected groups of persons for purposeful deliberation. Generally seminar is conducted by colleges, University or research institutions. Some organizations also support or assist for conduction of seminar like Indian law Institute, University Grants commission (U.G.C), and National Educational Research Council etc.Seminar method is used to share opinions concerns and appreciations, to discuss a particular issue. The number of days could vary depending objects of seminar. The seminar method is the most modern and advanced method of teaching. A seminar is an advanced group techniques which is usually used in higher education. It is an instructional technique. It involves generating a situation for a group to have a guided interaction among themselves on a theme. It refers to a structured group discussion, what usually follows a formal lecture or lectures often in the form of an essay or a paper presentation on a theme. Seminar method is more useful in legal education. The object of legal education is to create safe and positive environment in which students can fearlessly express their views. Seminar method is helpful to achieve that object.

2.2 OBJECTIVES

Being a part of creative education, seminar method possesses all the objectives of creative education. Seminar method is a first step in the way of establishment

of democratic country. The main objective of legal teaching is to impart new knowledge, influence attitudes and develop practical skill. The seminar method is used to achieve all objectives of legal education.

2.3 SUBJECT

2.3.1 The Seminar Method of Teaching

The seminar method can be used to serve a number of purposes. It is most suitable for the following purpose:

1. To develop the critical and analytical ability.
2. To provide opportunities to pupils maximizing their active participation.
3. To stimulate thinking.
4. To develop the habits of tolerance, cooperation, respect for other views.
5. To encourage slow learner to participate.
6. To arouse and maintain interest and enthusiasm to learn.
7. To provide opportunities to students for exploring and discovering something for themselves.
8. To develop cognitive and emotional ability among the participants.
9. To develop good manner of putting questions.

2.3.1.1 Role in seminar

Seminar method can be organized with the help of following persons. Different person play different role. Following roles are important in seminar.

1. Organizer

2. Chairman

3. Speaker

4. Participants

1. **Organizer.-** Organizer of the seminar is the true instructor. Role of instructor or organizer is very important. Complete responsibility of seminar is upon him. The plan and management of seminar is the responsibility of the organizer. Organizer takes decision about the subject or theme of the seminar, venue of the seminar, date and time,

name of the speaker and their topics. Sequence of speaker is also to be decided by the organizer.

2. **Chairman**.- The selection of chairman can be done by two ways.
   1. by participants.
   2. by organizer.

Chairman is usually an eminent person of that field. The chairman of the seminar should be a specialist of the subject. He should be able of instigate the participants to ask questions. In case of any controversy unwanted situation

3. **Speaker**.- speakers are selected by organizer. Number of speakers is also decided by the organizer on the basis of the object and availability of time.
4. **Participations**.-Generally interested persons join the seminar and become participations. Most of the students come under this category. Participations should be aware of the theme, they can also share their views or experience with the permission of chairman . Number of participations is depending upon the objective of seminar and organizer's management and economic capacity.

2.3.1.2 Steps in seminar

Seminar is a well planned process of teaching. It has three parts:

1. Planning Part.
2. Operational Part.
3. Post seminar phase.

1. **Planning part**.-seminar is not an easy method, it requires a lot of preparation before actual presentation. Prior planning is essential for successful organization of seminar.

One of the important duty of organizer is to choose a good theme and suitable situation for seminar. Execution of the seminar requires activity of a lot of pupil. A series of activates have to be taken up by pupils, such as preparing panel of speakers, expert chief guest, participants. The concurrence from them is a must. Plan of conduction of program should be circulated among them.

The most important thing which comes under this part is to getting aid from some institutions and their planning. Fixing of place, date or days, selection of papers

and their information to speaker also come under this part. All these things must be circulated.

3. **Operational Part.-** On the fixed day either participations of the seminar have to select the chairman of seminar or already selected chairman conducts the programme. The chair man has to decide the mode of operations.

Research papers prepared by a speaker are distributed among participations. They present their paper. After presentation of the papers, discussion session is organized. The chairman can allow or give time for discussion after every presentation or after completion or after completion of all presentations. At the end , chairman is to sum-up the session with the vote of thanks. He can give opinion on the theme or subject, appreciate good speaker, summarize the discussion and a report is to be prepared for publication. The presented papers, discussion there on and report is to be published.

4. Post seminar phase.- Post seminar phase involved following activities- correction of presented papers, restructuring of papers according to discussion, completion of papers and sending of report.

2.3.1.3 Types of seminar

Seminar can be divided into following types:

1. National seminar
2. International seminar
3. State level seminar
4. Major seminar
5. Class(mini) seminar

1. **National seminar**. - National issues or problems are generally the theme of this type of seminar. Participants come from all over India. Agencies like U.G.C or NCERT provide assistance for it.
2. **International seminar**.- when any subject of the seminar is of global concern and speakers or participants are invited from more the one country, it is called international seminar. Mostly international agencies or organizations like WTO, UNESCO or National committees organize such seminars.
3. **State level seminar.-** When the participants of seminar are restricted to a particular state it is called state level seminar. Like Madhya Pradesh or

utter Pradesh. The theme or problem of seminar will be national or international with special reference to that state.

4. **Major seminar.-** Major seminar is popularly known as institutional seminar. It is conducted at an institutional level for specific purpose. Most of the participants are members of that institution.
5. **Class seminar.-** It is a mini seminar. Class seminar is conducted in the class for teaching purpose. Participants are the students of that class and teacher as well. Class seminars are felt necessary because it gives the students self confidence, questioning skill and experience to conduct major seminars in future.

2.3.1.4 Advantages

Seminar method has various advantages which are as follows:

1. Seminar method provides enough opportunity for meeting the varying interest and ability of students.
2. The method provides good opportunity for the coordination.
3. It helps in the development of democratic values.
4. The approach is student centered and develops the self confidence in the students.
5. This learns promoted habit of analytical or critical thinking.
6. Students learn in natural way or by doing.
7. The students help in imbibing useful habit like self confidence, scientific temper, drawing conclusion.
8. Provides opportunity to share feelings or experience about theme or subject of the seminar.
9. It is intellectual team work and provides deep and intensive knowledge about the subject.
10. Students learn through seminar presentation, to speak, stand and sit properly.

11. Students learn to respect the idea of others and to share responsibility.

12. Through seminar method students crystallize their thinking and identify concepts for further study.

13. Seminar method helps in discovering leaders.

2.3.1.4 Limitations of Seminar method

1. Seminar method is not easy to organize it is too complex and technical.
2. It is not economic in terms of money or time.

3. Very highly qualified persons are required for success of this method.
4. The use of this method is not adequate or practical for under graduate students.
5. All the students do not have the capacity of preparation or presentation of paper.
6. All colleges and universities don't have facilities for this method.
7. Not suitable for all subjects or cases.
8. Some time language becomes the limit for this method.
9. There is a possibility of groupies, favoring or bias.

2.3.2 Examination System and Problems in Evaluation

Education has always been conceived as a tool to promote national development as well as international understanding. Education is a key factor determining a nation's progress. The quality of knowledge society depends on the quality of education. In the whole educational system, Evaluation plays an important role in the process of teaching and learning. Examination is an instrument to test what the student has learned and retained in his mind during course of study. Examination are integrated part of our educational system. With the technological revolution, the electric media is replaced by the digital media or ICT and virtually every aspect of human behavior or activity is in some way or another dependent on the new computer technologies. It is a fact that, ICT has great potential for knowledge dissemination, effective learning and the development of more efficient education services. ICT has opened new avenues in education by way of increased accessibility of resources and better interaction processes. In the case of Examination system, all the universities and school education boards are under a process of change from manual to computer technologies / ICT. This change in the examination System will minimize human intervention by adopting ICT since the technology promises Compact storage, speedy retrieval of data and untiring diligent work. Global reforms in education and challenging ICT demands have also made a remark able shift in the structure of ICT environment and the utilization of ICT in education. ICT is having lot of possibilities in improving the whole examination system. Trend of seeking online applications for regular, entrance /competitive examinations and conducting on-line examinations have made the system very simple and cost effective for the examining bodies. But, on the other hand, this change is also bringing lot of challenges to the rural youth of the country who are not that much tech- savvy. The present paper, focus on the possibilities and challenges of integrating ICT in examination system. The paper also focuses on the problems related with the ICT based examination system adoption by the students. Introduction Education has always been

conceived as a tool to promote national development as well as international understanding. Education is a key factor determining a nation's progress. Education a process of creation, preservation, dissemination of knowledge, development of skills / attitudes and is an important element and basis of a knowledge society. The quality of knowledge society depends on the quality of education. The quality of life in depth cannot be achieved unless the human society is empowered with input of knowledge and progress of mind. One has to learn through education how to achieve fundamentals of self-realization. It is a process of world building and it implies practicing and ensuring of the human development

2.3.2.1 CHAPTER IX184th Report Of Law Commission On Examination System, Problem Method And Training Centers For Law Teachers.

1. We shall now refer briefly to the examination systems. The Ahmadi Committee Report, 1994, has referred to this aspect and considered it as something quite important to improve the quality of the students who may ultimately come to the Bar.
2. There has been a belief for several years in the past that if one takes up the study of law, one need not attend classes regularly and that if one reads some small books published by some publishers who have an eye only on profit making, - one can easily pass the law examination. Such easy methods have remained very attractive and continue to stay even today for students who just want a bare pass. There are some students who have never read the text of a bare Act, much less any leading commentary. They only depend on some of these small books containing a few theoretical questions which the students think are sufficient. When they go to the Bar, they for the first time open the books containing the Acts or the commentaries and are unable to cope up with the problem of the litigant and the needs of the profession. Of course, what we have said does not apply to the more serious students who have been regular and who are interested deeply in the subjects and in making a mark in

the profession but such students are today a small percentage. Nor are we referring here to the students from the new law Universities or to some colleges which are still rated as the best.

3. Whatever be the percentage of students who adopt short cuts to pass the law examination, there is, in the view of the Commission, great need to revamp the examination system with the dual object of eliminating malpractices like copying (which do take place in some centers) and the perennial problem of absenteeism in law schools. Mere bookish knowledge must give way to practical aspects of law. This has to start in the college itself.

2.3.2.2 The Lecture method and Case method

Methods of teaching have been changing from time to time. The time old method of lectures was supplemented by the 'case method' introduced by Prof. Lang dell in Harvard in 1911 and these have been supplemented by the 'problem method 'later.

2.3.2.3 Problem method:

The 'problem method' of teaching is today considered more important than the other two methods.

1. The problem method was introduced by Prof. Jerome Frank in his article "Why not a Clinical Lawyer School' 81. U. Pa L. Rev. 907 (1933) which he expanded in his thesis in "Both Ends Against the Middle' (1951)100 U. Pa L. Rev. 20, where he grumbled that Legal education should not remain 'hypnotized by Lang dell's ghost'. He also said that the law curriculum should include 'social sciences and humanities'. Law is linked with economics, politics, cultural anthropology, and ethical ideals. Humanities must also be added to social sciences. 'Students', Prof. Frank said must be exposed to "the great literary artists" whose "poetic insights…. concern…. The particular, the unique"and these goals too will have to be accomplished in the legal clinic.

2. Mr. Stephen Nathan son in his 'Developing Legal Problem Solving Skills' (1994) Vol. 44 Journal of Legal Education (p. 215) says that teachers should synthesize "general problem-solving skills and context- specific knowledge".
3. In 1979, Russel Stewart, in Australia, said that teaching legal problem-solving skills should be the primary goal of professional legal education. In 1984, in America, Anthony G. Amsterdam predicted that by the 21st century, legal education would have shifted its focus from case reading, doctrinal analysis and legal reasoning to a broader spectrum of practical skills, including problem solving skills. In 1991, in England, a research study by Kim Economides and Jeff Small listed the main tasks and skills and stated that professional legal training should address problem- solving figures prominently among them. In 1992, the American Bar Association's Mac Crate Report identified problem-solving as the most fundamental of all legal skills.
4. A curriculum design has to be made, theory and practice must be put together, a problem-data bank must be generated and circulated to all law schools.
5. Prof. Myron Moskovitz of the Golden Gate University has extensively dealt with the 'problem method' in his article "Beyond the Case Method: It's Time to Teach with Problems" [See (1992) Vol. 42 Journal of Legal Education, p. 241).
6. The American Association of Law Schools (AALS) in their 1942 Report stated as follows:

"The merit of the problem method is that it more effectively forces the law student to reflect on the application of pertinent materials to new situations and accustoms him to thinking of case and statute law as something to be used, rather than as something to be assimilated for its own sake."

A later AALS Report lists five virtues of the problem method:
(1) it approximates the lawyer's approach to the law,
(2) it affords training in planning and advising,
(3) it broadens the range of matters open to the students consideration,
(4) it increases the effectiveness of instruction where case-law is inadequate (primarily where legislation is involved), and
(5) it provides the stimulus to student interest. Prof. Myron Moskovitz in the above article (at Page 249) has referred to a large volume a literature on 'problem method'. The author refers to a problem in criminal law where

the Miranda Rule is involved and to the string of four cases of the US Supreme Court, each of the rulings referring to minor variations in the law on the subject of Miranda warnings students must learn these aspects. He says (at p. 258) that ultimately the 'problem method swallows up the case method'. The author also disagrees with the view that the problem method is suitable only for small classes of students. The author also refers to the manner in which 'problems have to be set'. He then says (p. 267) "we now have books that contain problems" and there are several types of problem books. Reference is made to five types of such books.

6. Prof. Borch refers to what a medical professor said that there is "widespread conservatism" among academics to innovation in teaching. Teachers must also be trained in the matter of problem-solving. Professional academics and the 'Adjunct teachers' can deal with this part of the curriculum effectively.
7. The Ahmadi Committee Report suggested a system where the theory part of the examination – where it is not difficult to get pass marks – is restricted to 25% or 20% marks while 75% or 80% marks should be allocated for legal problems. There must be a separate minimum for the theoretical part and the problems part. The importance of the legal problems part is that the candidate will have to apply his mind independently in the examination hall. He cannot resort to copying nor will he be able to seek any help from the supervisor for unless one is thorough, one cannot follow even if some obliging supervisor in the examination hall is prepared to help him. We may make it clear that we are not here referring to the good and reputed colleges where there are no malpractices. We are only referring to those colleges where malpractices do persist or are encouraged by some management. Apart from prevention of malpractices, the problem-method will make the student to think and come forward with a practical solution. This is not possible unless the student is thorough with the subject. The problem method will be able to eliminate malpractices.
8. In our view, so far as this part of the paper containing the problems is concerned, the students can even be allowed to have the bare Acts to enable them to read the sections clearly and think of an answer. Of course, this may not apply to some subjects like the Law of Torts where several legal principles are based on case law and not statutes.
9. The second advantage of the problem method is that students will

have to necessarily attend all classes and cannot hope to remain absent, if they have to face such a system of examination. The third advantage is that students have to apply their mind
independently. Thus the problem method has several advantages – (i) it precludes malpractices; (ii) it makes the students think and study the statutes closely and (iii) absenteeism in classes will get automatically controlled. The introduction of 'problem method' requires generation of a huge data Bank of problems in various subjects. In the matter of prescribing topics for the law course, the Commission considers that clinical legal education may be made mandatory subject. This course features as part of the law curriculum in all universities in South Africa and is an excellent supplement to the legal aid system. Even here in India, the Delhi university has for many years now been running a successful legal clinical education programme where students are able to provide minimal legal assistance in the form of drawing of the petitions/applications and offering legal advice, to under trial prisoners and inmates of custodial institutions. This could be made mandatory in all law colleges.

2.3.2.5 Training centers for Law teachers

1. Yet another important aspect is about the need to revamp the teaching system by establishing a number of special institutions to enable law teachers to update their knowledge. While we agree that there are several good teachers in law schools who are highly qualified and very competent, there is always need to keep abreast of latest needs of the practitioners, and of the latest Judgments of our Courts and our statutes as well as Judgments of the House of Lords, American and Canadian Supreme Courts, Judgments of the Australian High Court and New Zealand Courts and of the European Human Rights Court at Strausborg.It is also necessary to keep in touch with new principles of law emanating abroad and to several developments in important subjects like trademark, copyright, patents, the Trips Agreement, Cyber law, Environmental law, Human Rights and other new subjects.
2. Further, when it is necessary to teach several subjects dealing with procedural laws at the college level, there is need that law teachers must get acquainted with several practical aspects of the procedural laws. Training for the teachers is, therefore, necessary.

Apart from the existing refresher courses conducted by the University Grants Commission, it is necessary to impart professional training to the law teachers.

3. To start with, at least four colleges must be started by the Central Government in consultation with the Bar Council of India and UGC, in the four corners of India. The law teachers must have exposure to centers by experts in various branches of law and for this purpose guest lecturers from other States or even from other countries have to be invited.
4. It will be for the UGC and the Government of India to make the necessary funds available for the above purpose.
5. We recommend addition of clauses (i.e.) and (if) after proposed Clause (id) in section 7 (1) as follows:"(i.e.) to take such measures to facilitate the establishment of institutions by the Central Government for continuing legal education for law teachers; (if) to take measures for raising the standards of teaching in law in consultation with the Central Government, the State Governments and the University Grants Commission."
6. We also recommend that the 'problem method' be introduced in the examination system to an extent of above 75% in each paper, apart from 25% for theory. The students should obtain a separate minimum number of marks for the theory and a separate minimum in the problem part of the examination. This will enable the student to apply their mind seriously to every subject. This will also eliminate malpractices. Attendance to classes is also bound to improve.

2.3.3 External and Internal Assessment

Here the underlying question is who shall assess? Shall it be someone internal to the teaching situation (e.g. the teacher) or some external assessor? Someone who knows the student or someone who does not? Everyday formative Assessment will almost by definition, be internal assessment performed, chiefly, by the teacher as part of his teaching, though he is not the only one who contributes here, other teachers, the students, and the students colleagues will all help him through their informal assessment.

Internal assessment is often called "Home examination", "Class room test" or "Teacher made test. There are the assessments for which all the arrangement are made by the teachers of the same institution. It's main

aim is to evaluate the progress of students in different classes at different levels. Teachers themselves frame the question papers, take the exam, examine the answer scripts/answer copies and decide about the Fail/Pass of the students.

2.3.3.1 Objectives

(i) To evaluate the Mental Nourishment of students.

(ii) To estimate the student's educational progress, speed of achieving and ability of learning.

(iii) On passing the internal exam, promotion is given to next class.

(iv) Internal assessment creates the competing environment, which make pleasant effects over the educational achievements.

(v) Students and teacher both know the status of each student, who is leading and who is lagging and how much.

(vi Teacher evaluates his progress and his teaching methods and try to overcame his weakness.

(vii) It evaluates the particular curriculum for a particular class.

(viii) Parents of the students are informed about the progress of students so that they can care for their children.

(ix) Teacher can group the students according to Ability, Hard work, and Intelligence on the basis of the result and make arrangements for weak students' betterment.

(x) Result of these test work as motive for further study and encourage or admonish the students accordingly.

(xi) It fulfills the objective of learning and retaining it for a long time.

(xii) Teacher knows the hidden abilities, capabilities, desires and interests of the students, and became able to guide them accordingly on the basis of there.

2.3.3.2 Types

(i) Following are the types of Assessment

(ii) Daily Test

(iii) Weekly Test

(iv) Fortnightly Test

(v) Monthly Test

(vi) Three monthly or Terminal Test

(vii) Annual exam or Annual Promotion Test

(viii) Entrance Test or admission Test

2.3.3.3 Merits

(i) It is direct, flexible and can easily be tied with the unit of instruction.

(ii) It is economical in terms of time and money and can be conducted frequently.

(iii) There is little scope of mal-practices and the students get satisfaction (by receiving back their scripts) that they have been accurately graded.

(iv) It permits the use of a variety of evaluation tools and the results can be used for the improvement of teaching learning processes and providing remedial teaching.

(v) The student accepts it as of a variety of evaluation tools and the results can before the improvement of teaching learning processes and providing remedial teaching.

(vi) The student accepts it as part of teaching learning process and faces it without squirm or fear.

(vii) It provides essential date for the cumulative record, for grouping students according to their ability, and for reporting to parents as well as for making decisions with regard to annual promotion.

(viii) It has content validity and scares are sufficiently reliable.

2.3.3.4 Demerits

(i) Every teacher is not competent to construct and use these techniques of evaluation.

(ii) Internal assessment tends to lead to indiscreet comparison of students.

(iii) It is not possible to apply internal evaluation in respect of thousands of private candidates.

(iv) Teacher can yield to local pressures.

(v) Grades will vary from school and will not have uniform significance.

(vi) Pupils and their parents have lesser faith in internal evaluation.

(vii) Teachers having freedom of evaluating their own students may tend to be lax in covering the prescribed syllabus.

2.3.3.4 External Assessment:

External Assessment is organized and conducted through standardized test, observation, and other techniques by an external agency, other than the school.

2.3.3.5 Process of External Assessment Conduct

(i) Selection of paper setters and reviewers.

(ii) Setting and moderation of question papers.

(iii) Printing and packing of question papers confidential nature of printing work.

(iv) Selection of examination centres

(v) Appointment of superintendents and invigilators and staff for the fair conduct of examination at centres.

(vi) Supply of stationary to centres.

(vii) Distribution of question papers to examinees under the supervision of the centre superintendent.

(viii) Posting of police personnel at the centers.

(ix) Packing of answer scripts and sending them to Board's office or examining body's office.

(x) Deployment of special squads for checking unfair means.

(xi) Assignment of fake of fictitious or secret roll numbers to answer books at the Board's office.

(xii) On the spot evaluation at some specified centers where head examiner and examiners mark the scripts.

2.3.3.6 Importance & Objectives of External Assessment:

Following

(i) Degree/Certificate

(ii) A standard

(iii) To make distinguish

(iv) Comparison of abilities.

(v) To evaluate the progress of Institution

(vi) Selection for Higher education

(vii) To get employment

(viii) Popularity/Standard of educational institution.

(ix) Selection of intelligent students.

(x) Competition.

(xi) Evaluation of teacher's performance

(xii) Evaluation of objectives and curriculum.

(xiii) Creation of good habits in students

(xiv) Satisfaction and happiness of parents

2.3.3.7 De-Merits of External Assessment

(i) Use of unfair means in the examination hall.

(ii) Just pass the exam/to get degree

(iii) Partial curriculum is covered

(iv) In complete evaluation of personality.

(v) Un reliable results.

(vi) Use of helping books & guess papers.

(vii) Chance/Luck

(viii) Corruption

(ix) Exams without specific objectives.

(x) Negative effect/Impact on the students.

(xi) No attention over research.

(xii) It is time consuming.

(xiii) Pet questions are respected

(xiv) Standards vary from Board to Board and University in the same year.

(xv) Marking is not up to the standard.

2.3.3.8 Suggestions for Improvement:

(i) Comprehensive Evaluation

(ii) Employees of examining bodies to be controlled.

(iii) Invigilating staff.

(iv) Secrecy sections should be fool proof.

(v) Appointment of Examiners

(vi) Change in examination point of view, It should not be objective, It should be mean to achieve objectives.

(vii) Reform in question papers.

(viii) Marking of Answer Scripts.

(ix) Ban on helping books and guess papers.

(x) Amalgamation of Internal and External exam.

(xi) Oral test should be taken.

(xii) Amalgamation of subjective and objective type test.

(xiii) Record of students.

(xiv) Question paper should be based on curriculum rather than text book.

In-spite of these flaws both are necessary for the betterment of education system. Internal assessment prepares the students for external Assessment. Therefore we can't avoid any one. But we have to replace/remove the negative points from these to make more effective to these systems.

2.4 SUMMARY

Seminar is a technique of instruction by which circumstances are created for reflection level of understanding. Students are more active in reflection level and teacher is there to assist or guide them. In higher education teacher should use those techniques in which student can play an important and active role. Seminar method is one of them. It is a presentation and discussion among selected groups of persons for purposeful deliberation. Generally seminar is conducted by colleges, University or research institutions. Some organizations also support or assist for conduction of seminar like Indian law Institute, University Grants commission (U.G.C), and National Educational Research Council etc.

Seminar method is used to share opinions concerns and appreciations, to discuss a particular issue. The number of days could vary depending objects of seminar. The seminar method is the most modern and advanced method of teaching. A seminar is an advanced group techniques which is usually used in higher education. It is an instructional technique. It involves generating a situation for a group to have a guided interaction among themselves on a theme. It refers to a structured group discussion, what usually follows a formal lecture or lectures often in the form of an essay or a paper presentation on a theme. Seminar method is more useful in legal education. The object of legal education is to create safe and positive environment in which students can fearlessly express their views. Seminar method is helpful to achieve that object.

The seminar method can be used to serve a number of purposes. It is most suitable for the following purpose:

1. To develop the critical and analytical ability.
2. To provide opportunities to pupils maximizing their active participation.
3. To stimulate thinking.
4. To develop the habits of tolerance, cooperation, respect for other views.
5. To encourage slow learner to participate.
6. To arouse and maintain interest and enthusiasm to learn.
7. To provide opportunities to students for exploring and discovering something for themselves.
8. To develop cognitive and emotional ability among the participants.
9. To develop good manner of putting questions.

Role in seminar

Seminar method can be organized with the help of following persons. Different person play different role. Following roles are important in seminar.

1. Organizer

2. Chairman

3. Speaker

4. Participants

Seminar is a well planned process of teaching. It has three parts:

1. Planning Part.
2. Operational Part.
1. Post seminar phase.
2.

Seminar can be divided into following types:

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(iii) Invigilating staff.

(iv) Secrecy sections should be fool proof.

(v) Appointment of Examiners

(vi) Change in examination point of view, It should not be objective, It should be mean to achieve objectives.

(vii) Reform in question papers.

(viii) Marking of Answer Scripts.

(ix) Ban on helping books and guess papers.

(x) Amalgamation of Internal and External exam.

(xi) Oral test should be taken.

(xii) Amalgamation of subjective and objective type test.

(xiii) Record of students.

(xiv) Question paper should be based on curriculum rather than text book.

2.5 SUGGESTED READINGS

1. Dr. H.N. Tiwari, Regal Research Methodology, Reprint, 2006.
2. Dr. S.N. Myaneni Legal Research Methodology, Reprint, 2008.
3. C.R. Kothari Research Methodology: Methods and Techniques. Reprint, 1994.
4. 184th law commission report of India.

2.6 TERMINAL QUESTIONS

1. Explain about the seminar method of teaching.
2. Give an account of evaluation system in India.
3. Write an essay on internal and external assessment in India.
4. What is the difference between case method and lecture method? explain.

LL.M. Part-2

Subject: LEGAL EDUCATION AND RESEARCH METHODOLOGY

Block I- Introduction

Unit-3 Clinical legal education - legal aid, legal literacy, legal survey and law reform

STRUCTURE

3.1 INTRODUCTION

Clinical Legal Education includes not only the clinical courses but also practice-oriented courses and activities included in or offered outside the curriculum. Clinical Legal Education is more than a vehicle for the study of lawyering and the legal profession. Clinical Legal Education should be devised and implemented; this will give law students a deeper and more meaningful understanding of law. The subject-matter or content of Clinical Legal Education and the Clinical method of law teaching can be separated; the subjects sought to be taught in a clinical course or program can be presented in traditional classes, and the clinical teaching method can be utilized in courses outside the usual "clinical" subject areas. Clinical Legal Education in India has its roots in both the Legal Aid and Legal Education Reform Movements. Formal Legal Education started in 1855, in India. Many commissions and Committees were set up for the development of Clinical Legal Education in India. Legal Education has gone through many stages of development.

The Bombay Legal Education Committee concluded in 1949, recommended that practical courses should be made compulsory only for students who choose to enter the profession of law and the teaching method should include seminars or group discussions, moot court competitions etc.

The 14th Report of the Law Commission of India recognized the importance of professional training and for a balance of both academic and vocational training. It recommended that University training must be followed by a professional course concentrating on practical knowledge—but it suggested that the professional course be made compulsory only for those who chose to practice law in the courts. The Commission's 1958 Report concentrated on institutionalizing and improving the overall standards of legal education. In that regard, the Report also discussed teaching methods and suggested that seminars, discussions, monk trials, and simulation exercises should be introduced--- in addition to lectures. Thus, although the Commission's Report

didn't deal directly with improving skills, it did so indirectly by supporting the use of teaching methods that could be more helpful in developing various skills.

Reports of University Grants Commission (UGC) also played important roles in the history of Clinical Legal Education and report emphasized the role of legal education in developing law as a hermeneutical profession, explaining that lawyers must be taught a variety of skills and sensibilities. It outlined the objectives of reformed teaching as making students more responsive to learning and making them demonstrate their understanding of law.

Bar Council of India (BCI) report 1996 on NLSIU (The National Law School of India)—The Bar Council of India issued a circular in1997 using its authority under the Advocates' Act 1961 directing all universities and law schools to revise their curriculums. It included 21 compulsory courses and 2 optional courses, leaving Universities free to add more courses. The circular also mandated the inclusion of 4 practical papers. Law schools have been required to introduce these 4 practical papers since academic year 1998-99, which was viewed as a big step toward introducing Clinical Legal Education formally into the curriculum.

3.2 OBJECTIVES

The clinical programme, is to provide a wide range of opportunities in clinical programmes, compulsory as well as optional. At present the compulsory clinical courses are—(a) Client Interviewing, counseling, And Alternate Dispute Resolution methods; (b) Litigation Clinic; (c) special Clinic integrated with compulsory placements of two months from III year to V year of the 5 year LL.B. course. The optional component of the scheme includes: a) Moot Court (b) Legal services Clinics; (c) community-based Law Reforms Competition. The objective of this lesson is not only to study about the clinical courses but also practice-oriented problems and activities included in or offered outside the curriculum. Clinical Legal Education is more than a vehicle for the study of lawyering and the legal profession. The present lesson will be helpful in providing a structure about the concept of clinical education in India.

3.3 SUBJECT

Actually clinical legal education is the method and technique of the teaching, and managing situations including the behaviour of the students in such a way so as to maximize their participations in learning.It involves some programmes for

providing opportunities to pupils for maximizing there active participation. Clinical legal education includes learning the task in hand. This can be done as posing a problem or situation. Professional education demands more practical exercise. Clinical methodology has significant place in legal education. Purpose of clinical methodology can be achieved through various activities like Lok Adalat, legal aid scheme, legislative drafting technique, moot-court, trial proceedings.

3.3.1 Nature of clinical Education

Clinical legal education in its true sense is a practical training. It deals with the utility of law for the society. Professional character of law requires problem based exercise. Now clinical legal education has been given by law school by establishing legal aid center or projects.

Traditional educational methods also have certain aspects of this education like Moot-Court, Practical training under the supervision of lawyers. Clinical legal education constitute an important tool for getting practical training on lawyers skills for law students and rendering legal services to the poor.

It includes some aspects of lawyers process on negotitation, counseling interviewing, verifying of field work is also a part of clinical education Lok- adalat, legal literacy program social interest litigation, moot trail self learning are important elements of the clinical legal education.For a long time, student could not practice what they have learned in the class. Now a days attachments programmes have been introduced in the cause that require law students to attach themselves to a lawyer and the courts for legal aid for practical experience. A more systematic approach was required as part of their course like Lok-Adalat, legal literacy programmes, professional ethics, Moot court and drafting etc.

Selection of clinical activity will vary according to course objectives. Selecting of activity or programmes is not the complete task, student must be prepared adequately to respond to challenges. “The nature and extent of the preparation will depend of course on the background of the students and the type of activity selected. At a minimum student should be provided on over-view of the relevant substantive law and procedural frame work that will be used ‘.

3.3.2 Need of clinical legal education

Before the Advocate Act, Law students were required to complete procedural subject and acquire practical training, practical training can be acquired for over a year under apprenticeship in the chamber of a senior advocate. Practical or procedural subjects such as C.P.C, Cr. P.C, and Evidence were being taught through the lecture method and the student had no practical or clinical activity. The term clinical legal education was not even referred to in literature.

The great divergence between law in the books and law in action will be brought to focus in these functional areas of jurisprudence particularly with the application of empirical research method. How to strike a balance in the curriculum between the traditional legal courses and the newly emerging functional field of legal activity to condition the future lawyer to entire range of responsibilities is an issue that will continue to pose challenges to the legal educators everywhere.

Bar council if India restructured legal education in 1982.Although practical training became a part of L.L.B. course but clear method and content was not provided.

Some universities like Delhi University and B.H.U introduced case method of teaching. These programmes were not supported by the prescribed syllabus for law degree.

The values perpetuated by any system of education determine the nature of society. The study of law, when devoid of social content and divorced from the reality of human existence too often teaching in any institution of learning becomes a passive monologue." Clinical legal education deals with practice of law. This is because of the distinction between legal education and legal profession.

The legal system has a dynamic role to play in political economic change etc. To make the legal education effective, what is needed is a balance between professionalism and value oriented traditional knowledge.

Experience of judges, lawyers and other relevance. In clinical legal Education 'Teachers have to demonstrate the working of courts, functioning of a government organ, preparation of drafts of plaint, written statements, decree or other relevant documents. This involves lawyering process, negotiation, counselling etc.

The clinical educator is in a unique position, and because of that position, has a unique responsibility to bridge the gap between law and its traditional

conservatism and the frankly pragmatic, spiritual idealism of many of its practitioners including the future lawyers who sit at your feet through several years of law school.

Professional nature of legal education requires more emphasis on functional aspect of law. Only doctrinal method to teach basic principles with statutes and judicial decision is not sufficient in the present context. “Law is to be conceived in the social context and studies in terms of social dynamics. This demands a variety of approaches and skills from legally trained persons, the teaching of which should be an objective of legal education, profession or otherwise. The need for lawyers and other legal professionals to be able to construct policies, evaluate them and integrate them in the social process is evident today more than ever before.

3.3.3 Characteristics of Clinical Method

There is a distinction between clinical legal education and clinical teaching methodology. They are so interdependent that are hardly discussed separately. A clinical methodology can be used for a theoretical subject or a clinical course subject can be taught by a traditional teaching methodology.

“This clinical methodology is most often summarized as ‘ learning through doing’ that is teaching through students active participation in various aspect of the legal process under faculty guidance and supervision. Its value is usually expressed in terms of achieving for students a greater depth of understanding about the role and work of lawyer than is possible in the classroom.”

Clinical methodology is not a new concept for medical education as is in legal education. During internship medical students learn diagnosis techniques and treatment through doing. In law students learn procedural law under the supervision of lawyers as junior. Ultimate goal of clinical methodology is involvement of students in real life, in making their own decision aware in the actual working of legal system.

3.3.4 Objects of Clinical legal Education

Main object of clinical legal education is to place student into active role. Purposes of clinical legal education are as follows:

1. It provides maximum opportunities to a student to perform.

2. Placing students in the optimal position in their field.
3. Prepare student for field work or placement.
4. Develop ability to perform their task justifiable in future.
5. To provide deeper and meaningful understanding of legal process.
6. To acquaint the law student with the advocacy skill and lawyering process.
7. Develop sense of independence in field.
8. Putting students in a profession role.
9. To develop a sense of social and political responsibility in the students about legal profession.
10. Reinforcing students towards their future profession.
11. To understand the limitations of traditional legal system.
12. To create problem solving capacity in the students.
13. To stimulate the student for alternative dispute resolution system.
14. To expose students to realities of life.
15. Enable the students to develop better understanding of Indian legal system.
16. To produce the lawyers.
17. To expose the student to real problems of clients.

The Clinical Legal Education can be defined in various ways –

"Clinical Legal Education is essentially a multi-disciplined, multipurpose education which can develop the human resources and idealism needed to strengthen the legal system… a lawyer, a product of such education would be able to contribute to national development and social change in a much more constructive manner."

"A learning environment where students identify, research and apply knowledge in a setting which replicates, at least in part, the world where it is practiced. It almost inevitably means that the student takes on some aspect of a case and

conducts this as it would be conducted in the real world."

The Clinical Legal Education is a term which encompasses learning which is focused on enabling students to understand how the law works in action. This can be done by undertaking real or realistic simulated case work. In early days law is thought as one of the curriculum available to the students. Even though the casebook method was growing in earlier days, there were critics of this method from the beginning. However the first hand experience method will really educate the law students. The legal education clinics if properly channeled may help the students to gain their knowledge. The use of the word 'clinic' prompts the analogy of trainee doctors meeting real patients in their medical clinics. Clinical Legal Education is only one way in which theory and practice can be brought together.

3.3.5 Types of clinics

The aims and objective of each are in principle the same. The legal clinics may be divided into three types 1. Simulation clinics 2. Out-house real client (real world) clinics 3. In-house real client clinics.

1-Simulation clinic :

Students can learn from variety of simulations of what happens in legal practice. Ex – moot Court commonplace etc. Cases can be acted out in their entirety, from the taking of initial instructions to a negotiated settlements or Court hearing. Such sessions can be run as intensive courses or spread through all or part of the academic year in weekly slots. Other simulations can range from negotiation exercises, client interviewing exercises, transaction exercises etc.

2-The In-house real client clinics:

In this model the clinic is based in the law school. It is offered, monitored and controlled in law school. In this type of clinic the clients require actual solutions to their actual problems hence it is called as real client clinic. The client may be selected from a section of the public. The service is given in the form of advice only or advice and assistance. In this type of Clinics, Clients are interviewed and advised orally or in writing and also helped with the preparation of their

cases. The clinic may operate as a paralegal services or a fully-fledged solicitor's practice.

3-he out-house clinic:

is a clinic that involves students in exercising legal work outside the college or ıiversity. These types of clinics may operate on the basis of advice giving only. ıch agencies are run by trade union councils and other non-statutory bodies. The nic might take the form of placement also in solicitors' office or barristers' ıambers.

mulation clinic has several advantages than other clinics. In this type of clinic risk ıd unpredictability of the real-client work are removed, the same materials are ;ed for many times and hence cost is substantially less than real clinic. The lministration of the simulation is very difficult. But all the clinics play active part in inical Legal Education and also their objectives and aims are same.

3.3.6 Benefits of Clinical Legal Education

Following are some benefits of the Clinical Legal Education.

a) Practical Approach: It involves a different approach to the learning of law: it encompasses experimental learning, or "learning by doing." The scope of the client's problem is determined and solutions are given to them. It generates confidence in students as their success is determined by their own efforts rather than external factors. It is the application of knowledge. It gives opportunities for the knowledge to be applied, but it also goes beyond this and calls for reflection and self examination. It gives students the opportunity to explain why they are taking certain actions and they are able to discuss and reconsider their actions. Students can examine the legal and social issues in some depth.

b) Student motivation and development: Students are self-motivated and highly committed to the work. Students are more responsible in their work.

c) Acquisition of skills: Some skills are very important to a lawyer. Clinical Legal Education is based on practical approach and hence it helps in acquisition of skills. The skills may include skills like Research skills, Communication skills, interviewing of clients and witnesses, Counseling, Drafting, Negotiating, and

Problem Solving etc skills. These skills are very important to a lawyer.

d) Professional ethics and responsibility: There in need of study of ethics and the professional responsibility and conduct of lawyers. This is growing in recent years as Clinical Legal Education includes practical training.

e) Involvement with local community: A law clinic can help to reduce isolation by making the law school more relevant to community. It can offer advice and assistance to local people and help to reduce isolation. There are many benefits of this. Also the students can be able to understand the problems of different generation and background. This experience can add to their understanding of the position of others in society, and can increase their maturity and sense of responsibility.

3.3.7 Problems of Clinics

a) The Integration of the clinic within the law school: Some eminent authors stated that there is a danger that the clinic will become an isolated outpost of the law school, and not absorbed within its mainstream activity. To avoid diversion of students from the rest of their legal teaching, it is important to draw clear links between substantive law courses and work done in the clinic. For example, problems arising in the clinic can be re-examined in other law classes, research can be done on them, and even action recommended. A wide range of teacher involvement is desirable. However, there is no ready-made solution to the problem of integration.

b) Resources: Extra resources must be allocated to the teaching and running of the clinic. This can be another cause of resentment for traditional academics who are less involved in skills teaching, and it is another reason why the support and involvement in the clinic of the law school is needed. The pressures created by the high caseload may badly affect the moral of both staff and students. Resources can be particularly stretched if the clinic operates an open door policy and attempts to deal with all cases which come in off the street. Hence there is need to limit access in some way.

c) Difficulties in supervision and assessment: Supervising students in the clinic is difficult task. It is important to include checks on the quality of work

being done for the system of supervision.

d) The dangers of public service: The idea of providing free legal advice is attractive but problems can develop if the public service aim takes precedence over that of providing a sound and well rounded legal education.

e) Relationship with the local legal profession: Some may fear that a legal clinic offering free legal work will upset the law school's relation with the local legal profession.

The 2nd UGC report of particular interest to Clinical Legal Education was prepared by a Curriculum Development Committee, which was asked to upgrade the syllabi of the LL.B. course. The proposed curriculum also includes several subjects which have a potential to be taught clinically in order to offer instruction in various values and skills required for a new lawyer. Also it introduced a clinical aspect in the LL.M. program.

Report of the Law Commission of India - 2002 stated that "the Commission considers that Clinical Legal Education may be made mandatory subject."

Current Assessment:

One can trace the development of Clinical Legal education in India to the efforts of a few law schools in the late 1960s. For example, faculty and students at Delhi University established a legal service clinic in 1969 on a voluntary basis. Banaras Hindu University was the first to introduce a clinical course, in the early 1970s. This was an optional course offered to a limited group of 30 students with academic credit for 200 marks. The course included courts visits, participation in a legal aid clinic in the school, and an internship in chambers of lawyers. While each of these early efforts was significant, no steps were taken during those years to institutionalize Clinical Legal Education. A national movement to do so was begun with the opening of the National Law School of India University in Bangalore, established by the Bar Council in 1987 as a model for legal education reform. The National Law School's curriculum includes several clinical courses, including more recently course that cover the subjects included in the practical papers mandated by the Bar Council of India in 1997. Over the past 10 years, seven other national law schools have been

established. It is necessary to emphasize that the purpose and scope of legal education must be to prepare students for the practice of the profession of law. Therefore, the law and legal education which together constitute the backbone of society should change according to the changing needs and interests of the ever changing society. Undoubtedly clinical work will be more expensive than class room teaching.

3.3.8 Legal activities: legal aid, legal literacy, legal survey and law reform

Clinical legal education cannot be planned and implemented in isolation. Operating a clinical legal education programme successfully requires care in working other institutions in the academy and the legal profession. A clinical programme work is best when it is integrated into overall curriculum in law school, as well as into the legal and judicial community, can be an asset to students, faculty, client and the legal community. To achieve the objectives of clinical legal education, number of courses has been introduced by Bar council of India in legal study syllabus. National law Universities offer a wide range of opportunities in clinical problems. To achieve the objectives of clinical legal education number of activities has been introduced by universities. These are some important programmes.

1. Moot court
2. Legal aid clinics
3. Law reforms competition
4. Lok Adalats
5. Counsellings
6. Alternative Disputes Resolution clinics
7. Client interviewing
8. Pre-Legal advocacy training
9. Mediation clinics
10. N.G.O and legal education programmes.
11. Mock trial.

3.3.9 Moot Court

Every year number of inter-class, Inter Collegiate or interstate moot court competition has been organized in India. Now this is a compulsory course in every law university. Students also participate in International moot court competitions. In doing Moot Court the students learn the skill of researching on a given problem, the skill of drafting and the skill of arguing out a case. Students are expected to present and prepare a case on the problem assigned to them; actually it is a role playing activity. There are roles of judge, Advocate, Client etc. This course is intended to impart understanding of the basic skills of investigation, examination and cross examination of witness, litigation, strategies etc.

3.3.10 Legal services

Legal literacy and legal aid services are important tools for professional education for law students. These services provide legal service to poor, legal services clinics are established in many law school, to provide legal advices to poor and opportunities to law students to serve them. Legal literacy programmes are organized by national or other law universities, with the objective to provide legal information's with a sense of social responsibility. The legal service clinics usually include legal literacy, legal aid, legal advices, conciliation, mediation, ADR etc. In order to spread legal awareness among poor, women, under trial rural people, and to promote legal literacy, programmes are organized by various law universities.

3.4 SUMMARY

Clinical Legal Education includes not only the clinical courses but also practice-oriented courses and activities included in or offered outside the curriculum. Clinical Legal Education is more than a vehicle for the study of lawyering and the legal profession. Clinical Legal Education should be devised and implemented; this will give law students a deeper and more meaningful understanding of law. The subject-matter or content of Clinical Legal Education and the Clinical method of law teaching can be separated; the subjects sought to be taught in a clinical course or program can be presented in traditional classes, and the clinical teaching method can be utilized in courses outside the usual "clinical" subject areas. Clinical Legal Education in India has its roots in both the Legal Aid and Legal Education Reform Movements. Formal Legal Education started in 1855, in India. Many commissions and Committees were set up for the development of Clinical Legal Education in India. Legal Education has gone

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for getting practical training on lawyers skills for law students and rendering legal services to the poor.

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The legal system has a dynamic role to play in political economic change etc. To make the legal education effective, what is needed is a balance between professionalism and value oriented traditional knowledge.

Experience of judges, lawyers and other relevance. In clinical legal Education 'Teachers have to demonstrate the working of courts, functioning of a government organ, preparation of drafts of plaint, written statements, decree or other relevant documents. This involves lawyering process, negotiation, counseling etc.

Professional nature of legal education requires more emphasis on functional aspect of law. Only doctrinal method to teach basic principles with statutes and judicial decision is not sufficient in the present context. "Law is to be conceived in the social context and studies in terms of social dynamics. This demands a variety of approaches and skills from legally trained persons, the teaching of which should be an objective of legal education, profession or otherwise. The need for lawyers and other legal professionals to be able to construct policies, evaluate them and integrate them in the social process is evident today more than ever before.

Clinical legal education cannot be planned and implemented in isolation. Operating a clinical legal education programme successfully requires care in working other institutions in the academy and the legal profession. A clinical programme work is best when it is integrated into overall curriculum in law school, as well as into the legal and judicial community, can be an asset to students, faculty, client and the legal community. To achieve the objectives of clinical legal education, number of courses has been introduced by Bar council of India in legal study syllabus. National law Universities offer a wide range of opportunities in clinical problems. To achieve the objectives of clinical legal education number of activities has been introduced by universities. These are some important programmes.

Moot Court

Every year number of inter-class, Inter Collegiate or interstate moot court competition has been organized in India. Now this is a compulsory course in every law university. Students also participate in International moot court competitions. In doing Moot Court the students learn the skill of researching on a given problem, the skill of drafting and the skill of arguing out a case. Students are expected to present and prepare a case on the problem assigned to them; actually it is a role playing activity. There are roles of judge, Advocate, Client etc. This course is intended to impart understanding of the basic skills of investigation, examination and cross examination of witness, litigation, strategies etc.

Legal services

Legal literacy and legal aid services are important tools for professional education for law students. These services provide legal service to poor, legal services clinics are established in many law school, to provide legal advices to poor and opportunities to law students to serve them. Legal literacy programmes are organized by national or other law universities, with the objective to provide legal information's with a sense of social responsibility. The legal service clinics usually include legal literacy, legal aid, legal advices, conciliation, mediation, ADR etc.In order to spread legal awareness among poor, women, under trial rural people, and to promote legal literacy, programmes are organized by various law universities.

3.5 SUGGESTED READINGS

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2. Dr. S.N. Myaneni Legal Research Methodology, Reprint, 2008.
3. C.R. Kothari Research Methodology: Methods and Techniques. Reprint, 1994.
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5. Richard Lewis, Clinical Legal Education Revisited
6. N. R. Madhava Menon, 1998, Clinical Legal Education.

3.6 TERMINAL QUESTIONS

1. What is the need of clinical education in India?

2. What are the objectives of clinical education in India?

3. Write an essay on relevance of clinical education in India.

4. What are the benefits of clinical education to the law students ?

5. What are legal services ? give a brief account in tour own words

LL.M. Part-2

Subject: LEGAL EDUCATION AND RESEARCH METHODOLOGY

Block II - Research Methods
Unit-4 - Socio Legal Research

STRUCTURE

4.1. INTRODUCTION

Research work is not something which can be completed in one stroke on in one step. It consists of a number of closely related activities which very often overlap. At the very outset the researcher must choose the area in which he wants to carry on research. In the field of Law the researcher has a very wide scope. He can select any area. After selecting the area he is required to select topic or subject for his study.

A research cannot said to be duly carried out unless the relevant materials have been examined. The collection of relevant materials is most difficult and comprehensive work and requires lot of energy, attention as well as patience. The collection of material depends upon the research design, selected by the research. In this chapter we will discuss various tools and techniques for the collection of data, with Pros x cons of each method so that the data be analysed.

4.2. OBJECTIVES

Research in common parlance refers to a research for knowledge. Research is a scientific and systematic search for pertinent information of a specific topic. In fact research is an art of scientific investigation. In the field of law, research occupies a very significance portion. The purpose of research is to discover answers to questions through application of scientific procedures. The objective of this lesion is to define the research design. One of the design decision will be the what types of tools and techniques can be used for the collection of data and seeking answers to the question which will be useful in the research or study of a specific topic.

4.3. SUBJECT

4.3.1 Collection of Data in Socio-Legal Research

Collection of data is regarded as fascinating phase of research. Through the collection and handling of information, the researcher begins to feel the actual excitement of research. A researcher can either collect the data himself or rely on others for their collected data or information available with them. In both the cases, there is a great need for data of high quality. The selection of data requires great skill and experience.

Data is based on our sense-observations. The word 'observation' as used here includes all forms of perception used in recording responses as they impinge upon our senses. But response is not a datum. A response is some manifest kind of action, whereas a datum is the product of the process of recording the response.

In data collection stimuli (questions, tests, pictures or other objects) is presented to the respondent (subject). The stimuli may be classified as systematic stimuli, and unsystematic stimuli. By systematic stimuli, we mean those that are kept constant while objects are changed. The unsystematic stimuli are those which lack standardization e.g., questions asked in informal interviews.

The responses of the subjects (i.e., respondents) to the stimuli may also be classified as systematic and unsystematic responses. Systematic responses have a reference to constant (definite, standardized) response categories. Thus, the responses of subject to a stimulus are recorded. The unsystematic responses are those which are recorded verbatim with due regard to all possible individual variations and character logical nuances. Bringing these categories of stimuli and responses, we can decide the settings for the collection of data as :—

(i) Informal,
(ii) Formal unstructured, and
(iii) Formal structured.

The responses of the subjects may be called as 'acts'. Acts may be classified as verbal and non-verbal. The verbal acts may be sub-divided into oral and written. Verbal acts are acts where verbal symbols are used to communicate. The non-verbal acts are the signals like bowing, clapping, etc. The oral-verbal acts consist of the subject replying to a stimulus by the word of the mouth. The other kind of verbal acts consist in writing out the responses to the stimulus.

The main forms of data collection responses can be presented in the following break-down table -

Settings	**Responses**		
	Non-verbal	**Oral-verbal**	**Written-verbal**
Formal	Participant observation	Conversations	Letters, articles, biographies
Formal	Systematic	Unstructured	Open-ended

unstructured	Observation	Interviews	Questionnaires
Formal structured	Experiments	Structured interviews	Structured questionnaires

Data collection is related to : (i) Primary and secondary sources of data, (ii) Census and sampling techniques, and (iii) Methods of data collection.

The sources of legal data can be classified on several grounds, such as, reliability, personal efforts, availability and so on. On the basis of reliability they may be broadly divided into two categories: Primary data, and secondary data. Some divided the sources of data into documentary source and, field sources. Lundberg classified them as historical source and field sources.

4.3.2 Primary and Secondary Sources of Data Collection

(a) Primary source of data.—it is original information collected for the first time. It is also called as internal source of data as the data is collected directly from the subjects. They are obtained from living persons directly related to' the problem or through observation. This primary sources can again be sub-divided into: (a) Direct Primary, and (b) Indirect Primary

(i) Direct primary sources: The researcher personally goes and observes events, things, behaviour, activities and so on. He has to display great skill and objectivity Observation can be of three sub-types: (i) participant observation, (ii) non-participant observation, and (iii) quasi-participant observation. Direct observation is the best, but difficult. In some cases it may be either legally inadmissible or physically impossible.

(ii) Indirect primary sources : As the researcher cannot observe things which occurred long back, he needs to contact those persons who have made observations relevant to his research. This can be done through interviews, questionnaires or schedules.

(b) Secondary source of data.—this information is obtained from outside either a published source or from someone else who has already 'worked on the subject. They save a researcher's labour of collecting data again and prevent unnecessary expenditure. They can be broadly divided into two types: (a) Personal documents, and (b) Published documents. Personal documents

consist of life histories, diaries, letters, and memories. It is very difficult to obtain them or put them to proper' use. Public documents come from public bodies, government and private organizations. Apart from books, available in libraries, this category includes records, published statistics, reports of newspapers and journals and special reports, film or T.V. programmes, tapes and so on. Unpublished documents are not easily available. Documentary sources are very important because past events can be known only through them. They may reveal certain secrets. They can help to save time, money and energy. But a researcher should verify the contents with the help of other sources. The secondary materials of law possess only on persuasive value but not authoritative value.

4.3.3 Relationship between Primary and Secondary Sources

The primary data once collected will become secondary data for others. The researcher collecting primary data knows the reality and the limitations, of the problem. Second-hand data provides hypotheses for the problem. These hypotheses can be tested or verified on the basis of first-hand data. Secondary data become third-hand data if they are mentioned by someone else. Primary data can be considered as being most reliable. The secondary sources are available in a Law Library.

Original Material Sources of Law

Material source of law is that source from which law derives not its validity but the matter of which it is composed. Material sources are divided into legal and historical. Legal source of law are those sources which are authoritative. They are recognized as such by the law itself. These are the immediate sources of law. The law which comes through the legal source may be divided into the following classes

1. **Enacted law, having its source in legislation.—**

The supreme legislation is made by the sovereign power of the nation. In democratic countries, Parliament is sovereign. It is considered not only supreme but legally omnipotent. But there may be certain constitutional restrictions upon its power. Subordinate legislation is made by any other authority than the supreme authority in the nation. It is made under the powers delegated by the supreme authority. Such legislation is also considered as law. Subordinate laws are executive made laws and local laws by local bodies.

(2) Case law, having its source in precedent.—

Precedent is defined as "a previous instance or case which is, or may be taken as an example of rule for subsequent cases, or by which some similar act or circumstances may be supported or justified. In the judicial field, it means the guidance or, authority of past decisions for future cases. Only such decisions as lay down some new rule or principle are called judicial precedents. The first general rule of doctrine of precedent is that each court is absolutely bound by the decisions of the courts above it. The second rule is that to a certain extent higher courts are bound by their own decisions.

(3) Customary law, having its source in custom.—

Customs are the most important source of law. But with the progress of the society they gradually diminish and legislation and judicial precedents become the main sources. In every legal system and at all the stages of legal development there are some customs accepted by the society The customs having sanction are those customs which are enforced by the State. Legal customs operate on a binding rule of law. They have been recognized by the courts and have become a part of the law of the land. They are enforced by the courts.

(4) Conventional law, having its source in agreement.—

The conventional law are those customs which govern the parties to an agreement. Parties agree to them. Such customs are binding not due to any legal authority independently possessed by them, but because it has been the contract between the parties to it. There is a bulk of conventional law in every country.

(5) Statutory interpretation.—

The law which comes into being through legislation is called enacted or statute law. It is for the courts to apply these formulas to specific cases. The court has to ascertain the meaning of the letters and expressions of the enactment for its application. This process of ascertaining the meaning of the letters and expressions by the court is called 'interpretation'. In this process the judge exerts very considerable influence on the statute law. The interpretation is mainly of two kinds : (i) literal and (ii) liberal. The principle of literal interpretation is that the judge should not go beyond the letters of the law. The liberal interpretation is that the judges should go beyond the letters of the statute in order to ascertain the true intention.

(6) Codifications.—

Codification means promulgation, compilation, collection and systematization of the body of law in a coherent form by an authority in a State competent to do so. In India, there are the codes of Manu, Yajnavalkya, Brihaspathi, Narada, Parashara, etc. These various codes are applied in different parts of the country. In modern times, the Indian Law Commission drafted a number of codes such as Indian Penal Code, The Civil Procedure Code, etc. The Law Commission made comprehensive and voluminous recommendations of which many have been implemented.

There are other sources of law like: (1) morals and equity and (2) opinions of experts. All these sources are available in documentary form in general and legal libraries.

4.3.4 Case Law as a Source of Law

The legal practitioner, judge, researcher of law have to involve in search of law to be applied to a case in hand because “no lawyer knows more than a relatively infinitesimal part of the law, nor does any judge”. But they have to know how to find law and where to find law.

Lawyers draw relevant proposition of law to be applied in a case in hand from two important sources: the judgments made by higher courts, i.e., the precedents and the legislations. One cannot find out a law applicable to a fact situation covered by a single source of law. Often the legal proposition to be applied in a fact situation cannot be drawn from a particular source of law. A sound knowledge in substantive and procedural laws enables a lawyer to identify relevant facts of a case from a mountain of facts made available to him by a client. On the identification of relevant facts and the law to be applied thereto a lawyer uses his logic to correlate them.

A precedent is primarily a case law which serves as an authority for deciding a similar case. In many instances, case-laws have played an important part in the interpretation of statutes. Case-law consists of the rules and principles stated and acted upon by judges in giving decisions. In a system based on case-law, a judge in a subsequent case has to decide the case before him in the same way as that in which the previous case was decided unless he can give a good reason for not doing so. That means, cases must be decided in the same way

when their material facts are the same. Of course, it does not require that all the facts should be the same.

Case law consists of the rules and principles stated and acted upon the judges in giving decisions. The case laws are the necessary subject-matter in any doctrinal enquiry because the law declared by Supreme Court and High Courts binding the subordinate courts. The Indian law is largely a system of case law. That is, the decision in a particular case constitutes 'precedent'. According to the doctrine of precedent, it is not everything and by a judge when giving judgment that constitutes precedent. But only the reason for the decision given in the judgment constitutes precedent. So, the reason stated in the judgment of an appeal case becomes a necessary subject-matter of inquiry and analysis by a lawyer.

Case laws are the secondary source of data to the researchers. While reading the case laws, the researcher may come across a problem of legal issue and he can form a hypothesis, run an empirical inquiry and thus conduct the research.

Case laws are the evidential source for the arguments in deductive analysis. The lawyers, judges and researchers use case laws for their logical argumentation. Thus, the case laws become the documentary source of data in legal studies.

4.3.5 Documentary Sources of Data

Data can be made available from different sources. P.V. Young has classified the data into two groups : (1) Documentary and (2) Field sources. Documentary sources include material already collected whether published or unpublished. Such data can be obtained from libraries and from persons and public documents.

A legal document is anything that contains matters of socio-legal importance. Most of the documents are written in the past when the phenomena took place and are not specially prepared for the study of the present problem. Documents can be divided into two categories: (i) Primary, and (ii) Secondary. Primary documents provide primary data collection and compiled by the same authority that originally prepared those documents. Secondary documents provide data that has been transcribed or compiled from original sources. The published documents were categorized by John Madge into : (i) personal documents, and (ii) public or official documents.

1. **Personal documents (direct source).—**

Personal documents include all such written material as is written by an individual to narrate his views upon personal relationship or social phenomena. Most of these documents are written from personal point of view. There are many kinds of personal documents such as : (i) life histories, (ii) diaries, (iii) letters and (iv) memories.

Life histories include all biographical material, even autobiographies. The author of a life history records his personal views about contemporary happenings. Such writings prove a useful source of material for researchers. Diaries are another important source of information. In a diary, events are recorded in a regular manner. In a diary the author's personal experiences are reflected. Letters are another valuable tool of the socio-legal researcher. They contain the facts of the phenomena. But letters have their own limitations. Some persons write their memories in which they record some of the main events of their social life.

The personal documents express the inner-most feelings of the heart of the writer and at times, these documents throw light on such aspects of life as would have been difficult to know through observation or interview. They, generally, are more reliable both as regards the description of the subject as well as the feelings of the writer. They contain the perfect type of socio-legal material necessary to characterize the life of social group.

Limitations of Personal Documents

(1) The availability of personal documents may be difficult if they contain some confessions which are likely to damage his reputation.

(2) Unreliability of the data may be there due to personal bias of the writer.

(3) Personal documents do not provide a representative sample and the document may not be considered as a valid one.

Public Documents or Official Documents

Public documents also supply a huge fund of information. They deal with different subjects and are usually published by various institutions, organisations and associations. Records, parliamentary debates, judgments, etc. are regarded as important public documents. These documents are easily available and, to a large extent, also reliable. The public documents may be in the form of unpublished records and published documents. A good deal of information regarding socio-legal problems is now collected and released for publication by the Government.

Documentary Sources of Legal Material

(1) Central Legislative Material in Gazettes of India.—

Generally, all current legislative materials such as Bills, Acts, Rules, Notifications, etc. are published in the Gazette of India. The relevant portions of the 'Gazette of India' dealing with legislative material can be of much use for a researcher.

(2) Official Publications of Central Acts.—

'Indian Code' is one of official publications containing all the Acts in force in India. 'Acts of Parliament' is another publication containing all the bare Acts passed in a particular year.

'General Statutory Rules and Orders' is the official publication of all the Rules, Orders and Notifications issued by the Central Government which are in force. To trace the material, the subject heading should be traced by consulting 'the Index to Indian Code'.

The Union Government publishes the reports of Various Committees and Commissions such as Law Commission of India, Commission for Scheduled Castes and Scheduled Tribes, Committee on Public Undertakings, Pay Commission, Finance Commission, Sarkaria Commission etc.

(3) **State Gazettes.—**

The State statutes are published in the respective State gazettes. Some States have published State Codes.

(4) **Private Publications.—**

The privately published case reports may have a section dealing with Central as well as State legislative materials. 'The All India Reporter' is one of such reputed legal periodicals. The publishers of 'All India Reporter' have published 'AIR Manuals' in multiple volumes. These volumes contain Central and State legislative materials. Madras Law Journal has also published a manual known as Civil Court Manual.

(5) **Departmental Publications.—**

A few Government Departments do publish manuals from time to time giving the latest rules and notifications on their respective subjects. 'Central Excise

Manual', 'Civil Services Manual', 'Customs Manual', 'Income Tax Manual', Foreign Exchange Manual' are some of them to be mentioned.

(6) **Delegated legislation.—**

Statutory materials concerning delegated legislation can be found in the 'Gazette of India' and State Gazettes.

(7) The publications like 'Constituent Assembly Debates', 'Lok Sabha and Rajya Sabha Debates' may offer information regarding the pre-legislative discussions in the research area.

(8) 'The Federal Court Reports, (1939-50) and 'Supreme Court Reports' (since 1950) published the cases decided by them.Private publications like "All India Reporter', 'Supreme Court Journal', 'Supreme Court Cases' also report the case decisions of the Supreme Court. The case decisions of High Courts are also published in 'All India Reporter', Madras Law Journal, Bombay Law Reporter, etc.

(9) Specialized Law Reporter.—

The following are reports specialized on certain branches giving information on specialized branches

(i) Labour Law Journal

(ii) Labour and Industrial Cases

(iii) Industrial Court Reporter

(iv) Criminal Law Journal

(v) Income Tax Reports

(vi) Company cases and Sales Tax cases, etc.

(10) Contribution of Individual Academicians.—

Such a— (i) Indian Legal Materials (1970) and Law Library Administration and Reference (1972) by H.C. Jain published by Indian Law Institute, New Delhi.

(11) Academic Law Journals.—

"The Journal of Indian Law Institute", 'Indian Journal of International Law' are some of the journals which carry research articles. 'Academy Law Review', 'The Administrator', 'Banaras Law Review', 'Civil and Military Law Journal', etc. also belong to this category.

(12) 'Citators' and 'Digests'

help a researcher to locate topic-wise materials. The A.I.R. published Fifty Years Digests (1901-1950) and Fifteen Years Digests (1951-1965) etc. Income Tax Digest, Company Law Digest, Labour Law Digest etc. are same of the Digests which are specialized in the particular fields.

(13) 'Index to Legal Periodical' and 'Index to Foreign Legal Periodicals'

may help the researcher to find the article relevant to his research and locate the name of the journal, volume and number in which that has been published.

(14) Law Libraries are the workshops to the legal researchers.

Law library is not just a place where books and periodicals are housed, but it is a place where books are classified and placed in an orderly manner so as to provide easy access to the researchers.

Importance of Documents

(1) They can help to save time, money and energy. There is no need to purchase books. There is no need to go from place to place as they are available in a library

(2) Data is collected periodically, making the establishment of trends over time possible.

(3) The documentary sources does not require the cooperation of the individuals about whom the information, is desired.

(4) There will be no scope for the bias of the investigator.

(5) Available records may be used to supplement or to check information gathered specifically for the purpose of a given investigation.

(6) Past event can be known from the documentary source.

(7) They can be quoted as authoritative.

4.4 SUMMARY

A research cannot said to be duly carried out unless the relevant materials have been examined. The collection of relevant materials is most difficult and comprehensive work and requires lot of energy, attention as well as patience. The collection of material depends upon the research design, selected by the research. In this chapter we will discuss various tools and techniques for the collection of data, with Pros x cons of each method so that the data be analyses.

Collection of data is regarded as fascinating phase of research. Through the collection and handling of information, the researcher begins to feel the actual excitement of research. A researcher can either collect the data himself or rely on others for their collected data or information available with them. In both the cases, there is a great need for data of high quality. The selection of data requires great skill and experience.

Data is based on our sense-observations. The word ‘observation’ as used here includes all forms of perception used in recording responses as they impinge upon our senses. But response is not a datum. A response is some manifest kind of action, whereas a datum is the product of the process of recording the response.

In data collection stimuli (questions, tests, pictures or other objects) is presented to the respondent (subject). The stimuli may be classified as systematic stimuli, and unsystematic stimuli. By systematic stimuli, we mean those that are kept constant while objects are changed. The unsystematic stimuli are those which lack standardization e.g., questions asked in informal interviews.

The responses of the subjects (i.e., respondents) to the stimuli may also be classified as systematic and unsystematic responses. Systematic responses have a reference to constant (definite, standardized) response categories. Thus, the responses of subject to a stimulus are recorded. The unsystematic responses are those which are recorded verbatim with due regard to all possible individual variations and character logical nuances. Bringing these categories of stimuli and responses, we can decide the settings for the collection of data as :—

(iv) Informal,
(v) Formal unstructured, and
(vi) Formal structured.

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(2) Official Publications of Central Acts

(3) State Gazettes.

(4) Private Publications..

(5) Departmental Publications

(6) Delegated legislation..

(7) Specialized Law Reporter

4.5 SUGGESTED READINGS

5. Dr. H.N. Tiwari, Regal Research Methodology, Reprint, 2006.
6. Dr. S.N. Myaneni Legal Research Methodology, Reprint, 2008.
7. C.R. Kothari Research Methodology: Methods and Techniques. Reprint, 1994

4.6 TERMINAL QUESTIONS

1. Write a brief Essay on Socio Legal research

2. How data is collected in Socio-Legal Research?

3. How Case Law is used in research?

LL.M. Part-2

Subject: LEGAL EDUCATION AND RESEARCH METHODOLOGY

Block- II Research Methods

Unit-5 Doctrinal and Non-Doctrinal

STRUCTURE

5.1 INTRODUCTION

Law is a normative science that is a science which lays down norms and standards for human behavior in a specific or situations enforceable through the sanction of the state. What distinguishes law from, other social sciences (and law is a social science on account of the simple fact that it regulates human conduct and relationship) is its normative character. This fact along with the fact that stability and certainly of law are desirable goals and social values to be pursued, make doctrinal research to be of primary concern to a legal researcher. Doctrinal research of course involves analysis of case law, arranging ordering and systematizing legal propositions and study of legal institutions , but it does more it creates law and its major tool (but not the only tool) to do so is through legal reasoning or rational deduction . Even during the period when analytical positivism held its sway and the dominant legal philosophy was that judges did not create law but merely declared it, the truth was that much judicial creativity was going on. The development of common law by the judges is a clear example of law making by the judges. It has been commented upon the traditional view.

5.2 OBJECTIVES

The present chapter deals with the major steps involved in doing legal research. It also describes doctrinal and non doctrinal legal research problem or topic and collection of data in social-legal research and how to use it for reporting.

5.3 SUBJECT

5.3.1 Doctrinal and Non- Doctrinal Legal Research

The traditional theory may appear plausible in a period characterized by relatively stable conditions, as opposed to one in which great changes and developments are clearly evident, it is still difficult to see how one could literally believe the law to be a coherent and complete system, and the judicial process to be only a logical application of existing rules of law. Professor cooper rider has made the plausible suggestion that the traditional theory was not intended as an accurate descriptive account of the judicial process: I am also inclined to doubt that it is sound to think of it as a conscious attempt at scientific description. It did,

however, represent a view which at one time was generally held as to the attitude which the judge should bring to his task: that it should be his objective to deal with the case before him in that way which was indicated by an interpretation of existing authorities, rather than in that way which seemed to him on the facts to be the fairest or most desirable from a social point of view. It is called for the subordination of his judgment to that of the collectivity of his predecessors, for a primary reliance on a reasoned extrapolation of accumulated experience. According to this interpretation the traditional theory represents more a practical regulative ideal of how the judicial process ought to be conceived by the judiciary than a theoretical analysis of its actual structure and functioning. That even in that case-law method of research much creativity goes on is shown by Cardozo in his work, "The Nature of the judicial process". His thesis is 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 hypotheses, 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 it a rule continues to work injustice, it will eventually be for if the rules derived from a principle do not work well, the principle itself must ultimately be re-examined.

He himself says:

Hardly a rule of today but may be matched by its opposite of yesterday… These changes or most of them have been wrought by judges. The men who wrought them used the same tools as the judges of today. The changes as they were made in this case or that may not have seemed momentous in the making. The result however when the process was prolonged throughout the years, has been not merely to supplement or modify: it has been to revolutionalize and transform. The two outstanding examples of the where none had hitherto existed is 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. It may not be out of place to mention that in India it was the pioneering work of A.T. Marko's on judicial control of Administrative action and the seminars organized and the work done by the Indian law institute in the area of administrative law which had created an awareness of the importance of the subject for the legal system. With the emergence of the sociological school, the

creative role of lawyers and judges has come to be recognized explicity. The writings of the sociological jurists coincided with the change in political philosophy from the laissez faire to the welfare state of the were rather the result of this metamorphosis. One can see the seeds of the conception of law as a catalytic agent to advance human welfare in the following famous remarks of **Justice Holmes:**

The life of the has not been logic: it has been experience .The felt necessities of the times, the prevalent moral and political theories, institutions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. The writings of Dean Roscoe Pound however, depict more clearly and forcefully the task of law to be the adjustment of human relationship in society to the best possible advantage. Thus, **he says:**

For the purpose of understanding the law of today I am content with a picture of satisfying as much of the whole body of human wants as we may with the least sacrifice. I am content of think of law as a social institution to satisfy wants- the claims and demands and expectations involved in the existence of civilized society- by giving effect to as much as we may with the least sacrifice, so far as such wants may be satisfied or such claims given effect by an ordering of human conduct through politically organized society. For present purposes I am content to see in legal history the record of a continually wider recognizing and satisfying of human wants for claims or desires through social control, a more embracing and more effective securing of social interests: a continually more complete and effective elimination of waste and precluding of friction in human enjoyment of the goods of existence- in short, a continually more efficacious social engineering.

At another place he says:

As the saying is, we all want the earth. We all have a multiplicity of desires and demands which we seek to satisfy. There are very many of us but there is only one earth. The desires of each continually conflict with or overlap those of his neighbors. So there is, as one might say, a great task of social engineering. There is a task of making the goods of existence, the means of satisfying the demands and desires of men living together in a politically organized society, if they cannot satisfy all the claims that men make upon them, at least go round as far as possible. This is what we mean when we say that the end of law is justice… we mean such as adjustment of relations and ordering of conduct as well makes the goods of existence, the means of satisfying human claims to

have things and do things, go round as far as possible with the least friction and waste.

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 as extent that there is hardly any human conduct which has been left untouched by law. The result is that there has been an explosion of laws and the law has become all pervading. We have come to live in an age of laws. The legislative mill has been constantly pouring out laws. This is not the only factory for producing statutory laws. The execution made law (delegated legislation) has become much more important both quantitatively and qualitatively.

In evaluating such elusive factors and forming their own conception of what is reasonable in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self restraint and the sobering reflection that thinking but for all, that the majority of the elected representatives of the people have, in authorizing the imposition of the restrictions, considered them to be reasonable.

In considering reasonableness of a restriction the task before the courts is to judge the objective of public interest to be served by the restriction against fairness to the individual. The Indian fairness book is replaced with provisions where the legislative has given to the courts to develop the law from case to case.

Thus the objective and philosophy of doctrinal researcher has to be the same as that of sociologist jurisprudence, that is social engineering through it is true that his liberty of operation is restricted to some extent by the statutory language, existing doctrines and also the consciousness that a sound legal system should move forwards certainly and stability of law which are social values to be desired. But as seen above, the law in modern tunes leaves a large scope, a large leeway, and the leeway may be more in some cases and less in others but it is there, for molding and adapting it to the society and to social change. This has been additionally facilitated in India by the Supreme Court expressly agreeing as a principle to review its own decisions, and a number of instances can be cited where the court has done so. The process began with the Court overruling the

United Motors case. In the Bengal Immunity case and its high watermark was reached when in the famous Golak Nath case, it overruled its consistent holdinh in the two earlier cases- Shankari Prased and Sajjan Singh. A few other instances of such overruling are: Director of Rationing of legal Affiars v. Corporation of Calcutta. Indian Airlines Corporation v. Sukhdeo rAi by Sukhdev singh v. Bhagatram, Sardarilal v. Union of India by shamasher singh of Punjab.Any number of cases can be cited when the court without expressly overruling its earlier decisions departed from these them or weakened their authority or modified the principles laid down. Such cases are demonstrative of the fact that the language of the statute is not petrified for all times to come and its meaning and impact change in the catalytic hands of the judge. The author is not unmindful of the fact that sometimes a doctrinal researcher may lack a utilitarian approach, and his sole concern may be to test the logical consistency and technical soundness of a case or a legal proposition by analyzing it with reference to the precedential symmetry and on the anvil of strict literal meaning. Technical soundness of the law is not unimportant but it should not operate in vacuum and ought to be balanced, whenever there is scope against social policy and mores of the society.

5.3.2 Sociology of law

From where does a doctrinal researcher get this social policy, social facts and social values? The answer is his; own experience, observation, reflection and study of what others have done before him in a similar or same kind of situation. However, it will certainly add values to his research if he gets an opportunity to test his ideas by sociological data. And this is what the author understands by the sociology of law. In other words, the sociology of law tries to investigate through empirical data how law and legal institutions affect human attitudes and what impact on society they create. It seeks answers to such questions as- are law and legal institutions serving the needs of the society? Are they suited to the society in which they are operating? What factors influence the decisions of adjudicators? Are the laws property administered and enforced? The sociology of law also concerns itself with the identification and creating as awareness of the new problems which need to be tackled through law.

Though sociology of law may have great potentialities, yet a few caveats must be entered here. Firstly, sociological research is extremely time consuming and costly. It has been stated: “socio-legal research is more expensive, it calls for additional training: and it entails great commitments of time and energy to

produce meaningful results, either for policy-makers or theory- builders. The decisions in human affairs however, cannot await the findings of such studies and must constantly be made, and herein comes the value and utility of doctrinal research. Thus, “Doctrinal legal research… has had the practical purpose of providing lawyers, judges and other with the tools needed to reach decisions on an immense variety of problems, usually with very limited time at disposal.

In this context K.C. Davis observed:

It may be a hundred or several hundred years before we get truly scientific answers to some of the questions. I am trying to explore, and we need to make some judgments in the meantime. Some of the most useful thinking can be unscientific, impressionistic, intuitive based on inadequate observation or insufficient data or wild guesses or imagination. Scientific findings are obviously the long term objective, but a good many judgments which fall for short of scientific findings are valuable, respectable and urgently needed.

Secondly, law –sociology research needs a strong base of doctrinal research. Upendra Baxi rightly points out that “law society research cannot thrive on a week infra-structure base of doctrinal type analyses of the authoritative legal materials. The reason is simple. The primary objectives of the sociology of law are to reveal, by empirical research, hoe law and legal institutions operate in society, to improve the structure and functioning of legal institutions whether engaged in law administration, law enforcement, or settlement of disputes, and these objectives cannot be achieved unless the researcher has in-depth knowledge of the legal doctrines, case law and legal institutions. Further, such knowledge is essential for identifying issues, delimiting areas, keeping the goals in view, and determining the hypotheses on which to proceed. In the absence of these, the sociological research will be like a boat without a rudder and a compass, left in the open sea. The whole exercise may be fruitless. The authors of the monograph on law and Development were perhaps conscious of this when they said: should make clear that we do not denigrate doctrinal research, which has a traditional of outstanding scholarship. Nor do we seek to minimize the importance of doctrinal research to the establishment and functioning of a legal system and thus to society. We are also conscious that in many of the countries. We were concerned with; there is an absence of basis doctrinal research and indeed not infrequently the tools and raw materials of such research. While the situation varies between countries, we recognize that in some countries doctrinal research could claim a high priority in allocations of the resources available for

legal research. In India where we still lack the infra-structure of doctrinal research such a research will naturally have to claim high priority.

Thirdly, sociological research may help in building general theories, but it seems inadequate where the problems are to be solved and the law is to be developed from case to case. For instance, as a matter of general theory it is axiomatic that governmental powers need to be checked as "power corrupts and absolute power corrupts absolutely". But too much check may result in governmental ineffectiveness. This necessitates that when a case comes before a court in which abuse of power by the executive is alleged, pragmatic considerations ought to control the decision- making. Since the law to control theories that either there should be no control over government action or there should be adequate control. That is why it has been said about the ultra vires doctrine, which is the basis of judicial review in case of writs. The ultra virus doctrine provides a half way basis of judicial review between review in appeal and no review at all. The half way review, the extent of which is not always clear, creates uncertainly about judicial intervention in administrative action. Sometimes, the courts may feel like intervening because they feel strongly about the injustice of the case before them: deference to the expertise of the administration and uphold the decision. It is beyond the comprehension of the author how we can improve the contents of the ultra doctrine by sociological research. To illustrate the point by another example take the case of the concept of "sale" for purposes of sales tax. The tax is imposed only on sale and not on a contract for labor or service. Now every sale of commodity does involve some labor. Still there may be clear cases of sale and clear cases of labour contract but there may be innumerable particular transaction falls.

Fourthly, the function of law in society is not only to follow or adapt itself to public opinion but also to give a lead and mould public opinion. When the law should follow one course or the other may not always be answered on the basis of sociological data but on the basis of one's maturity of judgment, intuition, and experience, though sociological research may be some informational value to the decision- maker.

Fifthly, on account of complicated settings and variable factors, we may again be thrown back to our own pre-conceived ideas, prejudices and feelings in furnishing solutions to certain problems. For instance, there has been the perennial problem of government control of business or non- government control, private enterprise or public enterprise and individual liberty or government powers. We may not be bale to answer these questions basis to any society

through scientific study. Even if one were to attempt such a study, it would require such huge resources that one may not be able to have them at one's command. Coming to a lower plane, under part XIII of the constitution, states cannot discriminate whether there has been discrimination or not and an empirical study may not easily furnish the answer. Thus is clear from the following extract from an article by the author.

In determining the validity of a law against a challenge on account of discrimination against commerce, multiple taxation or undue burdens on it, the judiciary has an important though a difficult role to play. Should the Court go merely by patent or formal discrimination? Should it cut deeper and go behind the avowed purpose of the law and attempt to find out its actual effects? Should it examine the law in question in the context of the entire economy? For example state A imposes a fifteen per cent tax on cost of alcoholic liquor manufactured in that case. Now state B, which is importing liquor from state A, imposes a tax of twenty per cent on liquor manufactured within it. How much tax should state B impose on imported liquor? One view could be that it should impose a tax of twenty per cent. Another view which could be taken is that it should impose a tax of only five per cent as a higher tax would put a burden on the imported liquor than the intrastate liquor and would be discriminatory against the former. There are several limitations in the latter approach. First, since the intrastate tax on liquor is likely to differ from state to state, the importing state will be required to impose different taxes on imported liquor depending on the state from which it is coming. It is doubtful whether such a tax would be possible to administer. Second, if the tax involved is other than excise, say, sales tax, it may be practically difficult for the importing state to known the account of tax which an importing commodity has actually borne in the exporting state. In some states the system is multiple points, in some two points, in some states the system point on the first sale and in some single point on the last state. The incidence of local sales tax on a commodity exported to another state will depend on the system of sales tax in that state the number of local states. If equality is to be achieved in the sense suggested above, then it would not only mean the different rates on the sale of the same imported commodity within state depending upon the state from which it is imported but also the rates would have to vary on a commodity from the same state upon the number of local sales in that state- a practical impossibility. Third, if real equality is to be attained in the example relating to liquor, why stop only at the excise duty. Why not consider all other taxes like the property tax and the taxes on the raw materials going into the manufacture of liquor which will have an impact on the cost of production of the liquor. Under the equality formula suggested above, these should also be taken into account by

the importing state. In spite of the readiness of the United states Supreme Court to be receptive to economic and social data, the following quotation again is indicative of the difficulties in this regard: In the United states, in the non-tax area the supreme court usually goes deeper into various factors in order to determine whether the law was placing an "undue" burden on interstate commerce which "frequently entails weighing evidence, drawing nice lines, and making close and difficult decision on important policy questions. "However, in the tax area, probably because of greater difficulty in evaluating complicated economic factors involved, this has not been general approach.

Sixthly, though law sociology research is of recent origin, yet it is common knowledge that even in the United States, where this kind of work has been done mostly, such researchers have yet to show their potentiality in terms of translating the findings into legal propositions and norms. Amongst others, one reason may have been the failure to select subjects with such potentialities. Any information has some value, but when huge resources are to be staked in collecting sociological data it may be better to use them on carefully planned subjects where the research may lead to ultimate improvement of the contents of the law. Thus with regard to decision- making research, Davis observes:

5.3.3 Certain heresies

The opportunity may be availed here to remove two heresies. It has often been expressed that the legal community has not been concerned with development or shown sufficient awareness about it. This criticism seems to be justified if the idea is to say that lawyers have not been associated with the development plans scheme by the planners and policy makers. But it does not seem correct to say that lawyers have not concerned themselves with the problems of development. The major problems created by development requiring solution by lawyers have been the growth of administrative power necessitating their control to avoid arbitrariness and equitable use and distribution of resources. That the legal community has been deeply involved with these problems is amply demonstrated by the inclusion of such courses in the legal pedagogy as administrative law, labour law, government regulation of business company law and taxation. Even legal research is not legging behind in the area of development. A perusal of a few of the studies produced by the Indian law institute should dispel any doubt in this regard. These are:

(1)Contractual Remedies in Asian countries(2) Law of International trade Transactions (3) Law Relating to Irrigation; (4) Some problems of Monopoly and

Company law; (5) Government Regulations of private enterprises (6) Interstate water disputes in India (7) Law regarding to flood control in India (8) Law and urbanization in India (9) Labour law and labour relations (10) Property Relations in independent India: Constitutional and legal implications (11) Case and Materials on Administrative law in India (12) Administrative process under the Essential commodities act (13) Interstate trade Barriers and sales tax laws in India(14) Administrative procedure followed in conciliation proceedings under the industrial disputes act.

The second heresy pertains to the research work done by the Indian law Institute. It has been assumed in certain quarters that the Institute has confined itself only to doctrinal research. Though it is true to say that it has given priority to doctrinal research, yet it has not ignored non-doctrinal research altogether. A number of instances of the latter type of research can be cited: (1) Disciplinary Proceedings against Government Servants- A case study: This study is based on field work. “The Institute’s staff studied in detail sixty files (twenty each from the years 1957, 1958 and 1959 which are consecutive files of closed cases for these years) in connection with part I and 150 files of closed cases of the quinquennial period from 1955 in connection with part II of the study.” Thus data was further supplemented by more general reports on disposals formal by the department and by the information gathered from responsible officers of the department. The research team also attended formal disciplinary proceedings to gain insight in to the operation of the proceedings. (2) Administrative Procedure Followed in Conciliation Proceedings under the Industrial Disputes Act: This monograph is based on a study of 373 cases of failure of connection and 421 cases of settlement including award and mutual settlement to arrive at the conclusions made in the book. (3) Interstate Water Disputes in India: This study is again based on the actual case files of interstate water disputes interviews with the officials concerned at the level of the Central Government. With the help of these files and interviews the institute identified the issues requiring solution through law and also the real reasons for failure to settle these disputes through methods other than adjudication. (4) Interstate Trade Barriers and sales tax Laws in India: This study is based on economic data collected through a questionnaire from the agencies concerned regarding the impact of the present sales tax laws on interstate commerce. With the help of economic data it found economic justification for a law a few of the provisions in the Central Sales tax Act. The study also recommended the creation of an Interstate Taxation Co-ordination Council. This suggestion was implemented to some extent by the government when in 1968 the Central Government created four regional councils to discharge practically the same functions as were suggested in case of the interstate

Taxation Co-ordination Council. (5) Presidential Assent to state Bills- A case study: This study (published as articles in the journal of the Indian law institute) is based on a study of about 300 state bills rent by the states to the centre for presidential assent during the years 1956 to 1965. (6)Assessing the Degree of Acceptance of the system of law in India in terms of (i) Awareness (ii) Value Compatibility and (iii) Pattern of Adaptation. Reference has already been made to this work in the earlier pages.

5.4 SUMMARY

Law is a normative science that is a science which lays down norms and standards for human behavior in a specific or situations enforceable through the sanction of the state. What distinguishes law from, other social sciences (and law is a social science on account of the simple fact that it regulates human conduct and relationship) is its normative character. This fact along with the fact that stability and certainly of law are desirable goals and social values to be pursued, make doctrinal research to be of primary concern to a legal researcher. Doctrinal research of course involves analysis of case law, arranging ordering and systematizing legal propositions and study of legal institutions , but it does more it creates law and its major tool (but not the only tool) to do so is through legal reasoning or rational deduction . Even during the period when analytical positivism held its sway and the dominant legal philosophy was that judges did not create law but merely declared it, the truth was that much judicial creativity was going on. The development of common law by the judges is a clear example of law making by the judges. It has been commented upon the traditional view.

The traditional theory may appear plausible in a period characterized by relatively stable conditions, as opposed to one in which great changes and developments are clearly evident, it is still difficult to see how one could literally believe the law to be a coherent and complete system, and the judicial process to be only a logical application of existing rules of law. Professor cooper rider has made the plausible suggestion that the traditional theory was not intended as an accurate descriptive account of the judicial process: I am also inclined to doubt that it is sound to think of it as a conscious attempt at scientific description. It did, however, represent a view which at one time was generally held as to the attitude which the judge should bring to his task: that it should be his objective to deal with the case before him in that way which was indicated by an interpretation of existing authorities, rather than in that way which seemed to him on the facts to be the fairest or most desirable from a social point of view. It is called for the

subordination of his judgment to that of the collectivity of his predecessors, for a primary reliance on a reasoned extrapolation of accumulated experience. According to this interpretation the traditional theory represents more a practical regulative ideal of how the judicial process ought to be conceived by the judiciary than a theoretical analysis of its actual structure and functioning. That even in that case-law method of research much creativity goes on is shown by Cardozo in his work, “The Nature of the judicial process”. His thesis is 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 hypotheses, 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 it a rule continues to work injustice, it will eventually be for if the rules derived from a principle do not work well, the principle itself must ultimately be re-examined.

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 as extent that there is hardly any human conduct which has been left untouched by law. The result is that there has been an explosion of laws and the law has become all pervading. We have come to live in an age of laws. The legislative mill has been constantly pouring out laws. This is not the only factory for producing statutory laws. The execution made law (delegated legislation) has become much more important both quantitatively and qualitatively.

Thus the objective and philosophy of doctrinal researcher has to be the same as that of sociologist jurisprudence, that is social engineering through it is true that his liberty of operation is restricted to some extent by the statutory language, existing doctrines and also the consciousness that a sound legal system should move forwards certainly and stability of law which are social values to be desired. But as seen above, the law in modern tunes leaves a large scope, a large leeway, and the leeway may be more in some cases and less in others but it is there, for moulding and adapting it to the society and to social change. This has been additionally facilitated in India by the Supreme Court expressly agreeing as a principle to review its own decisions, and a number of instances can be cited

where the court has done so. The process began with the Court overruling the United Motors case. In the Bengal Immunity case and its high watermark was reached when in the famous Golak Nath case, it overruled its consistent holdinh in the two earlier cases- Shankari Prased and Sajjan Singh. A few other instances of such overruling are: Director of Rationing of legal Affiars v. Corporation of Calcutta. Indian Airlines Corporation v. Sukhdeo rAi by Sukhdev singh v. Bhagatram, Sardarilal v. Union of India by samsher singh of Punjab.Any number of cases can be cited when the court without expressly overruling its earlier decisions departed from these them or weakened their authority or modified the principles laid down. Such cases are demonstrative of the fact that the language of the statute is not petrified for all times to come and its meaning and impact change in the catalytic hands of the judge. The author is not unmindful of the fact that sometimes a doctrinal researcher may lack a utilitarian approach, and his sole concern may be to test the logical consistency and technical soundness of a case or a legal proposition by analyzing it with reference to the precedential symmetry and on the anvil of strict literal meaning. Technical soundness of the law is not unimportant but it should not operate in vacuum and ought to be balanced, whenever there is scope against social policy and mores of the society.

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In determining the validity of a law against a challenge on account of discrimination against commerce, multiple taxation or undue burdens on it, the judiciary has an important though a difficult role to play. Should the Court go merely by patent or formal discrimination? Should it cut deeper and go behind the avowed purpose of the law and attempt to find out its actual effects? Should it examine the law in question in the context of the entire economy? For example state A imposes a fifteen per cent tax on cost of alcoholic liquor manufactured in that case. Now state B, which is importing liquor from state A, imposes a tax of twenty per cent on liquor manufactured within it. How much tax should state B

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The major problems created by development requiring solution by lawyers have been the growth of administrative power necessitating their control to avoid arbitrariness and equitable use and distribution of resources. That the legal community has been deeply involved with these problems is amply demonstrated by the inclusion of such courses in the legal pedagogy as administrative law, labour law, government regulation of business company law and taxation. Even legal research is not legging behind in the area of development. A perusal of a few of the studies produced by the Indian law institute should dispel any doubt in this regard. These are:

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5.5 SUGGESTED READINGS

1. Dr. H.N. Tiwari, Regal Research Methodology, Reprint, 2006.
2. Dr. S.N. Myaneni, Legal Research Methodology, Reprint, 2008.
3. C.R. Kothari, Research Methodology: Methods and Techniques. Reprint, 1994.
4. Anwarue Yagin, Legal Research and Writing Methods, 2008.

5.6 TERMINAL QUESTIONS

1. What is the utility of doctrinal research?
2. What is the diffence between doctrinal and non-doctrinal research?
3. How a researcher should do doctrinal research? Explain citing examples.
4. How social science is reflected in doctrinaland non-doctrinal research?

LL.M. Part-2

Subject: LEGAL EDUCATION AND RESEARCH METHODOLOGY

Block II - Research Methods
Unit-6- Relevance of Empirical Research

STRUCTURE

6.1 INTRODUCTION

After the data have been collected and processed, the researcher shifts his attention to their analysis. Analysis of data involves a number of operations. **John Galtung** distinguishes between analysis of data and the processing of data. Processing of data refers to concentrating, recasting and dealing with data such that they become as amenable to analysis as possible. Analysis of data may be considered as having a reference to the process of viewing the data in the light of hypothesis or research questions, as also the prevailing theories and drawing conclusions that will make some contribution in the matter of theory formulation or modification. According to John Galtung, "Analysis of data involves a number of closely related operations that are performed with the purpose of summarizing the data obtained, and organizing them in such a manner that they will yield answers to the research questions."

Sellitz, Jahoda, etc. considered the processing as a part of analysis and for them analysis of data, as a comprehensive process involves processing, i.e., operations designed to facilitate and increase amenability of data for analysis, as also, the operations designed to draw generalization or test hypothesis. The purpose of analysis of data is to summarize the collected data and organize these in such a manner that they will yield answers to the research problems.

6.2. OBJECTIVES

After collection of data **Empirical Research** requires analysis and interpretation. The objective of the lesson is to highlight the stages of analysis, its meaning and kinds and interpretation of collected data.

6.3. SUBJECT

Empirical Research What is empirical research? Empirical research is defined as research based on observed and measured phenomena. It reports research based on actual observations or experiments using quantitative research methods and it may generate numerical data between two or more variables. When writing a research Is the article paper, you may need to read and analyze an empirical article. Published in an academic, scholarly, or professional journal? Popular magazines such as *Time* or *Newsweek* do not publish empirical research articles; academic journals such as *American Economic Review* or *Journal of Psychology* may publish empirical articles. Some professional

journals, such as *JAMA: Journal of the American Medical Association* publish empirical research. Other professional journals, such as *Coach & Athletic Director* publish articles of professional interest, but they do Does the abstract of the article mention a not publish research articles. Study, an observation, an analysis or a number of participants or subjects? Was data collected, a survey or questionnaire administered, an assessment or measurement used, an interview conducted? All of these terms indicate possible Empirical articles normally contain methodologies used in empirical research. these sections: o Introduction and literature review of related research o A statement of the research question(s) and method used to gather the data o Analysis of the results of the data gathered (quantitative or qualitative) o Discussion or conclusion o A substantial list of the references consulted throughout the article. The sections may be combined, and may have different headings or no headings at all; however, the information that would fall within these sections should be present in an empirical article. An empirical article is usually normally three or more pages long.

Search for Empirical Research A quick way to look for empirical research is to type your search terms into the database's search boxes, then type study or studies in the final search box to look for studies on your topic area.

6.3.1 Qualitative and Empirical Research Methods

Some disciplines require students to use peer-reviewed, empirical or qualitative research articles. What are these types of research? Although not exactly the same, both empirical and qualitative research methods are evidence-based research that is developed through precise experimentation and observation. They demonstrate causal relationships and are guided by practical measurements rather than theory. Generally, both qualitative and empirical researches are used to answer a specific question or to test a hypothesis, enhance understanding for certain areas of study, and combine detailed research with case studies. Often, the theories proven in empirical studies can work in a real world environment rather than just in a controlled situation.

6.3.2 Identification of Qualitative & Empirical Research Articles?

As previously stated, empirical and qualitative research articles are not exactly the same, but both can be found in refereed (peer-reviewed) journals and books. Various phrases or keywords can identify articles that

Analysis	**Subjects**
Sample size	**Measure or measurement(s)**
Outcomes	**Qualitative Research**
Usage	**Findings**
Statistics	**Results**
Survey	**Methodology**
Data	**Original study**
Experiment	**Research study**

use empirical or qualitative research. These include:

`Research articles that consist of empirical research are written in a specific manner. They are always divided into the following sections: title, abstract, introduction, methods, results, discussion, and references. Each of these sections may be further divided into subsections. One quick way to determine if you are looking at an article that consists of empirical research is to see if it has these sections.

6.3.3 Stages of Analysis of Legal Research Data

1. Use of non-qualified data, determination, formulation and conceptualization;
2. Preparation of a tentative classificatory scheme;
3. The application of categories to the raw data through coding;
4. The tabulation of responses;
5. Statistical analysis of data;
6. Drawing of inferences about causal relations; and
7. Interpretation.

Thus, the analysis of data includes: (a) classification of data, (b) coding, (c) tabulation, (d) statistical analysis of data and (e) inferences about causal relations among variables when processing is considered as a part of analysis.

6.3.4 Statistical Analysis of Data

In order to estimate the reliability of generalizations to the population from the data, statistical methods are useful. The statistical methods that are used to summarize the obtained data go by the name of descriptive statistics, whereas the statistical methods utilized in making and evaluating generalizations from the data are known as sampling statistics.

The statistical methods used in describing or summarizing the mass of data are the central tendencies of distributions. Such measures are called averages and include among others the arithmetic mean, the median and the mode. The other general type of summary of a frequency distribution includes measures of dispersion such as the range, mean deviation, quartile deviation, standard deviation and the coefficient of variance. These measures are used to compare the relative wideness of spread in any two or more frequency distributions.

A common and simple method of comparing frequencies is the use of the ratio. A ratio is merely an indicator of actual quotient which relates the size of one number to another. Their main utility is to act as a relative measure and thus permits the comparison of otherwise unequal numbers.

A related method of comparing values is the proportion. This measure is a fraction such that the numerator is one of the two observed frequencies and the denominator the sum of observed frequencies. The purpose of using percentages, ratios and proportions is to simplify the problem of comparison. Percentages reduce two frequency distributions to a common base and thus make the comparisons simpler.

The more common problem arises when a cross tabulation is used. The cross tabulation of two or more attributes or variables is merely a formal and economical method of arranging the data so that the logical methods of proof may be applied. The methods of agreement, difference, or concomitant variation (correlation) may be used in drawing conclusions from a cross tabulation.

The whole process of analysis is not so much a matter of manipulative techniques as it is of the rigorous application of the basic principles of scientific method. Some precautions have to be observed by researcher in analysis. First of all, the researcher himself should be particularly careful. He should use his insight in the process. He should first of all lay down the principles of analysis and then follow them faithfully. Thus, much depends upon the general knowledge, experience, insight and the intellectual honesty of the investigator.

6.3.5 Inferring Causal Relations

In ideal research design cause and effect relationships can be easily established but in socio-legal studies such ideal designs are very difficult to work out. Most of the studies of socio-legal research are non-experimental in character and certain empirical obstacles have to be faced in determining whether or not a relation

between variables is causal. In the analysis of non-experimental studies there is always a possibility of interpreting spurious relationships as causal.

6.3.6 Interpretation of Data

The dividing line between analysis of data and interpretation is difficult to draw as the two processes are symbolical and merge imperceptibly. Interpretation is inextricably interwoven with analysis. It is a special aspect of analysis rather than being a distinct operation. Interpretation helps one understand what the given research finding really means and what the underlying abstract principles, of which the research finding is just one concrete manifestation or reflection at the concrete level of empirical observations.

Interpretation is the process which unravels the abstract that lies buried in the concrete. It makes it possible for us to appreciate why the relations between variables as expressed in the findings are what they are.

The researcher's task is incomplete if he stops by presenting his empirical findings in the form of generalizations which he is able to arrive at through the analysis of data. The researcher must show that his observation has a meaning. Interpretation is the search for broader and more abstract meanings of the research findings.

The interpretation serves a two-fold purpose. First, it gives an understanding of the general factors that seem to explain what has been observed in the course of a study and secondly, it provides a theoretical conception which can serve in turn as a guide for further research. It is the responsibility of researcher to interpret the relations he has observed carefully, thereby he gives correct findings. While interpreting, he has to avoid the following points

1. Failing to consider all significant facts;

2. Ignoring negative evidence;

3. Mistaking correlation for causation;

4. Comparing non-comparable data;

5. Generalizing only from few causes; and

6. Distorting interpretations to fit prejudice and pre-conceived ideas.

Sometimes, the researcher has to give evidence or support to his findings by subjective interpretation which is known as “past factum interpretation” but he has to be very careful in wording the interpretation. The important aim of interpretation is to bring real importance of findings. On the basis of interpretation, a new hypothesis can be formulated for the experimental research. With the help of interpretations, unconnected and isolated facts get meaningful explanations. It can be of use to further research by giving a theoretical model.

Thus, interpretation is so interwoven with analysis that it should more properly be conceived of a special aspect of analysis rather than a separate or distinct operation. After interpretation, the researcher generalizes the findings of his study.

6.3.7 Qualitative Data Analysis

The aim of qualitative research is to ascertain opinions, attitudes, behavior, or likes or dislikes. Its main purpose is to ascertain how people feel, what they think about a certain phenomenon or why they behave in a certain way. The main forms of qualitative research include field observation, content analysis, case studies, and in-depth interviews.

In qualitative research, the data collected are in the form of notes or some form of textual material. Qualitative research basically involves data in the form of words, descriptions or narratives. The goal of data analysis in qualitative research is to extract meaning from what the researcher has studied—what and how something happens or exists (such as how often child abuse occurs or how the abuse affects the victims or what causes people to abuse children). In qualitative social research, data are not converted into numerical format, unlike in quantitative analysis.

6.3.8 Quantitative Data Analysis

After the questionnaire or interview responses have been obtained, the next task of the researcher is to prepare the data for analysis. If, for example, the researcher has completed a survey using 300 questionnaires, the survey is of no use because the data in such a format are inconvenient for analysis and drawing conclusions from them. The collected data have to be reduced (often called data reduction), summarized and rearranged. The researcher has to follow certain steps before the raw data are transformed into information. The transformation of

data into information requires that the data should be edited and coded, so that they can be transferred to a computer (entered into a computer file or into what is usually called data file or data set) or any other medium such as using files for storing data.

6.3.9 Editing

Usually the first step in analysis is to edit the collected data. Editing is the process of checking and adjusting the data for omissions, legibility and consistency. Editing detects errors and omissions and corrects them where it is needed, and ensures that certain minimum standards of data quality are maintained. The general purpose of editing is to ensure that data are accurate, complete, consistent with the intent of the question and other information in the survey and are arranged in such a way as to simplify coding and tabulation) Editing may be needed in a wide variety of situations, such as the following.

Editing for Correcting Mistakes

A researcher may commit a mistake and record, during the interview, an answer which is obviously impossible (e.g. birth year: 1850) or interviews a respondent who is not eligible (such as too young to qualify for being interviewed). The editor's job is to look for answers that are incomplete, answers that show the questions were misunderstood, answers that do not seem to be correct due to some error, and so on.

Editing for Removing Inconsistencies

Answers on a questionnaire may sometimes be inconsistent. The respondent, for example, might have inadvertently not answered whether or not she is married. In the column that asks for the number of years married, she might have responded 8 years; in the number of children column she might have marked 2, and for ages of children, she might have answered 4 and 2. The latter three responses would indicate that the respondent is married. It is, however, possible that the respondent deliberately omitted responding to the item because she is either a widow or has been separated by divorce. Uma Sekaran suggested that in such a case, supplying the omission by treating the answer as 'yes' would be introducing a bias in the data. It would be better, wherever feasible, to follow up with the respondent and get the correct data while editing. There may be many more instances where the answers given by the respondent to one question are not consistent with those given to other related questions. For example, a

respondent's yearly salary may be stated at Rs 24,000. However, in the occupational column, the respondent states his or her occupational status as executive vice president in a large company, whose salary most obviously be much higher. The researcher will find it highly unlikely that the answers to both questions could simultaneously be true. The researcher, during the editing process, should ensure that responses are logically consistent, and should eliminate such answers which are not.

6.4 SUMMARY

Empirical research is defined as research based on observed and measured phenomena. It reports research based on actual observations or experiments using quantitative research methods and it may generate numerical data between two or more variables. When writing a research Is the article□paper, you may need to read and analyze an empirical article. Published in an academic, scholarly, or professional journal? Popular magazines such as *Time* or *Newsweek* do not publish empirical research articles; academic journals such as *American Economic Review* or *Journal of Psychology* may publish empirical articles. Some professional journals, such as *JAMA: Journal of the American Medical Association* publish empirical research. Other professional journals, such as *Coach & Athletic Director* publish articles of professional interest, but they do does the abstract of the article mention a not publish research articles. Study, an observation, an analysis or a number of participants or subjects? Was data collected, a survey or questionnaire administered, an assessment or measurement used, an interview conducted? All of these terms indicate possible Empirical articles normally contain□□methodologies used in empirical research. these sections: o Introduction and literature review of related research o A statement of the research question(s) and method used to gather the data o Analysis of the results of the data gathered (quantitative or qualitative) o Discussion or conclusion o A substantial list of the references consulted throughout the article. The sections may be combined, and may have different headings or no headings at all; however, the information that would fall within these sections should be present in an empirical article. An empirical article is usually normally three or more pages long.

Some disciplines require students to use peer-reviewed, empirical or qualitative research articles. What are these types of research? Although not exactly the same, both empirical and qualitative research methods are evidence-based research that is developed through precise

experimentation and observation. They demonstrate causal relationships and are guided by practical measurements rather than theory. Generally, both qualitative and empirical researches are used to answer a specific question or to test a hypothesis, enhance understanding for certain areas of study, and combine detailed research with case studies. Often, the theories proven in empirical studies can work in a real world environment rather than just in a controlled situation.

In order to estimate the reliability of generalizations to the population from the data, statistical methods are useful. The statistical methods that are used to summarize the obtained data go by the name of descriptive statistics, whereas the statistical methods utilized in making and evaluating generalizations from the data are known as sampling statistics.

The statistical methods used in describing or summarizing the mass of data are the central tendencies of distributions. Such measures are called averages and include among others the arithmetic mean, the median and the mode. The other general type of summary of a frequency distribution includes measures of dispersion such as the range, mean deviation, quartile deviation, standard deviation and the coefficient of variance. These measures are used to compare the relative wideness of spread in any two or more frequency distributions.

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Some precautions have to be observed by researcher in analysis. First of all, the researcher himself should be particularly careful. He should use his insight in the process. He should first of all lay down the principles of analysis and then follow them faithfully. Thus, much depends upon the general knowledge, experience, insight and the intellectual honesty of the investigator. In ideal research design cause and effect relationships can be easily established but in socio-legal studies such ideal designs are very difficult to work out. Most of the studies of socio-legal research are non-experimental in character and certain empirical obstacles have to be faced in determining whether or not a relation between variables is causal. In the analysis of non-experimental studies there is always a possibility of interpreting spurious relationships as causal.

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Thus, interpretation is so interwoven with analysis that it should more properly be conceived of a special aspect of analysis rather than a separate or distinct operation. After interpretation, the researcher generalizes the findings of his study.

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6.5 SUGGESTED READINGS

1.Dr. H.N. Tiwari, Regal Research Methodology, Reprint, 2006.
2.Dr. S.N. Myaneni Legal Research Methodology, Reprint, 2008.
3.C.R. Kothari Research Methodology: Methods and Techniques. Reprint, 1994.

6.6 SELF ASSESSMENT QUESTIONS

1 What are Qualitative and Empirical Research Methods? Explain
2 Define and explain Empirical Research

3 Write the short note on the following

A- Qualitative Data Analysis and B- Quantitative Data Analysis

LL.M. Part-2

Subject: LEGAL EDUCATION AND RESEARCH METHODOLOGY

Block II - Research Methods
Unit-7 Induction and deduction

STRUCTURE

7.1 INTRODUCTION

The End of the 17th century and the beginning of the 18th witnessed what may be termed the scientific revolution. Until then the growth of scientific knowledge was slow and halting but since then it has been rapid and phenomenal. This unprecedented growth of scientific knowledge is actually due to a transformation of the scientific method into what it is today, which took place in the 17th century as exemplified in the studies of Galileo and Newton. The transformation of the scientific method consisted in a combination of the methods of reasoning and observation or in the combination of the methods of inductive and deductive logic.

The earlier scientific studies followed mainly the method of deduction, which is a method of arriving at conclusions from premises. In deduction it is immaterial whether the premises are true or false so long as the conclusions follow logically from the assumptions. All that is needed is to select propositions in such a way that the analysis their meanings lead to other propositions. Take for instance the following two propositions:

1. It is in the nature of weaker persona to become subordinate to stranger ones.
2. Women are weaker than men.

It is possible to deduce a third proposition from these two propositions namely,

3. Women are subordinate to men. The truth or validity of the third statement would depend upon the truth of the first two statements which are the premises. But the method of deduction is different as to the validity of the premises. Therefore one cannot be sure about the truth of the third statement.

There are two main reasons why no serious attempts were made in the past to test the validity of the premises or axioms employed in social studies. One is a different kind of the world view of the people of the period, which assumed that the changes in the phenomena were caused by certain qualities of the phenomena themselves which were divinely ordained. Such a world view was well exemplified in the traditional explanation about the Varna system in India. The four Varnas were supposed to have been created by god from His arms, the Vaishyas from His trunk and the shudras from His feet. The qualities of the different Varnas were thought to have been derived from the different parts of the body from which they organized and, therefore, they were fit to perform the

different kinds of tasks assigned to them by the society. With such an understanding which is backed up by divine sanctions, there was no question of validating the premises.

A second reason for not validating the premises in the past was the fact that knowledge was rarely put to use for the solution of problems of life. The learned persons considered it below their dignity to associate themselves in any kind of productive work which was the lot of the menial persons who belonged to altogether a different class. So long as knowledge was not needed for use, it was immaterial whether it was true or false.

7.2 OBJECTIVES

Research in common parlance refers to a research for knowledge. Research is a scientific and systematic search for pertinent information of a specific topic. In fact research is an art of scientific investigation. In the field of law research occupies a very significance portion. The purpose of research is to discover answers to questions through application of scientific procedures. The objective of this lesion is to define the induction and deduction methods in research. One of the decision will be the what types of tools and techniques can be used for the collection of data and seeking answers to the question which will be useful in the research or study of a specific topic. Various methods are discussed in this lesson which a researcher can use while doing research in the field of law.

7.3 SUBJECT

7.3.1 Induction and deduction

Induction method

The tremendous growth in our productive capacity goes back to the industrial revolution whose foundation lies in the application of true knowledge for the solution of problems. But the acquisition of true theological and metaphysical world views of the past, the modern scientific world view assumes than the objects and events in the universe are interrelated and as such the changes in a given set of phenomena are caused by changes in the related phenomena. Such a world view implies the possibility of observing and verifying the causes of

phenomena. It also suggests that the desired kind of changes can be brought about by manipulating the appropriate phenomena.

True knowledge is the knowledge which corresponds with the reality. Unfortunately all that we perceive is not necessarily true. Therefore, a distinction has to be made between the reality that we experience or the empirical reality and the reality which is out there or the true reality. Our perceptions are subjective, conditioned as they are by our past experiences, values and world view. However, through inter subjective communication we can render our subjective experiences objectives so that a large number of people may perceive the same phenomena in the same way. But even an objective view of phenomena may not necessarily correspond with the true reality; it is still an empirical reality. Yet the scientist can observe only the empirical. Therefore, the problem faced by a scientist is how to understand the nature of the true reality through an investigation of the empirical reality. In this task mere reasoning alone or observation alone is not sufficient but both the methods have to be combined.

Reasoning is also involved in observation. But when we refer to reasoning as a method of scientific study then what is implied by this term is mainly deductive reasoning. On the other hand, inferences from observation are made through inductive reasoning which has its own rules of logic as distinguished from those of deduction. Now the combination of induction and deduction is necessary for obtaining true knowledge because the testing of the truth or validity of a set of propositions depends upon demonstrating that the consequences deduced from those propositions are observable. It is the testing of hypothesis which is the linchpin of scientific investigation.

Through observation and inductive reasoning we accumulate knowledge consisting of facts, concepts and empirical generalizations. This is not necessarily true knowledge. The next step makes use of deductive reasoning. In these steps theoretical model is constructed from known generalizations and other assumptions and hypothesis are deducted from this model. Hypothesis is propositions which are deducted from theoretical models and whose truth has to be tested through observation. If the hypothesis is validated then it is to be accepted that the theoretical model from which the hypotheses have been deducted is also true. It then becomes part of the theoretical knowledge or true knowledge. Thus we succeed in acquiring knowledge about the true reality through an investigation of the empirical reality.

The above approach of study starts with inductions is followed with deduction and then ends up, again with induction. Studies need not always begin either

observation. If there are already a sufficient number of tested propositions, one can straightway formulate a theoretical model and deduce hypotheses and then test the hypotheses with observation. This approach of study starts with reasoning and ends up with observation. However, in either of these approaches both induction and deduction are involved.

The scientific study of any subject matter depends upon the possibility that the subject matter can be empirically observed and measured. Calling attention to the special nature of the subject matter of social sciences, particularly its symbolical and teleological aspects, there are some persons who doubt that social behavior could at all be studied scientifically. Such persons, however, do not doubt that social behavior can be observed, but point out that its special meaning as understood by the actor cannot be directly observed. But we have seen that in any case the knowledge obtained from a direct observation of the reality need not necessarily be true knowledge and that the modern scientific method based on a combination of induction and deduction enables us to correct the biases in our observation. Therefore, social behavior is no exception to the subject matters which are amenable to scientific investigation.

Let me now illustrate the two different approaches in scientific investigation in research in social science with reference to the problem of women's participation in the labour force, which I have already discussed in detail elsewhere. One of the problematic aspects of women's participation in the labour force stems from the fact that whereas it is common for all men to participate in the labour force, only a few women do so. Therefore, why do some women enter the labour force whereas the others do not, becomes an interesting question.

In trying to understand this problem, first let me take up the approach which involves induction, deduction and induction, in that order. I adopted this approach in my own investigation of the problem. In the course of the observation about the participation of women in the labour the working age women according to their educational background it is found that up to a point, say just below matriculation, with the increasing level of education the proportion of women workers in an educational category diminishes, but beyond that point with the increasing level of education, the corresponding proportion increases in an educational category. Thus in terms of the educational variable, the participation of women in the labour force forms a curvilinear trend. (b) A similar trend is also observed when the degree of women's participation in the labour force is related to the occupational prestige of their husbands. When the husbands of women are classified according to the degree of their occupational prestige , the degree of

labour force participation of wives diminishes with the increasing degree of husbands' occupational prestige; whereas beyond that point it increases with the increase in the husband's occupational prestige. These curvilinear trends invalidate the commonly held notion that the husband's relatively low income is the main cause of the wife's participation in the labour force. (c) A third major empirical generalization is that when the women workers as well as their husbands are classified according to their occupational prestige, there is a relationship between the occupational prestige of the husband and of the wife; however, on the whole,. The wife's occupational prestige is slightly lower than that of her husband's. In this case, interestingly, the relationship is a linear one as distinguished from the trends in the empirical generalization (a) and (b) which are curvilinear.

The study so far has been observational- inductive. The next phase of the study was aimed at providing a logical explanation of this empirical generalization and in the process, at finding an answer to the question why some work while the others do not. This had to be done by formulating a theoretical model. Which is a deductive exercise? In doing so I argued as follows:

1. Since women are the subordinate members in the Indian family system their behaviour as regards participation in the labour force can be better understood if viewed from the family unit.
2. The members of a family share their status in common within the larger stratification system.
3. The status of the family is, by and large, derived from the occupational prestige of,, members.
4. If there is only one earning member in a family the other members share the status derived from his or her occupational prestige.
5. If there are more than one member following occupational in a family then for the family to maintain its character as a status unit the occupational prestige of different members should be similar.
6. The husband and the wife are intimate members of the family in which the latter is regarded as dependent upon the former.
7. As the superior partner, it is the primary responsibility of the husband to earn a livelihood and the wife shares the status derived from his occupational prestige.
8. If the wife should also work she must find an occupational which is consistent with the occupational prestige of her husband.
9. As a subordinate partner it is ideal if the wife secures an occupational whose prestige is slightly lower than that of her husband's occupation. From all the above propositions which from a theoretical model it can be deducted that

10. Women would participate in the labor force if they could secure occupations which are consistent with their family status; their occupational prestige should be either the same or slightly lower than the prestige of their husband's occupation. The hypotheses derived from the theoretical model, namely, proposition No. 10 is directly in agreement with empirical generalization (c) pointed out above, namely that there is a relationship between the occupational prestige of the husband and of the wife. The same hypotheses can also be shown to be in agreement with the empirical generalization (a) and (b) by making use of some additional propositions.
11. Since the husband is regarded as the superior partner in marriage he has to marry a wife whose educational qualifications should not be higher than his own, although they may be lower.
12. The women as a whole are less educated than men.

It follows from propositions 11 and 12 that at the one extreme all illiterate men have to marry illiterate women and at the other, all highly educated women have to marry highly educated men, In the middle of the range, however, there would be many instances where there would be a wide disparity in the educational background of husband and wife, the former being the better educated partner. Therefore, at the two extremities of the educational levels of women there is likely to be a parity in the educational backgrounds of husbands and wives in most cases and hence most wives would be in a position to secure occupations which are consistent with the occupational prestige of their husbands. Hence the empirical generalization (a) which shows a curvilinear trend between the degrees of educational levels of women an d the degree of their participation in the labour force. I so far as occupational prestige is related to the educational levels, the same explanation, mutatis mutandis, also hold well in the case of empirical generalization (b).

Deduction method

The formulation of the theoretical model to explain the empirical generalization completes the second phase of our study which is based on deduction. But there is no guarantee that our theoretical model which supplies the explanation.

Problem is true. A false model can also explain satisfactory the empirical findings. Therefore, our study is still most complete until we have tested the theoretical model which has to be done through further observation and induction. A theoretical model is validated by testing hypotheses derived from it. The major hypotheses in this case the proposition No.10 which states that women would participate in the labor force if they can secure occupations whose

prestige is either the same or slightly lower than that of their husband's occupations. These hypotheses can be operational zed into two parts. Since occupational prestige and educational level are interrelated, it would mean that (10A) in the case of working wives their education is almost equal to that of their husband's, as a consistent levels; (10b) on the other hand, in the case of non-working wives there is a wider disparity between their education and that of their husband's because of which they are unable to secure occupational at consistent levels. These operational hypotheses were actually tested empirically and were found true. It is this validation which gives us the confidence that the theoretical model which was formulated to explain "why do some women work whereas the others do not", corresponds with the true reality.

The other approach of scientific study in which we start with deduction and end up with induction may also lead us to a similar understanding about the participation of women in the labour force. I am here referring to a couple of studies by American authors about the labour- force participation by the American women. The authors of these studies have tried to test some of the hypotheses about women's economic role, which can be deducted from the theory about the American nuclear family put forward by Talcott Parsons. The relevant theoretical formulations with which they have started their studies are:

1. The American nuclear family is a unit of diffuse solidarity and as a result the members of a given family must share a common status in the overall system stratification.
2. The primary determinant of the family's status is the occupational position of the husband.
3. Because of the possibility of disruptive status competition between husband and wife's the society and the members of the family ignore the occupational status of the wife(if she is employed) and perceive only the husband's occupational prestige as giving status to the family. The above formulation gives rise to the following hypotheses.
4. Even when the wife is working her status will be derived entirely from the occupational status of her husband and not from that of her own occupational , and
5. For the reason of avoiding status competition with her husband, the wife, if employed, will play only a marginal economic with her husband.

The above hypotheses (proposition NO.4 and 5) were tested and were found untrue. The authors have come to the conclusion that the status of a working woman is as much influenced by her wife's taking up an occupation much lower in status than that of her husband's occupation, the tendency is for the wife to

equalize her occupational status with that of her husband. Talcott Parson's assumption that family as a whole constitutes a single unit of status is sustained, but his other assumption than the status of this unit is society determined by the occupational status of the husband turns out to be untrue. The occupational status of the wife also is aimed at maximizing the status of the family and in doing so an effort is made at achieving consistency or compatibility between the roles of husband and wife and not avoiding competition.

Thus the final results of the study agree with the conclusions from my own study although the approaches were different. But both the types of studies had one thing in common and that is the combination of induction and deduction. Such a method provides a self corrective in the accumulation of knowledge of the true reality. It is for this reason that Karl Pearson has maintained that "there is no way to gain knowledge of the universe except through the gateway of scientific method.

7.4 SUMMARY

The End of the 17th century and the beginning of the 18th witnessed what may be termed the scientific revolution. Until then the growth of scientific knowledge was slow and halting but since then it has been rapid and phenomenal. This unprecedented growth of scientific knowledge is actually due to a transformation of the scientific method into what it is today, which took place in the 17th century as exemplified in the studies of Galileo and Newton. The transformation of the scientific method consisted in a combination of the methods of reasoning and observation or in the combination of the methods of inductive and deductive logic.

The earlier scientific studies followed mainly the method of deduction, which is a method of arriving at conclusions from premises. In deduction it is immaterial whether the premises are true or false so long as the conclusions follow logically from the assumptions. All that is needed is to select propositions in such a way that the analysis their meanings lead to other propositions. Take for instance the following two propositions:

4. It is in the nature of weaker persona to become subordinate to stranger ones.
5. Women are weaker than men.

It is possible to deduce a third proposition from these two propositions namely, (3) Women are subordinate to men. The truth or validity of the

third statement would depend upon the truth of the first two statements which are the premises. But the method of deduction is different as to the validity of the premises. Therefore one cannot be sure about the truth of the third statement.

There are two main reasons why no serious attempts were made in the past to test the validity of the premises or axioms employed in social studies. One is a different kind of the world view of the people of the period, which assumed that the changes in the phenomena were caused by certain qualities of the phenomena themselves which were divinely ordained. Such a world view was well exemplified in the traditional explanation about the Varna system in India. The four Varnas were supposed to have been created by god from His arms, the Vaishyas from His trunk and the shudras from His feet. The qualities of the different Varnas were thought to have been derived from the different parts of the body from which they organized and, therefore, they were fit to perform the different kinds of tasks assigned to them by the society. With such an understanding which is backed up by divine sanctions, there was no question of validating the premises.

A second reason for not validating the premises in the past was the fact that knowledge was rarely put to use for the solution of problems of life. The learned persons considered it below their dignity to associate themselves in any kind of productive work which was the lot of the menial persons who belonged to altogether a different class. So long as knowledge was not needed for use, it was immaterial whether it was true or false.

The tremendous growth in our productive capacity goes back to the industrial revolution whose foundation lies in the application of true knowledge for the solution of problems. But the acquisition of true theological and metaphysical world views of the past, the modern scientific world view assumes than the objects and events in the universe are interrelated and as such the changes in a given set of phenomena are caused by changes in the related phenomena. Such a world view implies the possibility of observing and verifying the causes of phenomena. It also suggests that the desired kind of changes can be brought about by manipulating the appropriate phenomena.

True knowledge is the knowledge which corresponds with the reality. Unfortunately all that we perceive is not necessarily true. Therefore, a distinction has to be made between the reality that we experience or the empirical reality and the reality which is out there or the true reality. Our perceptions are subjective, conditioned as they are by our past experiences, values and world

view. However, through inter subjective communication we can render our subjective experiences objectives so that a large number of people may perceive the same phenomena in the same way. But even an objective view of phenomena may not necessarily correspond with the true reality; it is still an empirical reality. Yet the scientist can observe only the empirical. Therefore, the problem faced by a scientist is how to understand the nature of the true reality through an investigation of the empirical reality. In this task mere reasoning alone or observation alone is not sufficient but both the methods have to be combined.

Reasoning is also involved in observation. But when we refer to reasoning as a method of scientific study then what is implied by this term is mainly deductive reasoning. On the other hand, inferences from observation are made through inductive reasoning which has its own rules of logic as distinguished from those of deduction. Now the combination of induction and deduction is necessary for obtaining true knowledge because the testing of the truth or validity of a set of propositions depends upon demonstrating that the consequences deduced from those propositions are observable. It is the testing of hypothesis which is the linchpin of scientific investigation.

Through observation and inductive reasoning we accumulate knowledge consisting of facts, concepts and empirical generalizations. This is not necessarily true knowledge. The next step makes use of deductive reasoning. In these steps theoretical model is constructed from known generalizations and other assumptions and hypothesis are deducted from this model. Hypothesis is propositions which are deducted from theoretical models and whose truth has to be tested through observation. If the hypothesis is validated then it is to be accepted that the theoretical model from which the hypotheses have been deducted is also true. It then becomes part of the theoretical knowledge or true knowledge. Thus we succeed in acquiring knowledge about the true reality through an investigation of the empirical reality.

The above approach of study starts with inductions is followed with deduction and then ends up, again with induction. Studies need not always begin either observation. If there are already a sufficient number of tested propositions, one can straightway formulate a theoretical model and deduce hypotheses and then test the hypotheses with observation. This approach of study starts with reasoning and ends up with observation. However, in either of these approaches both induction and deduction are involved.

The scientific study of any subject matter depends upon the possibility that the subject matter can be empirically observed and measured. Calling attention to

the special nature of the subject matter of social sciences, particularly its symbolical and teleological aspects, there are some persons who doubt that social behaviour could at all be studied scientifically. Such persons, however, do not doubt that social behaviour can be observed, but point out that its special meaning as understood by the actor cannot be directly observed. But we have seen that in any case the knowledge obtained from a direct observation of the reality need not necessarily be true knowledge and that the modern scientific method based on a combination of induction and deduction enables us to correct the biases in our observation. Therefore, social behaviour is no exception to the subject matters which are amenable to scientific investigation.

The formulation of the theoretical model to explain the empirical generalization completes the second phase of our study which is based on deduction. But there is no guarantee that our theoretical model which supplies the explanation.

Problem is true. A false model can also explain satisfactory the empirical findings. Therefore, our study is still most complete until we have tested the theoretical model which has to be done through further observation and induction. A theoretical model is validated by testing hypotheses derived from it. The major hypotheses in this case the proposition No.10 which states that women would participate in the labor force if they can secure occupations whose prestige is either the same or slightly lower than that of their husband's occupations. These hypotheses can be operational zed into two parts. Since occupational prestige and educational level are interrelated, it would mean that (10A) in the case of working wives their education is almost equal to that of their husband's, as a consistent levels; (10b) on the other hand, in the case of non-working wives there is a wider disparity between their education and that of their husband's because of which they are unable to secure occupational at consistent levels. These operational hypotheses were actually tested empirically and were found true. It is this validation which gives us the confidence that the theoretical model which was formulated to explain "why do some women work whereas the others do not", corresponds with the true reality.

The other approach of scientific study in which we start with deduction and end up with induction may also lead us to a similar understanding about the participation of women in the labour force. I am here referring to a couple of studies by American authors about the labour- force participation by the American women. The authors of these studies have tried to test some of the hypotheses about women's economic role, which can be deducted from the

theory about the American nuclear family put forward by Talcott Parsons. The relevant theoretical formulations with which they have started their studies are:

6. The American nuclear family is a unit of diffuse solidarity and as a result the members of a given family must share a common status in the overall system stratification.
7. The primary determinant of the family's status is the occupational position of the husband.
8. Because of the possibility of disruptive status competition between husband and wife's the society and the members of the family ignore the occupational status of the wife(if she is employed) and perceive only the husband's occupational prestige as giving status to the family. The above formulation gives rise to the following hypotheses.
9. Even when the wife is working her status will be derived entirely from the occupational status of her husband and not from that of her own occupational , and
10. For the reason of avoiding status competition with her husband, the wife, if employed, will play only a marginal economic with her husband.

The above hypotheses (proposition NO.4 and 5) were tested and were found untrue. The authors have come to the conclusion that the status of a working woman is as much influenced by her wife's taking up an occupation much lower in status than that of her husband's occupation, the tendency is for the wife to equalize her occupational status with that of her husband. Talcott Parson's assumption that family as a whole constitutes a single unit of status is sustained, but his other assumption than the status of this unit is society determined by the occupational status of the husband turns out to be untrue. The occupational status of the wife also is aimed at maximizing the status of the family and in doing so an effort is made at achieving consistency or compatibility between the roles of husband and wife and not avoiding competition.

Thus the final results of the study agree with the conclusions from my own study although the approaches were different. But both the types of studies had one thing in common and that is the combination of induction and deduction. Such a method provides a self corrective in the accumulation of knowledge of the true reality. It is for this reason that Karl Pearson has maintained that "there is no way to gain knowledge of the universe except through the gateway of scientific method.

7.5 SUGGESTED READINGS

1.Dr. H.N. Tiwari, Regal Research Methodology, Reprint, 2006.
2.Dr. S.N. Myaneni Legal Research Methodology, Reprint, 2008.
3.C.R. Kothari Research Methodology: Methods and Techniques. Reprint, 1994.
4.S.K. VERMA, Legal Research Methodology Indian Law Institute publication.

7.6TERMINAL QUESTIONS

1. How deduction and induction method are useful in research?
2. How research material is collected for research by applying induction and deduction method?
3. When researcher use induction and deduction methods in research?
4. How induction and deduction are useful in doctrinal and non-doctrinal research?

LL.M. Part-2

Subject: LEGAL EDUCATION AND RESEARCH METHODOLOGY

Block III Identification of Problem of research

Unit-8 Research problem; Survey of available literature and bibliographical research

STRUCTURE

8.1 INTRODUCTION

The formation of a topic into a research problem is the first step in a scientific enquiry. The term 'Problem" comes from the Greek word "Proballein' which means anything through forward; a question proposed for solution; a Matter stated for examination. A problem, in simpler words, is some difficulty experienced by the Researcher in a theoretical or Practical Situation According to John Dewey; the Need of clearing up confusion, of straightening out an ambiguity, of overcoming obstacles, of covering the gap between things as they are and as they may be when transformed, is, in germ a problem.

8.2 OBJECTIVES

The objective of this lesson is to define the research problem and to explain different parts of research, what aspects should be considered by the researcher while opting for survey of literature. To describe different kinds of survey and bibliographical research and its importance in the research work.

8.3 SUBJECT

8.3.1 Research problem

8.3.2 Meaning of Research Problem

R.S. Woodworth defines problem as a "Situation for which we have no ready and successful Response by instinct or by Previously acquired habit we must find out what to do. A Problem an be called a legal research problem only when it satisfies the following conditions: Identification of Research Problem:

1. The Problem must be worth studying:
2. It must have social and Legal relevance;
3. There must be facts needed for Research'
4. It must come out with a Practical Solution to the issues;
5. It must be upto-date or relevant to the current social or legal happenings.
6. It must involve clarity of meaning and limited scope of study;
7. It must be explicit and original
8. It must be verifiable and testable

8.3.3 Criteria of Research Problem

Cocharan and Cox suggested the following questions to be asked for the selection of a research problem:

1. Is this type of problem than can be solved selectively throughout the process of Research?
2. Can relevant Data be gathered to test the theory or find the answer to the problem?
3. Is the problem a new one? Is an importance involved? Is he answering available?
4. Whether it can be able to carry out through a successful conclusion?

Only if a Research gets a positive answer for this entire question, he can select the problem for doing research.

8.3.4 Condition to Be Conductive To Formulation Of Significant Research Problem

Systematic immersion in the subject through first hand observation

The researcher must immerse himself thoroughly in the subject area within which he wishes to pose a special problem. For example if a research is interested in the broad problem of juvenile delinquency, he will have to visit Remand homes, Juvenile-centers, courts, families of the Juvenile and localities. This is called the formulation of the situation.

8.3.5 Study of Literature

To be able to pose a problem, the Researcher must know the relevant theories in the fields, Reports, Records. This would help him to know whether there are certain gaps in the theories.

Discussion with persons with practical experience in the field of study: Administrators social workers, community leaders etc. are persons who have a store of knowledge, often known as experience surveys. They can help and guide to sharpen his focus of attention on specific aspects within the broader field.

Components in the Progressive Formulation of a problem Merton distinguish three principle components which are applicable to the legal studies and progressive formulation of a social-research problem.

The Originating Questions (What one wants to know) the originating Questions represent the beginning of certain difficulties which attain the status of a Research Problem. One class of these calls for discovering a particular body of social facts and another class directs attention to the search for uniformities of Relations between classes.

Rationale of Question (Why one wants to have Particular Questions and answer) The Rationale helps to effect a distinction between the scientifically consequential and trivial Questions.

Specifying Questions (Possible Answers to be originating questions in terms that satisfy the rationale) This is the stage of culmination in the process of formulating a Research problem. The originating Questions are Sometimes Quite Diffuse, some relatively more specific. The originating Question must still be recast to indicate clearly the observations that will provide an answer it.

8.3.6 Formulation of Problem

At the outset the researcher has to decide the area or aspect of a subject matter in which he is interested such a decision affords only a crude indication. Hence he Researcher needs to formulate a specific problem from within his general area of interest-before he can take any decision relating to collection and analysis of data. It is more difficult to find and to Formulate a Problem that to solve it. He has to Put a great deal of thought into the Formulation a problem he expects to get anything worth from his efforts to solve them. Research begins when the Researcher experience a difficulty or a challenge which is the Basic component of a Research Problem. There are no principles which can guide an

investigation to pose significant problems for Research. A careful study of literature will guide him an a his sensibility. Experience directs him to Formulate the Problem.

8.4 Social Survey of available literature and bibliographical research

8.4.1 Survey of Available Literature and Bibliography:

The word survey has been derived from two words 'sur' or 'sor' and 'veeir' or veior' which mean 'over' and see respectively. The literal meaning of survey is to see over something from a high place. The term is used for technique of investigation by direct observation of a phenomena or collection of information.

A survey consists of asking questions of a representative cross-section of the population at a given point of time. Surveys in legal investigations are called legal surveys. It is a process by which quantitative facts are collected about the legal aspects of a community and its activities. Legal survey is the method of data collection that utilizes questionnaires or interview schedules for recording the non-verbal behaviour of respondents.

The Researcher must acquaint himself with all the material available on the matter. He should collect the literature, he should find out the persons who have conducted research on similar problem and discuss with them on their findings and techniques used. This early reparation will make him more equipped.

At the end a legal research all primary and secondary sources of data references book. Periodicals, Articles Report, Government documents, unpublished materials pamphlets, films, records and other references must be listed under the title bibliography.

Bibliography means booklist. The purpose of a bibliography is to provide with a fair chance to estimate the thoroughness and exhaustiveness of the Research. Bibliography consists of the particulars of the literature Referred to an actually utilized in the preparation of Research.

Bibliography begins on a new page at the end of the Research. It follows the main text and is a separate part of the thesis. Page numbering is continuous and. Follows the page numbers of the texts A Bibliography is a list of Authors in alphabetical other. The following order is usually observed while writing the reference.

Name of the Author: Each entry of the bibliography should start with the author's last name at the list land margin. If the author is a woman her first name is given in full, when two or more authors names are to be reported for the same article or book, then except for the first author's name, the other author's name are to be given with the first names occur first and then second name. When there are two or more words by the same author, the author's name must be replaced by a series of eight dashes in the second and subsequent entries. If the book is edited by a person or persons his or their name is written and 'ed' or 'eds' is added within the Brackets at the end of his or their name, (s). A comma is placed after the name of the author.

Title of the Book: The name of the author is followed by the title of the Book. The title of the Book is usually given in single inverted commas and is followed by the edition number if any, in the Bibliography, a capital letter is used to begin all the key-words in the title of the Book and journals for Articles, Manuscripts thesis and unpublished papers, the procedure is to use a capital only to begin proper nouns and the first word of the title. A full stop mark or comma is placed at the end of the title of the Book.

If the Article is quoted, its title is also given in single or double inverted commas and is followed by the following information (i) the title of the journals/magazine (ii) volume number in Roman numbers followed by the data and publications; and the number of journal in parenthesis.

Publishers address: The name of the publishers of the book/journal will be given. Followed by its place of publication and if possible the full address of the publishers. A colon mark is placed after the place of publication and a comma is placed at the end of the publisher's address.

Year of the Publication: The year of publication may be given in parenthesis at the era of the references. A full-stop mark is placed at the end.

1. Page Number: Wherever possible, the page numbers referred to given.
2. Example Book by one author :

3. Chapin F.S. 'Experimental Design in sociological Research'. New York: Harper & Row, Publishers, (1947).

Review the Relevant Prior Literature: A good reading of primary and secondary source materials drawn from law-library is indispensable for am empirical research. This makes a researcher conversant with the earlier theories and important variables concerning the area of research.

The researcher has to review previous studies on the subject to critically examine the following.

To know about eh different areas covered by various studies,

To get acquainted with the different meanings given to certain concepts in various studies.

To concentrate on the areas where little research has been carried out.

To look into different merits and shortcomings of the research designs followed in different studies; and

To verify the present findings with the previous findings.

Legislative Materials Including Subordinate Legislation :

Bentham and Austin signify by the term 'Legislation' any form of law-making. The term is, however. Restricted to a particular form of law-making; viz. the declaration in statutory form of rules of law by a competent authority. Legislation is the most potent and sovereign source of law making. It is the only source which has all the power of enacting laws. Repealing old laws and modifying current laws. It is, therefore, to be distinguished from law derives from judicial decisions, for though the judicial may be said to have power to make law, it has no power to lay down general rules.

Legislation may be divided into supreme and subordinate legislation. Supreme legislation is that which process directly from the Supreme or sovereign power in the state it is Supreme because no authority can annul, modify or control it. Legislation by any other authority is subordinate legislation and is capable of being controlled by the Supreme authority, the subordinate forms of legislation derive their authority to legislate only by delegation, express or implied of the Supreme. Power, municipal corporations, universities, Railway –companies and clubs have got power to make rules and orders governing themselves and their members; but such bodies are subject to the control of the sovereign –

legislature. The chief forms of subordinate – legislation, according to salmond, are the following :

Colonial Legislation :

Legislations by the legislatures of the colonies or other dependencies of the crown enjoying the power of self government are subject to the control of the imperial legislature.

Executive – Legislation :

It is the legislation by the executive for conducting the administrative departments of a state, where the Act does not contain the whole legislation but delegated to a foreign authority to legislate in the matter, it is subordinate legislation.

Judicial Legislation:

It is the rule making power of the Superior courts for the regulation of their own procedure. It is a true form of legislation except that it can not create new law by way of precedent.

Municipal Legislation :

The bye-law-making power of municipal authorities is another form of subordinate-legislation. The law entrusts to municipal authorities the limited power of making special law for the district under their control.

Autonomous Legislation :

Legislation by autonomous bodies like universities or railway companies is also termed subordinate legislation.

Constitution of Legislative measures :

Opinion of executive is not relevant the Bye laws of a co-operative society framed in pursuance of the provisos of the relevant Act can not be held to be law or to have the force of law. They are neither statutory in character may they have statutory flavour so as to be raised to the status of law. Now if there is any conflict between a statute and the subordinate legislation, it does not require elaborate reasoning to firmly state that the statute prevails over subordinate legislation and the bye laws of not in conformity with the statute, in order to give effect to the statutory provision, the rule of by-law and must be complied with. It is the function of the court to construe legislative. Measures and in reaching the

correct meaning of a statutory provision opinion of executive branch is hardly relevant. Nor can the court abdicate in favour of such opinion. (Baboji Kondaji Garad v. Nosik Merchants cooperative Bank Ltd., AIR 1984, SC 192).

Decisional Material :

For a legal Researcher Material source of law that source which law derives not its validity but the matter of which it is composed. Material sources are divided into legal and historical. Legal sources of law are those sources which are authoritative. They are recognized as such by the law itself. These are the immediate sources of law.Decisions given by judges marked a very important source of law, for on the law – Material of customs the judges fashioned up rules of law each rule of law came to be a thread in the 'Reticulated Fabric' of the Law. Like the sculptors who work ith chisel and marble or bronze and make beautiful works of Art, did the judges work on the raw material of custom supplied by Merchants or other satisfactory evidence well reasoned were the judicial decisions, and these formed a valuable contribution to the law of the land which was, in early tines very scant indeed.

For some-time past certain judges of Supreme Court have been adopting an activist approach to the conflicts that affect the citizens of the country, particularly in Regard to their socio-economic conditions. The Bihar under trials, the Bhagalpul Bindings, Agra protection hone case and other such litigation have given scope to the activist judges of the Supreme Court to espouse the cause of afflicted citizens. So a legal researcher should keep in mind available decisional material on the topic which he is pursuing.

Normally the decisions which have been followed for a long. Period of time and have been acted upon by persons in the formulation of contracts or in disposition of that property or other legal processes should generally be followed afterwards but this rule is not inexorable inflexible and universally applicable in all situations.

Another one case law consists of the rules and principles states and acted upon the judges in giving decision. The case laws are the necessary subject matter in any doctrinal enquiry because the law declared by the Supreme Court and High Court binding the subordinate courts. The Indian law is largely a system of law. That is, the decision in a particular case. Constitute precedent. According to the doctrine of Precedent it is not everything and by a Judge when giving judgment that constitutes precedent. But only the reasons for the decision given in the judgment constitute precedent. So, the reason stated in the judgment of an appeal case becomes a necessary subject matter of inquiry and analysis by a

lawyer. Case laws are the secondary source of data to the researches. While reading the case-laws the researcher may come across a problem of legal issue and he can from a hypothesis, run an empirical inquiry and thus conduct the research.

In a dynamic society, the lawn on social welfare has placed great Burden on courts of law. Generally, there will be gaps in statutes and the courts have to evolve doctrinal principles, standards and norms. Further, there will be ambiguity in the statutory language. A word which appears to clear during the enactment of law may become vague during its application to a particular case.

An example of the legislative covering the description on the court is that art 19 of the Constitution of India. Many a times the Supreme Court has used its discretion regarding the words 'public order', 'Reason to Believe'. 'Reasonable time' 'Reasonable ness of restriction' etc. in he same way in administrative laws the phrases like 'Executive delegation' and 'ultra-virest are vague and Flexible. The above decisions of the courts regarding the analyzing the existing statutory provisions are he examples joy the doctrinal research.

The empirical research is mainly concerned with legal. Decision process i.e. researcher's attention is on variables what influence the decision and the impact of the decisions on the society. The empirical research may be defined as research into relationship of law with other behavioural sciences. Here, more importance is given to people, social values and social institutions and not to the legal aspects doctrines usually a researcher undertakes some aspects of legal decisions and his approach is always broader and decisional materials contain a lot of information to be used by the researcher because it is concerned with the particular doctrine of law say and not as what made the authority to say so or what has been the impact of that say. According to S.N. Jain, decisional materials involves analysis of case law arranging ordering and systematizing legal propositions and study of legal institutions through legal reasoning or rational deduction. Ascertaining a legal rule for the purpose of solving a problem is one of the purposes of the legal research. This law has been achieved by original sources of law. The acts of parliament ones the act passed by the legislature fall under this category of legislation. The case laws decided by Supreme Court and High Court which are binding on lower courts fall under the category of precedents.

In modern context the researcher has to find out an a propose those principles, rules and regulations which can serve the purpose what Rosso Pound has termed as social engineering as well as the existing doctrine/Principle of law may

become certain and stable so that social goals may be achieved. If the researcher happens to be a judge he can give concrete shape and stability to the legal principles by applying the principle of review or revisions or overruling. A good number of cases may be cited substantiate this point of view e.g Shankair Prasad. (1951) and Sajjan Singh's case were overruled by Golak-Nath case which was subsequently overruled in Keshwanand Bharate case. Similarly a definite shape was provided by the Supreme Court to the Right of personal liberty as given in Art 21 of the Constitution in A.K. Gopalan's case but its scope was widened in Menka Gandhi and in subsequent cases because the court was convened that with the passage of time be meaning and scope of the right to personal liberty has considerably widened since its decision in A.K. Gopalan case.

The Court has introduced changes not only in the area of the Constitution Law, but also in the area of Labour-Law criminal law as well as property law. The courts have held that death sentence should not be imposed in all cases in which the offence of murder is established, but only in the rarest of rare cases.

Death penalty is now an exception life imprisonment is the rule (Jagmohan Singh V. Uttar Pradesh) AIR, 1973, SC. 947). Not only this execution of death sentence in public has been held to be a Barbaric act, and that the person sentenced to death to also entitled to procedural fairvers fill the last Breath of his life.

Courts through judicial decision reflect important social, economic and political goals and seeds of the society in which they function. This is possible only if a great deal of thinking and research is carried on in the area of law. Rules of law reflect the society and the time in which they operate growth of law has been pragmatic developing from society's need for researcher and flexibility in its day to day working.

Judicial Writings:

When pursing a legal research the person should keep in mind the importance of judicial writings on the concerned subject or topic. There are number of books of foreign and Indian Authors who influenced the legislatures to make law, rules and policies. Judges like justice Krishna Iyer P.N. Bhagwati on Human Rights. Upendra Bakshi, Subba Rao judicial writing of Gajender Gadkar on Public interest litigation Patanzali Shastri on Constitutional matters and the views and opinion in the form of writing play a very important role in Research work. Different commentaries and Digest Just like 'Edward Coke'. Mensfield, Bentham, Austin salmond also good 'source to gain' knowledge for a Research. The

documents express the inner-most feelings of the heart of the writer and at times. These documents throw light on such aspects of high as would have been difficult to know through observation or interview. They, generally are more realizable both as regards one description of the subject as well as the feelings of the writer. They contain the perfect type of socio-legal material necessary to characterize the life of social group.

A legal writing is anything that contains matters of socio-legal importance. Most of the writings are written in the past when the phenomenon took place and are not specially prepared for the study of the present problem.

Not only judicial writings but personal documents include all such written material is written by an individual to narrate his views upon personal. Relationship or social phenomena. Most of these writings are from personal point of view. But & researcher should take proper precautions to understand it and its consequences because there as some draw-backs of the writings which are mentioned below.

Unreliability of the data man be there due to personal Bias of the writes. Writings do not provide a representative sample and the documents ===== not be considered as a valid one. The availability of writing may be difficult if the y contain some confessions which are like to damage his reputation.

Judicial documents also supply a huge fund of information. They deal with different subjects and are usually published by various institutions, organizations and associations records, parliamentary debates, judgments etc one regarded important public documents. These writings are easily available and to a large extend, also reliable. A good deal of information regarding socio-legal problems is now. Collected and released for publication by the Government.

These personal documents including life-histories of the people in general and important persons in particular, public and private documents like diaries, confidential files. Literature, Newspapers etc. is important sources. Apart from this, Articles, Papers and Books on legal history and Constitutional history are equally important.

Compilation of List of Reports or Special Studies: The Legal Research Report is the statement that contains in Brief the procedure adopted and the findings aimed at by the researcher of a legal. Problem a legal report is not a complete description of work done by the researcher. It is only I brief statement of most significant facts that are necessary for understanding the generalization drawn by the investigator. After the collected data have been analyzed and interpreted and

various generalizations have been drowning, the report has to be prepared. It is the last phase of the research.

A vast planning and preparation is necessary for writing the report. Writing the report requires considerable through effort patience and penetration. Writing a legal research report is a technical activity which demands skill and patient from the researcher. The report should focus on the target audience; report should be simple, interesting and lucid. Only hard and patient work on the facts, careful and critical assessment and intelligent planning of the organisation of the report can facilitate the communication. There is no standard criterion for organisation of legal research report.

Reporting the research requires on order of skills come what different from these needed in the earlier phases of research. The chief purpose of a report is communication with the readers. It should contain the following aspects:

Reporting the research requires an order of skills come what different from these needed in the earlier phases of research. The chief purpose of a report is communication with the readers. It should contain the following aspects.

A. The problem of research.
B. The research procedure
C. The result of outcome
D. The importance of findings

R.L. Ackoy offered a model representing the process of inquiry which illustrates both the problem salvation and communicative phases. The communication model of inquiry involves four communicants (1) The consumer who has a problem (2) The research scientists, (3) The observer (4) The observed. These four communicants need not be four district individuals; rather they refer to four communicative roles.

The report representation makes it quite clear that the problem solving phases of inquiry are –

1. Existence of a problem
2. Formulation of the problem and designing
3. Movement into the environment in which observations one to be made (data-collection)
4. Recording of data
5. Treatment of data (Analysis and interpretation)
6. Reporting the results.
7. Action based on the reported results to solve the problem.

Purpose or Importance of a Report *:*

the purpose of a report is to the interested persons the whole result of the study in sufficient details in orderly manner. The main aim of the thesis writer is accuracy and truth. He should === himself to the validity of conclusions the purpose of report is thus the spread of knowledge. Broadcasting of generalized so is to ensure their widest use.

2.Report also crates grown & for hypotheses and leads to further research on the same or allied problems the report will generally be conformed to the objects of the study of the problem. Suggestions will be given to researcher to studies the items of gaps on additional items which are traced out in the present study.

3.The Research is sometimes undertaken at the instance of third parts which are interested in the problem. The report of such problem is not meant for general public and for their practical purposes. The sponsored persons are simply interested in the results and findings only.

8.4.1 Objects

1. To examine social aspects of a community- The primary aim of social survey is the collection of facts about certain definite aspects of a community in order to obtain scientific and well ordered information. For this purpose the social surveyor makes use of various techniques to gather information data has both qualitative and quantitative aspects. Prior to undertaking investigation, the aim or purpose of investigation is well-defined and established. In as much as there are varieties of aspects about a community, their aims and purpose are different. The land use survey, the political or geographical surveys are about different aspects of a community. A social survey is called social with a view to distinguish it from other types and also in order to stress the fact that in it only the social aspects of a community are considered. The social survey is both descriptive and stastical; besides, it aim at ameliorations.

2. To examine problems and the condition of working classes- A glance at the history of social surveys reveals that social survey is mainly, if not exclusively, concerned with the problems of society and the socio-economic conditions of the working classes and other depressed and underprivileged groups in the society.

The social survey aims at the study of the conditions and factors of social retardation or backwardness. It aims at the removal of reactionary forces from society and thereby helps release of social energies into progressive channels. After making social survey and knowing the cause of backwardness, plans are formulated to remove these conditions. The socio-economics level of working classes is much lower than other groups in a society. All kinds of social problems and dysfunctions abound in working classes. The problems of disease, epidemics, unemployment, juvenile delinquency, unhygienic conditions of living, moral depravity, sexual polymorphy etc., are far more acute among industrial labour than in any other social class. Due to paucity of accommodation and low moral sense, children of workers are constantly exposed to immoral and drunken behaviour of their elders. As a consequence of this, sexual is blunted. In order to improve their conditions social surveys are a prerequisite. Most of the problems are inter-related. Unemployment and poverty, illiteracy and unhygienic seem to be inter-related. Social survey studies social problems and tries to see relationship among them.

3. To examine practical and utilitarian approach- The motivation of social survey is practical and utilitarian. All survey of natural curiosity and urge to know and aims at pure theoretical knowledge; but social survey, on the contrary, is utilitarian. It is undertaken for the purposes of social welfare and betterment. In social survey, facts relevant to problem in hand are collected and upon their basis remedial measures are recommended or suggested. As a result of social surveys, government passes various laws to protect the underprivileged against exploitation. Many other measures are taken to help in a practical way the depressed and downtrodden. The special privileges granted to scheduled castes and backward tribes are a case in point.

The above aims of social survey have been graphically defined by an eminent sociologist C.A. Moser's in the following words, "The sociologist should look upon the survey as way, and a supremely useful one of exploring the fields of collecting data around as well as directly on the subject of study, so that the problem is brought into focus and points worth pursuing are suggested.

8.4.2 Steps in social Survey

Following are the steps in a social survey-

1. Selecting the problem- As we have seen in the foregoing definitions of social survey, it deals with social problems. Accordingly, the first step of social survey is the selection of the problem. As long as the nature and character of the problem is not clear in the mind of surveyors, they would not know how to make a start and will grope in dark; therefore clarity and definiteness about the problem is a sine qua non of any social survey. The social surveyor is not merely a spectator who can afford to tally with any and every problem he comes across in a community. His approach is practical and motivated by utilitarian considerations. Therefore he must choose a problem which is significant and whose solution would make some practical differences to the life of the community. A social surveyor should choose his problem keeping in view the importance of the problem of community and the actual of tangible benefits to the community consequent its removal.

2.Defining the Aim- Following the selection of the problem, the aim and purpose of social survey must be well defined and made crystal clear because without the knowledge of goals social survey would be like a ship on sea without rudders. Social survey will lack direction in the absence of knowledge of goals. Moreover, the efficiency of a social surveyor can be measured only in relation to achievement of goals and if we do not know a goal, we shall have no criterion to judge the success of survey. These goals may be specialized or generic. For example, collection of census data is for general purposes. The social survey of living conditions of laborers of the statistics regarding indebtedness of labour, nature of landholding, nature of tax structure are survey having specific aims. At times the aim of survey is to bring out into general notice the facts which are known by some only. Whatever may be the aim of social survey, it may be generic or specific, but it must be well defined.

3. Defining the problem under the study- Now the nature of the problem selected should be defined. This will determine the scope of the problem and also its nature and character. For example, if we wish to study the problem of alcoholism among labour, them first of all we should define what we mean by the term “alcoholism.” We have to be clear in mind as to what quantity of liquor consumed per day indicates alcoholism. Likewise if one wishes to study the effect of alcohol and drug on the commission of crime and the quantum and nature of punishment therefore, he will have to take into account the quantity of alcohol and drug quantity consumed and effect produced by it.

4. Making a schedule- After the problem is defined; we have to analyze the various elements, constituents or factors involved in the problems so that a

detailed and systematic list of these may be formulated. It is only when a detailed list of the problems is available that the relevant information can be systematically gathered.

5. Constituting a commission for survey- The official surveys are always undertaken after constituting a commission to make surveys and this commission is empowered to elicit various types of data and also an access to classified material relevant to the study. Having constituted these limit, and scope of the inquries, it is also provided with both financial and personnel assistance. The commission also acts as processor of complaints received from surveyors or public and can redress grievances. It can and does from time to time issue instructions and determine code of conduct for surveyors. Having done field work, the surveyors file all the data with the office of the commission where it is processed, classified and analyzed. The director and the members are responsible for all policy decisions. They determine the policy itself into various committees and sub-committees to deal with specialized matters. In the event of controversy, commission members may give dissenting notes, though normally an attempt at consensus is made. In the event of dissenting notes the majority report is considered to be the verdict of the commission.

6. Determinig of scope- In science the study of a problem implies systematic investigation into a limited and well-defined subject matter. Without setting limits, no phenomenon can be studied. Accordingly, before the beginning of a survey, it is imperative to determine the scope of the problem. In determining the scope of a problem the following techniques are made use of:

(a) Political and administrative division, such as Nation, State, Town, City, Locality etc.

(b) Professional class such as rich and poor people, labourers etc. This means limiting the problem on the basis of economic levels or considerations.

(c) Child, young, old etc. This involves determination of the problem on biological basis.

(d) Married, unmarried, literate, illiterate, that is determination on the basis status.

(e) Hilly areas, planes, deserts etc. determination of the scope of a problem upon geographical basis.

(f) Status in society president, Governor, Minister, I.A.S. & I.P.S. Officer, judges of Supreme Court, High court.

(g)Social division upper caste, backwards, scheduled caste and scheduled tribe.

(h) Nature of laws remedial penal enabling repealing etc.

(i) Nature of climate, polluted, non-polluted, highly polluted etc.

7. Determining of Time- Limits- Social survey requires the services of trained investigators and considerable amount of money. Accordingly, it is essential to set a time limit for it. Some problems are of topical importance and such problems undergo gradual chance. In both cases, if the results of survey take too long a period to be determined, the validity of results may be doubtful on account of change of conditions or the problem may no longer be quite relevant. For example, the social problems arising out of war conditions like displacement of populations etc must be immediately tackled if the solution is to be effective. But if the government takes too long to come to conclusion about the nature and the extent of relief needed, the problems will be changed and the results of it will be inapplicable. Certain statistics cease to be relevant to survey after a lapse of some period. For example, if Census Commission submits its report in 5 to 6 years, the Census data collected by it will cease to be very relevant, because pollution of certain areas may have radically changed in number and character. While fixing the time limit, the time needed for each stage of social survey is determined and, therefore delay in one stage will easily indicate that there is delay into the completion of the survey. While fixing the time it has to be kept in mind that time and money consumed should not be excessive; it should not also of course be too short. In the first event the character of problem may energy would be wasted. If the time is very short, the result may lack reliability on account of sufficient care, absence of check and cross-check. At times the time limit has to be fixed to suit the convenience of persons giving information. For example, different amount of time is taken by questionnaire, interview, biographical records, and observations techniques. The well trained and competent surveyors will take less time than the ordinary surveyor. Therefore, while fixing time limit the above consideration should be borne in mind.

8. Examining of the means of Information- After arranging survey, the next requirement is to decide about the means of information. The sources of information must be accessible and free from duplicity and mischief. If the survey is being made for the first time it is called primary survey and upon its basis there can be further advance. The data gathered through primary survey is called preliminary data. If the survey is being made second time it is called secondary

survey and its data called secondary data. In different types of survey different techniques of survey are employed. Mostly the information is obtained through schedule, questionnaire and direct interview of individuals. Secondary data are obtained through published or unpublished material of primary survey and also from official and non-official report.

9. Determining of the Unit of survey- Before launching survey, its unit should be determined. On account of this determination field workers are free from doubts and can easily gather the relevant information. The unit should be definite, unambiguous, stable, harmonized, simple and capable of being surveyed. In order to formulate a representative unit it is necessary to define and well formulate the sample. If all units are to be surveyed there is very little difficulty in the survey; but owing to unwieldiness and vastness of the area of survey; usually only representative units can be investigated. The units have to be the determined keeping the time and money available for the survey. Their number and form depend upon the nature of the material. The sample technique can be employed only where there is no deficiency of material or incoherence of time.

10. Determination of the amount of refinement of material- Before undertaking the actual survey it has to be made clear as to what extent refinement of the data is to be expected. In quantification, accuracy to the last percentile is considered a sine qua non. Accordingly, in qualitative survey the surveyor has to accuracy and refinement is proportionate to the availability of time, fund and able personnel. However, it has to the borne in mind that in the area of legal study so far as qualitative survey is concerned 100% accuracy can not be obtained because the social factors constantly hammer the society compelling the people to change their attitudes.

11. Selecting and training of Researchers and data collections- Research requires a well trained staff of researchers and field workers. The selection of researchers and field workers should be made keeping in view the nature of the scope of social survey. Having selected them they have to be trained for the job; they must become acquainted with their respective duties and manner of performance of them. In selection not only the intellectual qualities should be emphasized but the personal qualities like amiability, good humour, pleasant appearance and tactfulness have to be particularly stressed because the field workers have to deal with various types of persons and their personal qualities and resourcefulness will be much in demand.

12. Preparedness of Informers- In different types of survey the individuals from different classes are used for collecting information. Before undertaking the

survey it is essential to create responsiveness and preparedness for cooperation among individuals from whom the information is needed. For example, in the Indian Census of 1971, government publicized through various media to make people aware of the need and importance of Census and the responsibility of public to give accurate information to field workers without any fear because all information of personal nature will be kept strictly confidential. Educated public can be informed by post or through radio, television, cinema slides and various leaders of the community aspects of a survey. Sometimes handbills are distributed and to approach uneducated persons illustrated brochures are made available. If the individuals to be interviewed are persuaded to feel the importance of their cooperation, they will become responsible and give information easily.

13. Determining of survey Technique- Before starting, it should be made clear that techniques are to be used in survey. The choice of technique depends upon the scope and the nature of the survey. The determination of techniques facilitates survey. In questionnaire technique and the schedules to be set by post, the list of questions is prepared beforehand.

14. Field work- Having completed the above formalities field workers go to respective individuals to gather information. In this they have to keep in view the conveniences of persons to be interviewed. This work requires great resourcefulness and tact because the cooperation of respondents can be secured only if they are approached in the right manner. The field work is done under the supervisor. After collecting information the field workers file it with their respective departments.

15. Organization of material, classification and statistical analysis- The collected material is organized, classified and statistically analyzed.

16. Elucidation of conclusions- Having analyzed the data, competent and able researchers draws conclusions from them and elucidate these conclusions.

17. Presentation through Graphs- Lastly, the conclusions of a survey is graphically represented. Some schedules and charts are also given to aid the understanding of these conclusions.

When the conclusions of a social survey are made definite and have been well formulated, the recommendations are treated with respect as they have the backing of scientific inquiry. Upon the basis of these recommendations official and non-official agencies take the necessary steps to implement them and since

these recommendations are based on realistic scientific studies their implementation usually yields desirable results. If there are repeated surveys in a particular field, the later surveys act as verifier to earlier surveys.

8.4.2 Kinds of Surveys

Usually social surveys are of two kinds (a0 general and (b) specialized. In the general survey the entire community is studied in a general way. A specialized survey, on the contrary, seeks to study some particular aspect of the community such as hygienic attitude, child-welfare, etc. of these any one is studied at one time in a single survey.

Besides the above two types there are some other kinds of social surveys. The important ones and their basic nature are treated below.

1. Direct or indirect survey- Indirect surveys quantification is possible whereas quantitative description is not possible in indirect surveys. For instance the demographic surveys are direct; but, on the other hand, the surveys of health conditions and level of nutrition are indirect. Both types of social surveys have their place in social study.
2. Census survey or sample survey- In the Census all units are counted separately and the sum of all units is computed. On the other hand, in sample survey, only some representative unit is studied. Compared to total or Census survey, the representative surveys are of less time and energy consuming, but they are valid only if the sample is really representative and the entire field is harmonious. If the units are heterogeneous, sample survey is not possible.
3. Primary or secondary survey- In the primary survey, the task of survey is taken up a fresh and the surveyor himself sets the goals and collects relevant facts, but if some facts are already available and there is no need to examine them afresh by a new survey then the survey is called secondary. Primary survey is far more reliable than the secondary survey.
4. Initial or Repetitive survey- If in any area the survey is being made for the first time it is called initial but if it is being made second or third time it is called Repetitive.
5. Official, Semi official or Private survey- As is clear from the names, official surveys are conducted by the government, and the surveys conducted by quasi government institution like university, corporations, boards etc, are semi-official. If the survey is conducted by some non government persons or agency, it is called private survey.
6. Widespread or limited survey- The widespread survey takes a very large area or multiple aspects for survey purposes, while a limited survey is confined to a small area and usually deals with some specific question.

Obviously, limited survey has greater reliability than the widespread survey.

7. Public or confidential survey- Some surveys are of general types and their data are not of highly personal nature .Accordingly, no secrecy is maintained in the collection of data or publication of result. Theses surveys are therefore known as public surveys. Against this if the nature of the survey is such that the information called is not to be revealed to public, the survey is confidential.
8. Postal or personal survey- If the means of collecting data are dispatch of questionnaires and schedules by post, it is called postal survey; but if the information is collected by means of direct interview of respondents, it is called personal survey.
9. Regular or Ad-hoc survey- Regular surveys are made periodically without fail while ad-hoc surveys are conducted for specific purpose and are not periodically revised.

In social survey in town and country areas, Herman V. Morse has enumerated ten phases of survey which are being listed here-under for the sake of comparison:

1. Definition of the purpose or object.
2. Definition of the problem to be studied.
3. The analysis of this problem in a schedule.
4. The delimitation of area or scope.
5. Field work.
6. The arrangement, tabulation and statistical analysis of the data.
7. Examination of all documentary sources.
8. The interpretation of results.
9. Deduction.
10. Graphic expression.

8.4.3 Utility of Social Survey

The various types of survey and different techniques used in survey have their respective significance and value. In a general way it may be said that the surveys throw useful light on the various aspects of the social problems and help in understanding the causes of the problems and the mutual interplay of the causes. On the strength of s survey practical remedies are normally efficacious because they are the outcome of scientific study and analysis. A general or widespread survey helps us to get an overall idea of the multiple aspects of the problem gaining over a very wide field, and this, in turn, can indicate depth survey because it studies threadbare a particular problem in a limited range. The conclusions of a specialized survey are much more reliable than those of general or widespread survey. Accordingly, specialized survey is more important from the

scientific point of view. The postal survey is less expensive than personal survey, but the postal survey can be conducted only where all the respondents are literate. Moreover in case of doubt in the respondent's mind postal survey fails whereas personal survey can take care of all such contingencies. While personal survey is undoubtedly reliable and therefore desirable, its negative features are its expansiveness and various types of lures and temptations to which a field worker is exposed. There is a well known case of an American who distorted information about a poor family because the mother offered him the sexual services of her comely daughter. Public survey can be made only in a situation where the information is of general type and not of personal nature. But in survey of problems of disorganization, homosexuality, lesbianism, marital discord, smuggling, crime etc, the survey has perforce to be confidential. In regular surveys, the reliability of conclusion increases. The value of a primary survey is directly dependent upon the technique used. Here, there is lack of comparative material and this proves a stumbling-block. However, primary surveys are highly important because through them a first attempt is made to gather well-organized information on a subject and these prove to be stepping stones for repetitive surveys. The Census and income data can be kept reliable only through regular surveys.

In Census survey, much money, time and staff is needed. The surveys of this type are used countrywide and their conclusions are reliable and precise. But on account of being less expensive, sample surveys are widely used in social sciences. Official surveys are initiated and conducted by government to gather accurate data on some problem confronting the government. As the government has large funds and large brigade of trained personnel's, official surveys are quite reliable and accurate. But government is liable to suppress information unpalatable and offensive to it and which may arouse people's resentment against it. Therefore private surveys, inspite of their obvious limitations, are very useful. The direct surveys, being quantitative in character, are more reliable than the quantitative indirect surveys.

It is evident from the above that the utility and importance of survey cannot be determined in abstract. It is only in relation to the nature of the problem; its scope, the aim and object of survey, the availability of funds, staff and other facilities that one can known which type of survey will be useful under the given circumstances. Each type has its own pros and cons and the choice of type is very crucial in order to derive full benefits from the survey.

8.4.5 Limitations of Social Survey

The study of human behaviour in a scientific manner is the aim of sociology. Social research is the activity engaged in by the social scientists to break down the complexity of human behaviour into predictable and universally applicable formulate. Human behaviour being complex phenomena, social research purports to be of an equally indeterminate and essentially a time consuming affair. To rectify immediate anomalies in the system of social life and point out to the causes that are responsible for such problematic situations, one has to resort to the popular survey methods. Pauline Young called this method a short term analysis of a particular aspect of society in an isolated manner so as to arrive at definite cause effect formulations; thus providing the social worker with a set of analytical references to put into gainful effect in the human affairs. Surveys regarding the market situation, the opinions of consumers regarding specific products, communications etc, are common enough. Though pertaining to immediate problems the survey method has been criticized from various points of view because of inherent limitations. Some more important limitations are as follows:

1. Absence of Theoretical Framework- The aim of scientific method or for that matter “science” itself is the accumulated systematic knowledge. Scientific facts are placed on top of another and thus related to a definite base or theoretical framework. Any hypothesis which is related to a previous body of knowledge, is “scientific”. But social survey does not fulfil this characteristic of requiring urgent remedial measures, not necessarily based on any type of previous experience or theoretical framework.
2. Lack of Hypothesis- One of the prime steps in a research design is the formulation of a hypothesis related to a body of theory not one in isolation. Surveys are only tentative superficial analysis in this context and are seriously do not start from any hypothesis as to research methods. Likewise unlike the research methods surveys do not always lead to hypothesis. A hypothesis may be formulated only when numerous surveys pertaining to a common field yield some results.
3. Lack of clarity and Reliability- Clarity and reliability are the tents of a successful research design. When surveys are conducted with a pre-conceived notion, or to find out any implied explanation for a given problem, one may doubt the clarity of the design. Also, surveys tend to biased by the preconceived notions of the sponsoring authority be it political, economic or culture.
4. Lack of Depth study- Surveys are in turn quantitative and short term events. Quality and depth have been regarded all through the ages as necessary requisites of a method. Surveys fall short of this requirement. Limited by cost factors like time and money, surveys can in no terms

stand in comparison to the depth studies undertaken by the social researchers.

5. Lack of validity- Surveys are pre-planned and executed in a not so leisurely fashion and hence pre-tests are almost impossible. Such being the case, how can surveys meet the requirement of validity?
6. Lack of training- Survey being a quick answer-oriented affair; untrained workers are recruited to conduct the quantitative work. This violates the principle of any scientific research namely, trained workers and systematic collection of data.
7. No progress in scientific knowledge- Finally, social survey can only provide an answer to immediate social problems under a conditional framework. It is not concerned with the formulation or the definition of an existing theory. Hence it cannot contribute much to the progress of evaluation of scientific knowledge.

8.5 SUMMARY

The formation of a topic into a research problem is the first step in a scientific enquiry. The term 'Problem" comes from the Greek word "Proballein' which means anything through forward; a question proposed for solution; a Matter stated for examination. A problem, in simpler words, is some difficulty experienced by the Researcher in a theoretical or Practical Situation According to John Dewey; the Need of clearing up confusion, of straightening out an ambiguity, of overcoming obstacles, of covering the gap between things as they are and as they may be when transformed, is, in germ a problem.

R.S. Woodworth defines problem as a "Situation for which we have no ready and successful Response by instinct or by Previously acquired habit we must find out what to do. A Problem an be called a legal research problem only when it satisfies the following conditions: Identification of Research Problem:

The Problem must be worth studying:

It must have social and Legal relevance;

There must be facts needed for Research'

It must come out with a Practical Solution to the issues;

It must be up to-date or relevant to the current social or legal happenings.

It must involve clarity of meaning and limited scope of study;

It must be explicit and original

It must be verifiable and testable

At the outset the researcher has to decide the area or aspect of a subject matter in which he is interested such a decision affords only a crude indication. Hence he Researcher needs to formulate a specific problem from within his general area of interest-before he can take any decision relating to collection and analysis of data. It is more difficult to find and to Formulate a Problem that to solve it. He has to Put a great deal of thought into the Formulation a problem he expects to get anything worth from his efforts to solve them. Research begins when the Researcher experience a difficulty or a challenge which is the Basic component of a Research Problem. There are no principles which can guide an investigation to pose significant problems for Research. A careful study of literature will guide him an a his sensibility. Experience directs him to Formulate the Problem.

The word survey has been derived from two words 'sur' or 'sor' and 'veeir' or veior' which mean 'over' and see respectively. The literal meaning of survey is to see over something from a high place. The term is used for technique of investigation by direct observation of a phenomena or collection of information.

A survey consists of asking questions of a representative cross-section of the population at a given point of time. Surveys in legal investigations are called legal surveys. It is a process by which quantitative facts are collected about the legal aspects of a community and its activities. Legal survey is the method of data collection that utilizes questionnaires or interview schedules for recording the non-verbal behaviour of respondents.

The Researcher must acquaint himself with all the material available on the matter. He should collect the literature, he should find out the persons who have conducted research on similar problem and discuss with them on their findings and techniques used. This early reparation will make him more equipped.

At the end a legal research all primary and secondary sources of data references book. Periodicals, Articles Report, Government documents, unpublished materials pamphlets, films, records and other references must be listed under the title bibliography.

Bibliography means booklist. The purpose of a bibliography is to provide with a fair chance to estimate the thoroughness and exhaustiveness of the Research.

Bibliography consists of the particulars of the literature Referred to an actually utilized in the preparation of Research.

Bibliography begins on a new page at the end of the Research. It follows the main text and is a separate part of the thesis. Page numbering is continuous and. Follows the page numbers of the texts A Bibliography is a list of Authors in alphabetical other. The following order is usually observed while writing the reference.

Name of the Author:

Each entry of the bibliography should start with the author's last name at the list land margin. If the author is a woman her first name is given in full, when two or more authors names are to be reported for the same article or book, then except for the first author's name, the other author's name are to be given with the first names occur first and then second name. When there are two or more words by the same author, the author's name must be replaced by a series of eight dashes in the second and subsequent entries. If the book is edited by a person or persons his or their name is written and 'ed' or 'eds' is added within the Brackets at the end of his or their name, (s). A comma is placed after the name of the author.

Title of the Book:

The name of the author is followed by the title of the Book. The title of the Book is usually given in single inverted commas and is followed by the edition number if any, in the Bibliography, a capital letter is used to begin all the key-words in the title of the Book and journals for Articles, Manuscripts thesis and unpublished papers, the procedure is to use a capital only to begin proper nouns and the first word of the title. A full stop mark or comma is placed at the end of the title of the Book.

If the Article is quoted, its title is also given in single or double inverted commas and is followed by the following information (i) the title of the journals/magazine (ii) volume number in Roman numbers followed by the data and publications; and the number of journal in parenthesis.

Publishers address:

The name of the publishers of the book/journal will be given. Followed by its place of publication and if possible the full address of the publishers. A colon

mark is placed after the place of publication and a comma is placed at the end of the publisher's address.

Year of the Publication:

The year of publication may be given in parenthesis at the era of the references. A full-stop mark is placed at the end.

1. Page Number: Wherever possible, the page numbers referred to given.
2. Example Book by one author :
3. Chapin F.S. 'Experimental Design in sociological Research'. New York: Harper & Row, Publishers, (1947).

Bentham and Austin signify by the term ‘Legislation’ any form of law-making. The term is, however. Restricted to a particular form of law-making; viz. the declaration in statutory form of rules of law by a competent authority. Legislation is the most potent and sovereign source of law making. It is the only source which has all the power of enacting laws. Repealing old laws and modifying current laws. It is, therefore, to be distinguished from law derives from judicial decisions, for though the judicial may be said to have power to make law, it has no power to lay down general rules.

Legislation may be divided into supreme and subordinate legislation. Supreme legislation is that which process directly from the Supreme or sovereign power in the state it is Supreme because no authority can annul, modify or control it. Legislation by any other authority is subordinate legislation and is capable of being controlled by the Supreme authority, the subordinate forms of legislation derive their authority to legislate only by delegation, express or implied of the Supreme. Power, municipal corporations, universities, Railway –companies and clubs have got power to make rules and orders governing themselves and their members; but such bodies are subject to the control of the sovereign – legislature. The chief forms of subordinate – legislation, according to salmond, are the following:

For a legal Researcher Material source of law that source which law derives not its validity but the matter of which it is composed. Material sources are divided into legal and historical. Legal sources of law are those sources which are authoritative. They are recognized as such by the law itself. These are the immediate sources of law.

Decisions given by judges marked a very important source of law, for on the law – Material of customs the judges fashioned up rules of law each rule of law came

to be a thread in the 'Reticulated Fabric' of the Law. Like the sculptors who work its chisel and marble or bronze and make beautiful works of Art, did the judges work on the raw material of custom supplied by Merchants or other satisfactory evidence well reasoned were the judicial decisions, and these formed a valuable contribution to the law of the land which was, in early tines very scant indeed.

For some-time past certain judges of Supreme Court have been adopting an activist approach to the conflicts that affect the citizens of the country, particularly in Regard to their socio-economic conditions. The Bihar under trials, the Bhagalpul Bindings, Agra protection hone case and other such litigation have given scope to the activist judges of the Supreme Court to espouse the cause of afflicted citizens. So a legal researcher should keep in mind available decisional material on the topic which he is pursuing.

Normally the decisions which have been followed for a long, period of time and have been acted upon by persons in the formulation of contracts or in disposition of that property or other legal processes should generally be followed afterwards but this rule is not inexorable inflexible and universally applicable in all situations.

Another one case law consists of the rules and principles states and acted upon the judges in giving decision. The case laws are the necessary subject matter in any doctrinal enquiry because the law declared by the Supreme Court and High Court binding the subordinate courts. The Indian law is largely a system of law. That is, the decision in a particular case. Constitute precedent. According to the doctrine of Precedent it is not everything and by a Judge when giving judgment that constitutes precedent. But only the reasons for the decision given in the judgment constitute precedent. So, the reason stated in the judgment of an appeal case becomes a necessary subject matter of inquiry and analysis by a lawyer.Case laws are the secondary source of data to the researches. While reading the case-laws the researcher may come across a problem of legal issue and he can from a hypothesis, run an empirical inquiry and thus conduct the research.

In a dynamic society, the lawn on social welfare has placed great Burden on courts of law. Generally, there will be gaps in statutes and the courts have to evolve doctrinal principles, standards and norms. Further, there will be ambiguity in the statutory language. A word which appears to clear during the enactment of law may become vague during its application to a particular case.

An example of the legislative covering the description on the court is that art 19 of the Constitution of India. Many a times the Supreme Court has used its

discretion regarding the words 'public order', 'Reason to Believe'. 'Reasonable time' 'Reasonable ness of restriction' etc. in he same way in administrative laws the phrases like 'Executive delegation' and 'ultra-virest are vague and Flexible. The above decisions of the courts regarding the analyzing the existing statutory provisions are he examples joy the doctrinal research.

The empirical research is mainly concerned with legal. Decision process i.e. researcher's attention is on variables what influence the decision and the impact of the decisions on the society. The empirical research may be defined as research into relationship of law with other behavioral sciences. Here, more importance is given to people, social values and social institutions and not to the legal aspects doctrines usually a researcher undertakes some aspects of legal decisions and his approach is always broader and decisional materials contain a lot of information to be used by the researcher because it is concerned with the particular doctrine of law say and not as what made the authority to say so or what has been the impact of that say. According to S.N. Jain, decisional materials involves analysis of case law arranging ordering and systematizing legal propositions and study of legal institutions through legal reasoning or rational deduction. Ascertaining a legal rule for the purpose of solving a problem is one of the purposes of the legal research. This law has been achieved by original sources of law. The acts of parliament ones the act passed by the legislature fall under this category of legislation. The case laws decided by Supreme Court and High Court which are binding on lower courts fall under the category of precedents.

In modern context the researcher has to find out an a propose those principles, rules and regulations which can serve the purpose what Rosso Pound has termed as social engineering as well as the existing doctrine/Principle of law may become certain and stable so that social goals may be achieved. If the researcher happens to be a judge he can give concrete shape and stability to the legal principles by applying the principle of review or revisions or overruling. A good number of cases may be cited substantiate this point of view e.g Shankair Prasad. (1951) and Sajjan Singh's case were overruled by Golak-Nath case which was subsequently overruled in Keshwanand Bharate case. Similarly a definite shape was provided by the Supreme Court to the Right of personal liberty as given in Art 21 of the Constitution in A.K. Gopalan's case but its scope was widened in Menka Gandhi and in subsequent cases because the court was convened that with the passage of time be meaning and scope of the right to personal liberty has considerably widened since its decision in A.K. Gopalan case.The Court has introduced changes not only in the area of the Constitution

Law, but also in the area of Labour-Law criminal law as well as property law. The courts have held that death sentence should not be imposed in all cases in which the offence of murder is established, but only in the rarest of rare cases.

Death penalty is now an exception life imprisonment is the rule (Jagmohan Singh V. Uttar Pradesh) AIR, 1973, SC. 947). Not only this the execution of death sentence in public has been held to be a Barbaric act, and that the person sentenced to death to also entitled to procedural fairvers fill the last Breath of his life.

Courts through judicial decision reflect important social, economic and political goals and seeds of the society in which they function. This is possible only if a great deal of thinking and research is carried on in the area of law. Rules of law reflect the society and the time in which they operate growth of law has been pragmatic developing from society's need for researcher and flexibility in its day to day working.

When pursing a legal research the person should keep in mind the importance of judicial writings on the concerned subject or topic. There are number of books of foreign and Indian Authors who influenced the legislatures to make law, rules and policies. Judges like justice Krishna Iyer P.N. Bhagwati on Human Rights. Upendra Bakshi, Subba Rao judicial writing of Gajender Gadkar on Public interest litigation Patanzali Shastri on Constitutional matters and the views and opinion in the form of writing play a very important role in Research work. Different commentaries and Digest Just like 'Edward Coke'. Mensfield, Bentham, Austin salmond also good 'source to gain' knowledge for a Research. The documents express the inner-most feelings of the heart of the writer and at times. These documents throw light on such aspects of high as would have been difficult to know through observation or interview. They, generally are more realizable both as regards one description of the subject as well as the feelings of the writer. They contain the perfect type of socio-legal material necessary to characterize the life of social group.

A legal writing is anything that contains matters of socio-legal importance. Most of the writings are written in the past when the phenomenon took place and are not specially prepared for the study of the present problem.

Not only judicial writings but personal documents include all such written material is written by an individual to narrate his views upon personal. Relationship or social phenomena. Most of these writings are from personal point of view. But &

researcher should take proper precautions to understand it and its consequences because there as some draw-backs of the writings which are mentioned below.

Unreliability of the data man be there due to personal Bias of the writes. Writings do not provide a representative sample and the documents not be considered as a valid one. The availability of writing may be difficult if the y contain some confessions which are like to damage his reputation.

Judicial documents also supply a huge fund of information. They deal with different subjects and are usually published by various institutions, organizations and associations records, parliamentary debates, judgments etc one regarded important public documents. These writings are easily available and to a large extend, also reliable. A good deal of information regarding socio-legal problems is now. Collected and released for publication by the Government.

These personal documents including life-histories of the people in general and important persons in particular, public and private documents like diaries, confidential files. Literature, Newspapers etc. is important sources. Apart from this, Articles, Papers and Books on legal history and Constitutional history are equally important.

Compilation of List of Reports or Special Studies: The Legal Research Report is the statement that contains in Brief the procedure adopted and the findings aimed at by the researcher of a legal. Problem a legal report is not a complete description of work done by the researcher. It is only I brief statement of most significant facts that are necessary for understanding the generalization drawn by the investigator. After the collected data have been analyzed and interpreted and various generalizations have been drowning, the report has to be prepared. It is the last phase of the research.

A vast planning and preparation is necessary for writing the report. Writing the report requires considerable through effort patience and penetration. Writing a legal research report is a technical activity which demands skill and patient from the researcher. The report should focus on the target audience; report should be simple, interesting and lucid. Only hard and patient work on the facts, careful and critical assessment and intelligent planning of the organisation of the report can facilitate the communication. There is no standard criterion for organisation of legal research report.

Reporting the research requires on order of skills come what different from these needed in the earlier phases of research. The chief purpose of a report is communication with the readers. It should contain the following aspects:

Following are the steps in a social survey-

1. Selecting the problem- As we have seen in the foregoing definitions of social survey, it deals with social problems. Accordingly, the first step of social survey is the selection of the problem. As long as the nature and character of the problem is not clear in the mind of surveyors, they would not know how to make a start and will grope in dark; therefore clarity and definiteness about the problem is a sine qua non of any social survey. The social surveyor is not merely a spectator who can afford to tally with any and every problem he comes across in a community. His approach is practical and motivated by utilitarian considerations. Therefore he must choose a problem which is significant and whose solution would make some practical differences to the life of the community. A social surveyor should choose his problem keeping in view the importance of the problem of community and the actual of tangible benefits to the community consequent its removal.

2.Defining the Aim- Following the selection of the problem, the aim and purpose of social survey must be well defined and made crystal clear because without the knowledge of goals social survey would be like a ship on sea without rudders. Social survey will lack direction in the absence of knowledge of goals. Moreover, the efficiency of a social surveyor can be measured only in relation to achievement of goals and if we do not know a goal, we shall have no criterion to judge the success of survey. These goals may be specialized or generic. For example, collection of census data is for general purposes. The social survey of living conditions of labourers of the statistics regarding indebtedness of labour, nature of landholding, nature of tax structure are survey having specific aims. At times the aim of survey is to bring out into general notice the facts which are known by some only. Whatever may be the aim of social survey, it may be generic or specific, but it must be well defined.

3. Defining the problem under the study- Now the nature of the problem selected should be defined. This will determine the scope of the problem and also its nature and character. For example, if we wish to study the problem of alcoholism among labour, them first of all we should define what we mean by the term “alcoholism.” We have to be clear in mind as to what quantity of liquor consumed per day indicates alcoholism. Likewise if one wishes to study the effect of alcohol and drug on the commission of crime and the quantum and nature of punishment

therefore, he will have to take into account the quantity of alcohol and drug quantity consumed and effect produced by it.

4. Making a schedule- After the problem is defined; we have to analyze the various elements, constituents or factors involved in the problems so that a detailed and systematic list of these may be formulated. It is only when a detailed list of the problems is available that the relevant information can be systematically gathered.

5. Constituting a commission for survey- The official surveys are always undertaken after constituting a commission to make surveys and this commission is empowered to elicit various types of data and also an access to classified material relevant to the study. Having constituted these limit, and scope of the inquires, it is also provided with both financial and personnel assistance. The commission also acts as processor of complaints received from surveyors or public and can redress grievances. It can and does from time to time issue instructions and determine code of conduct for surveyors. Having done field work, the surveyors file all the data with the office of the commission where it is processed, classified and analyzed. The director and the members are responsible for all policy decisions. They determine the policy itself into various committees and sub-committees to deal with specialized matters. In the event of controversy, commission members may give dissenting notes, though normally an attempt at consensus is made. In the event of dissenting notes the majority report is considered to be the verdict of the commission.

6. Determinig of scope- In science the study of a problem implies systematic investigation into a limited and well-defined subject matter. Without setting limits, no phenomenon can be studied. Accordingly, before the beginning of a survey, it is imperative to determine the scope of the problem. In determining the scope of a problem the following techniques are made use of:

(a) Political and administrative division, such as Nation, State, Town, City, Locality etc.

(b) Professional class such as rich and poor people, labourers etc. This means limiting the problem on the basis of economic levels or considerations.

(c) Child, young, old etc. This involves determination of the problem on biological basis.

(d) Married, unmarried, literate, illiterate, that is determination on the basis status.

(e) Hilly areas, planes, deserts etc. determination of the scope of a problem upon geographical basis.

(f) Status in society president, Governor, Minister, I.A.S. & I.P.S. Officer, judges of Supreme Court, High court.

(g)Social division upper caste, backwards, scheduled caste and scheduled tribe.

(h) Nature of laws remedial penal enabling repealing etc.

(i) Nature of climate, polluted, non-polluted, highly polluted etc.

7. Determining of Time- Limits- Social survey requires the services of trained investigators and considerable amount of money. Accordingly, it is essential to set a time limit for it. Some problems are of topical importance and such problems undergo gradual chance. In both cases, if the results of survey take too long a period to be determined, the validity of results may be doubtful on account of change of conditions or the problem may no longer be quite relevant. For example, the social problems arising out of war conditions like displacement of populations etc must be immediately tackled if the solution is to be effective. But if the government takes too long to come to conclusion about the nature and the extent of relief needed, the problems will be changed and the results of it will be inapplicable. Certain statistics cease to be relevant to survey after a lapse of some period. For example, if Census Commission submits its report in 5 to 6 years, the Census data collected by it will cease to be very relevant, because pollution of certain areas may have radically changed in number and character. While fixing the time limit, the time needed for each stage of social survey is determined and, therefore delay in one stage will easily indicate that there is delay into the completion of the survey. While fixing the time it has to be kept in mind that time and money consumed should not be excessive; it should not also of course be too short. In the first event the character of problem may energy would be wasted. If the time is very short, the result may lack reliability on account of sufficient care, absence of check and cross-check. At times the time limit has to be fixed to suit the convenience of persons giving information. For example, different amount of time is taken by questionnaire, interview, biographical records, and observations techniques. The well trained and competent surveyors will take less time than the ordinary surveyor. Therefore, while fixing time limit the above consideration should be borne in mind.

8. Examining of the means of Information- After arranging survey, the next requirement is to decide about the means of information. The sources of

information must be accessible and free from duplicity and mischief. If the survey is being made for the first time it is called primary survey and upon its basis there can be further advance. The data gathered through primary survey is called preliminary data. If the survey is being made second time it is called secondary survey and its data called secondary data. In different types of survey different techniques of survey are employed. Mostly the information is obtained through schedule, questionnaire and direct interview of individuals. Secondary data are obtained through published or unpublished material of primary survey and also from official and non-official report.

9. Determining of the Unit of survey- Before launching survey, its unit should be determined. On account of this determination field workers are free from doubts and can easily gather the relevant information. The unit should be definite, unambiguous, stable, harmonized, simple and capable of being surveyed. In order to formulate a representative unit it is necessary to define and well formulate the sample. If all units are to be surveyed there is very little difficulty in the survey; but owing to unwieldiness and vastness of the area of survey; usually only representative units can be investigated. The units have to be the determined keeping the time and money available for the survey. Their number and form depend upon the nature of the material. The sample technique can be employed only where there is no deficiency of material or incoherence of time.

10. Determination of the amount of refinement of material- Before undertaking the actual survey it has to be made clear as to what extent refinement of the data is to be expected. In quantification, accuracy to the last percentile is considered a sine qua non. Accordingly, in qualitative survey the surveyor has to accuracy and refinement is proportionate to the availability of time, fund and able personnel. However, it has to the borne in mind that in the area of legal study so far as qualitative survey is concerned 100% accuracy cannot be obtained because the social factors constantly hammer the society compelling the people to change their attitudes.

11. Selecting and training of Researchers and data collections- Research requires a well trained staff of researchers and field workers. The selection of researchers and field workers should be made keeping in view the nature of the scope of social survey. Having selected them they have to be trained for the job; they must become acquainted with their respective duties and manner of performance of them. In selection not only the intellectual qualities should be emphasized but the personal qualities like amiability, good humour, pleasant appearance and tactfulness have to be particularly stressed because the field

workers have to deal with various types of persons and their personal qualities and resourcefulness will be much in demand.

12. Preparedness of Informers- In different types of survey the individuals from different classes are used for collecting information. Before undertaking the survey it is essential to create responsiveness and preparedness for cooperation among individuals from whom the information is needed. For example, in the Indian Census of 1971, government publicized through various media to make people aware of the need and importance of Census and the responsibility of public to give accurate information to field workers without any fear because all information of personal nature will be kept strictly confidential. Educated public can be informed by post or through radio, television, cinema slides and various leaders of the community aspects of a survey. Sometimes handbills are distributed and to approach uneducated persons illustrated brochures are made available. If the individuals to be interviewed are persuaded to feel the importance of their cooperation, they will become responsible and give information easily.

13. Determining of survey Technique- Before starting, it should be made clear that techniques are to be used in survey. The choice of technique depends upon the scope and the nature of the survey. The determination of techniques facilitates survey. In questionnaire technique and the schedules to be set by post, the list of questions is prepared beforehand.

14. Field work- Having completed the above formalities field workers go to respective individuals to gather information. In this they have to keep in view the conveniences of persons to be interviewed. This work requires great resourcefulness and tact because the cooperation of respondents can be secured only if they are approached in the right manner. The field work is done under the supervisor. After collecting information the field workers file it with their respective departments.

15. Organization of material, classification and statistical analysis- The collected material is organized, classified and statistically analyzed.

16. Elucidation of conclusions- Having analyzed the data, competent and able researchers draws conclusions from them and elucidate these conclusions.

17. Presentation through Graphs- Lastly, the conclusions of a survey is graphically represented. Some schedules and charts are also given to aid the understanding of these conclusions.

When the conclusions of a social survey are made definite and have been well formulated, the recommendations are treated with respect as they have the backing of scientific inquiry. Upon the basis of these recommendations official and non-official agencies take the necessary steps to implement them and since these recommendations are based on realistic scientific studies their implementation usually yields desirable results. If there are repeated surveys in a particular field, the later surveys act as verifier to earlier surveys.

The various types of survey and different techniques used in survey have their respective significance and value. In a general way it may be said that the surveys throw useful light on the various aspects of the social problems and help in understanding the causes of the problems and the mutual interplay of the causes. On the strength of s survey practical remedies are normally efficacious because they are the outcome of scientific study and analysis. A general or widespread survey helps us to get an overall idea of the multiple aspects of the problem gaining over a very wide field, and this, in turn, can indicate depth survey because it studies threadbare a particular problem in a limited range. The conclusions of a specialized survey are much more reliable than those of general or widespread survey. Accordingly, specialized survey is more important from the scientific point of view. The postal survey is less expensive than personal survey, but the postal survey can be conducted only where all the respondents are literate. Moreover in case of doubt in the respondent's mind postal survey fails whereas personal survey can take care of all such contingencies. While personal survey is undoubtedly reliable and therefore desirable, its negative features are its expansiveness and various types of lures and temptations to which a field worker is exposed. There is a well known case of an American who distorted information about a poor family because the mother offered him the sexual services of her comely daughter. Public survey can be made only in a situation where the information is of general type and not of personal nature. But in survey of problems of disorganization, homosexuality, lesbianism, marital discord, smuggling, crime etc, the survey has perforce to be confidential. In regular surveys, the reliability of conclusion increases. The value of a primary survey is directly dependent upon the technique used. Here, there is lack of comparative material and this proves a stumbling-block. However, primary surveys are highly important because through them a first attempt is made to gather well-organized information on a subject and these prove to be stepping stones for repetitive surveys. The Census and income data can be kept reliable only through regular surveys.

In Census survey, much money, time and staff is needed. The surveys of this type are used countrywide and their conclusions are reliable and precise. But on account of being less expensive, sample surveys are widely used in social sciences. Official surveys are initiated and conducted by government to gather accurate data on some problem confronting the government. As the government has large funds and large brigade of trained personnel's, official surveys are quite reliable and accurate. But government is liable to suppress information unpalatable and offensive to it and which may arouse people's resentment against it. Therefore private surveys, inspite of their obvious limitations, are very useful. The direct surveys, being quantitative in character, are more reliable than the quantitative indirect surveys.

It is evident from the above that the utility and importance of survey cannot be determined in abstract. It is only in relation to the nature of the problem; its scope, the aim and object of survey, the availability of funds, staff and other facilities that one can known which type of survey will be useful under the given circumstances. Each type has its own pros and cons and the choice of type is very crucial in order to derive full benefits from the survey.

8.6 SUGGESTED READINGS

1.r. H.N. Tiwari, Regal Research Methodology, Reprint, 2006.
2.Dr. S.N. Myaneni Legal Research Methodology, Reprint, 2008.
3.C.R. Kothari Research Methodology: Methods and Techniques. Reprint, 1994.
4.S.K. VERMA, Legal Research Methodology Indian Law Institute publication.

8.7 TERMINAL QUESTIONS

1. How research problem is formulated Discuss?
2. What are the criteria of research problem?
3. How bibliographical survey is made? Discuss.
4. How many kinds of survey are there?
5. Discuss in detail about the utility and limitations of social survey

LL.M. Part-2

Subject: LEGAL EDUCATION AND RESEARCH METHODOLOGY

Block III- Identification of Problem of research

Unit-9- Legislative materials including subordinate legislation, notification and policy Statements

STRUCTURE

9.1 INTRODUCTION

The Researcher must acquaint himself with all the material available on the matter. He should collect the literature, he should find out the persons who have conducted research on similar problem and discuss with them on their findings and techniques used. This early reparation will make him more equipped.

At the end a legal research all primary and secondary sources of data references book. Periodicals, Articles Report, Government documents, unpublished materials pamphlets, films, records and other references must be listed under the title bibliography.

9.2 OBJECTIVES

The present chapter deals with the major steps involved in doing legal research. It also describes selection or formulation of legal research problem or topic and collection of data in Legislative materials including subordinate legislation, notification and policy Statements. An imperative is made to discuss the important issues related with the subordinate legislation.

9.3 SUBJECT

9.3.1 Legislative materials including subordinate legislation, notification and policy Statements

Material source of law is that source from which law derives not its validity but the matter of which it is composed. Material sources are divided into legal and historical. Legal source of law are those sources which are authoritative. They are recognised as such by the law itself. These are the immediate sources of

law. The law which comes through the legal source may be divided into the following classes:

(1) Enacted law, having its source in legislation: The supreme legislation is made by the so power of the nation. In democratic countries Parliament is sovereign. It is considered not only supreme but legally omnipotent. But there may be certain constitutional restrictions upon its power.

Subordinate legislation is made by any other authority than the supreme authority in the nation. It is made under the powers delegated by the supreme authority. Such legislation is also considered as law. Subordinate laws are executive made laws and local laws by local bodies.

(2) Case law, having its source in precedent: Precedent is defined as "a previous instance or case which is, or may be taken as an example of rule for subsequent cases, or by which some similar act or circumstances may be supported or justified. In the judicial field it means the guidance or authority of past decisions for future cases. Only such decisions as lay down some new rule or principle are called judicial precedents. The first general rule of doctrine precedent is that each court is absolutely bound by the decisions of the courts above it. The second rule is that to a certain extent higher courts are bound by their own decisions.

(3) Customary law, having its source in custom: Customs are the most important source of law. But with the progress of the society, they gradually diminish and legislation and judicial precedents become the main sources. In every legal system and at all the stages of legal development there are some customs accepted by the society, The customs having sanction are those customs which are enforced by the state. Legal customs operate on a binding rule of law. They have been recognised by the courts and have become a part of the law of the land. They are enforced by the courts.

(4) Conventional law, having its source in agreement: The con law are those customs which govern the parties to an agreement. Parties agree to them. Such customs are binding not due to any legal authority independently possessed by them, but because it has been the contract between the parties to it. There is a bulk of conventional law in every country.

(5) Statutory interpretation: The law which comes into being through legislation is called enacted or statute law. It is for the courts to apply these formulas to specific cases. The court has to ascertain the meaning of the letters and

expressions of the enactment for its application. This process of ascertaining the meaning of the letters and expressions by the court is called 'interpretation'. In this process the judge exerts a very considerable influence on the statute law. The interpretation is mainly of two kinds: (i) literal and (ii) liberal. The principle of literal interpretation is that the judge should not go beyond the letters of the law. The liberal interpretation is that the judges should go beyond the letters of the statute in order to ascertain the true intention.

(6) Codifications: Codification means promulgation, compilation, collection and systematization of the body if law in a coherent form by an authority in a state competent to do so. In India, there is the code of **Manu, Yajnavalkya, Brihaspathi, Narada, Parashara** etc. These various codes applied in different parts of the country. In modern times the Indian Law Commission drafted a number of codes such as Indian Penal Code, the Civil Procedure Code etc. The Law Commission made comprehensive and voluminous recommendations of which many have been implemented

There are other Sources of law like (I) morals and equity and (2) opinions of experts. All these sources are available in documentary form in general and legal libraries.

After designing the research assignment the researcher turns to the implementation part of it. He attends to the formulation the instruments such as questionnaire, interview schedule etc. Keeping in view the techniques of analysis he is going to implement. To make the data Reliable and Free from Bias, he has to select the mode of administering the instruments.

9.3.2 Collection of Material

Collection of Material is regarded as Fascinating phase of research. Through the collection and handling of information, the researcher begins to feet the actual excitement of research. A researcher can either collect the material himself or rely on others for their collected material or information available with them.

In legal research public – documents also supply huge fund of information. They deal with different subjects and are usually published by various institutions. Organizations and Association records, parliamentary debates Judgments etc. are regarded important public-document. These documents are easily available and to a large extend also reliable. So a researched should survey of available literature and have knowledge of bibliography concerned with the topic.

Generally all current legislative materials such as Bills Acts. Rules notification etc. is published in the Gazette of India. The relevant portions of the 'Gazette of India' dealing with legislative material can be of much use for a researcher.

Official publication central Acts: 'Indian Code' is one of official publication containing all the acts in force in India. Acts of Parliament is another official publication containing all the Bare Acts Parsea in Particular years.

State Gazettes: The State statutes are published in the respective state Gazettes. Some states have published state codes.

Private Publications: The Privately published case reports may have a section dealing with central as well as state legislative-materials. The ALL INDIA REPORTER' have published 'Air Manuals' in Multiple volumes. These volumes contain central and state legislative materials.

Madras Law journal has also published a manual known as civil court Manual.

Departmental Publications: A Few governmental departments to publish manuals from time to time giving the latest rules and notification on their respective subjects. 'Central Excise Manual', Civil service manual, custom manual, income Tax manual are some of them to be mentioned.

Delegate Legislation: Statutory materials concerning delegates legislation can be found in the 'Gazette of India' and state Gazettes.

The Publication: Like 'Constituent Assembly Debates'. Lok Sabha and Rajya Sabha rebates' may offer information regarding the Pre-legislative Discussions in the Research area.

The Federal Courts Reports (1939-50), and Supreme Court Reports (Since 1950) Published the cases decided by them. Private Publications like 'All India Reporter', Supreme Court Journal', 'Supreme Court cases' also report the case decisions' of the Supreme Court, the case decisions of High Courts are also published in 'All India Reporter' Madras Law Journal, Bombay Law Reporter etc.

Specialized Law Reports:

The following are reports specialized on certain Branches giving information on specialized Branches:

1. Labour law Journal
2. Labour and Industrial case
3. Industrial court reporter
4. Criminal Law Journal
5. Income Tax Reports
6. Company cases and sales tax cases etc.

9.3.3 Academic Law Journals

"The Journal of Indian Institute' Indian Journal of International Law' are some of the journals which carry, Research articles. 'Academy Law Review'. 'The administrator', Banaras Law Review', Civil and Military Law Journal etc. are some belong to this category.

citators' and ges a researcher to locate topic-wise materials.

"Index to legal periodical' and 'Index to Foreign Legal Periodicals' may rearcher to find the Article relevant to his Research and locate the name of the Journal, volume and number in which that has been published.

Law Libraries are the workshops to the legal researcher Law Library are not just a place where books and periodicals are housed, but it is a place where books are classified and placed in an orderly manner so as to provide easy access to the Researcher.

Case Laws: are the evidential sources for the arguments in deductive analysis case laws are the secondary source of data to the Researcher. While reading the case-law, the Researcher may come across a problem of legal issue and he can form a hypothesis, Run an empirical inquiry and thus conduct the Research. The lawyers, Judges and Researchers use case-laws for their logical argumentation. Thus the case laws become the documentary source of material in legal studies.

9.3.4 Codification

Means promulgation compilation collection and systematization of the body if law in a coherent form by an authority in a state competent to do so. In Modern times the Indian Law commission drafted a number of codes such as Indian Penal Code, the civil procedure code etc.

9.3.5 Subordinate Legislation

Is made by any other authority than the Supreme Authority in the nation. It is made under the powers delegated by the Supreme authority, such legislation is also considered as law, subordinate laws are executive made laws and local laws by local bodies. But such bodies are subject to the control of the sovereign legislature. The Researched may gain knowledge by Municipal Legislation in which the power entrust to municipal authorities making special law for the district under their control.

Another form of subordinate legislation is autonomous legislation in the form of university. Railway companies bodies, corporations and clubs.

9.3.6 Legislative Materials Including Subordinate Legislation

Bentham and Austin signify by the term 'Legislation' any form of law-making. The term is, however. Restricted to a particular form of law-making; viz. the declaration in statutory form of rules of law by a competent authority. Legislation is the most potent and sovereign source of law making. It is the only source which has all the power of enacting laws. Repealing old laws and modifying current laws. It is, therefore, to be distinguished from law derives from judicial decisions, for though the judicial may be said to have power to make law, it has no power to lay down general rules.

Legislation may be divided into supreme and subordinate legislation. Supreme legislation is that which process directly from the Supreme or sovereign power in the state it is Supreme because no authority can annul, modify or control it. Legislation by any other authority is subordinate legislation and is capable of being controlled by the Supreme authority, the subordinate forms of legislation derive their authority to legislate only by delegation, express or implied of the Supreme. Power, municipal corporations, universities, Railway –companies and clubs have got power to make rules and orders governing themselves and their members; but such bodies are subject to the control of the sovereign – legislature. The chief forms of subordinate – legislation, according to Salmond, are the following:

9.3.7 Colonial Legislation

Legislations by the legislatures of the colonies or other dependencies of the crown enjoying the power of self government are subject to the control of the imperial legislature.

Executive – Legislation:

It is the legislation by the executive for conducting the administrative departments of a state, where the Act does not contain the whole legislation but delegated to a foreign authority to legislate in the matter, it is subordinate legislation.

Judicial Legislation:

It is the rule making power of the Superior courts for the regulation of their own procedure. It is a true form of legislation except that it can not create new law by way of precedent.

Municipal Legislation:

The bye-law-making power of municipal authorities is another form of subordinate-legislation. The law entrusts to municipal authorities the limited power of making special law for the district under their control.

Autonomous Legislation:

Legislation by autonomous bodies like universities or railway companies is also termed subordinate legislation.

9.3.8 Constitution of Legislative measures

Opinion of executive is not relevant the Bye laws of a co-operative society framed in pursuance of the provisos of the relevant Act cannot be held to be law or to have the force of law. They are neither statutory in character may they have statutory flavor so as to be raised to the status of law. Now if there is any conflict between a statute and the subordinate legislation, it does not require elaborate reasoning to firmly state that the statute prevails over subordinate legislation and the bye laws of not in conformity with the statute, in order to give effect to the statutory provision, the rule of by-law and must be complied with. It is the function of the court to construe legislative. Measures and in reaching the correct meaning of a statutory provision opinion of executive branch is hardly relevant. Nor can the court abdicate in favour of such opinion. (Baboji Kondaji Garad v. Nosik Merchants cooperative Bank Ltd., AIR 1984, SC 192).

9.3.9 Decisional Material:

For a legal Researcher Material source of law that source which law derives not its validity but the matter of which it is composed. Material sources are divided into legal and historical. Legal sources of law are those sources which are authoritative. They are recognized as such by the law itself. These are the immediate sources of law.

Decisions given by judges marked a very important source of law, for on the law – Material of customs the judges fashioned up rules of law each rule of law came to be a thread in the 'Reticulated Fabric' of the Law. Like the sculptors who work it chisel and marble or bronze and make beautiful works of Art, did the judges work on the raw material of custom supplied by Merchants or other satisfactory evidence well reasoned were the judicial decisions, and these formed a valuable contribution to the law of the land which was, in early tines very scant indeed.

For some-time past certain judges of Supreme Court have been adopting an activist approach to the conflicts that affect the citizens of the country, particularly in Regard to their socio-economic conditions. The Bihar under trials, the Bhagalpul Bindings, Agra protection hone case and other such litigation have given scope to the activist judges of the Supreme Court to espouse the cause of afflicted citizens. So a legal researcher should keep in mind available decisional material on the topic which he is pursuing.

Normally the decisions which have been followed for a long. Period of time and have been acted upon by persons in the formulation of contracts or in disposition of that property or other legal processes should generally be followed afterwards but this rule is not inexorable inflexible and universally applicable in all situations.

Case laws are the secondary source of data to the researches. While reading the case-laws the researcher may come across a problem of legal issue and he can from a hypothesis, run an empirical inquiry and thus conduct the research.

In modern context the researcher has to find out an a propose those principles, rules and regulations which can serve the purpose what Rosso Pound has termed as social engineering as well as the existing doctrine/Principle of law may become certain and stable so that social goals may be achieved. If the researcher happens to be a judge he can give concrete shape and stability to the legal principles by applying the principle of review or revisions or overruling. A good number of cases may be cited substantiate this point of view e.g Shankair Prasad. (1951) and Sajjan Singh's case were overruled by Golak-Nath case

which was subsequently overruled in Keshwanand Bharate case. Similarly a definite shape was provided by the Supreme Court to the Right of personal liberty as given in Art 21 of the Constitution in A.K. Gopalan's case but its scope was widened in Menka Gandhi and in subsequent cases because the court was convened that with the passage of time be meaning and scope of the right to personal liberty has considerably widened since its decision in A.K. Gopalan case.

The Court has introduced changes not only in the area of the Constitution Law, but also in the area of Labour-Law criminal law as well as property law. The courts have held that death sentence should not be imposed in all cases in which the offence of murder is established, but only in the rarest of rare cases.

9.3.10 Judicial Writings

When pursing a legal research the person should keep in mind the importance of judicial writings on the concerned subject or topic. There are number of books of foreign and Indian Authors who influenced the legislatures to make law, rules and policies. Judges like justice Krishna Iyer P.N. Bhagwati on Human Rights. Upendra Bakshi, Subba Rao judicial writing of Gajender Gadkar on Public interest litigation Patanzali Shastri on Constitutional matters and the views and opinion in the form of writing play a very important role in Research work. Different commentaries and Digest Just like 'Edward Coke'. Mensfield, Bentham, Austin salmond also a good 'source to gain' knowledge for a Research. The documents express the inner-most feelings of the heart of the writer and at times. These documents throw light on such aspects of high as would have been difficult to know through observation or interview. They, generally are more realizable both as regards one description of the subject as well as the feelings of the writer. They contain the perfect type of socio-legal material necessary to characterize the life of social group.

A legal writing is anything that contains matters of socio-legal importance. Most of the writings are written in the past when the phenomenon took place and are not specially prepared for the study of the present problem.

Not only judicial writings but personal documents include all such written material is written by an individual to narrate his views upon personal relationship or social phenomena. Most of these writings are from personal point of view. But & researcher should take proper precautions to understand it and its consequences because there as some draw-backs of the writings which are mentioned below.

9.4 SUMMARY

The Researcher must acquaint himself with all the material available on the matter. He should collect the literature, he should find out the persons who have conducted research on similar problem and discuss with them on their findings and techniques used. This early reparation will make him more equipped.

At the end a legal research all primary and secondary sources of data references book. Periodicals, Articles Report, Government documents, unpublished materials pamphlets, films, records and other references must be listed under the title bibliography.

Material source of law is that source from which law derives not its validity but the matter of which it is composed. Material sources are divided into legal and historical. Legal source of law are those sources which are authoritative. They are recognised as such by the law itself. These are the immediate sources of law.

Collection of Material is Regarded as Fascinating phase of research. Through the collection and handling of information, the researcher begins to feet the actual excitement of research. A researcher can either collect the material himself or rely on others for their collected material or information available with them.

In legal research public – documents also supply huge fund of information. They deal with different subjects and are usually published by various institutions. Organizations and Association records, parliamentary debates Judgments etc. are regarded important public-document. These documents are easily available and to a large extend also reliable. So a researched should survey of available literature and have knowledge of bibliography concerned with the topic.

Generally all current legislative materials such as Bills Acts. Rules notification etc. are published in the Gazette of India. The relevant portions of the 'Gazette of India' dealing with legislative material can be of much use for a researcher.

Official publication central Acts: 'Indian Code' is one of official publication containing all the acts in force in India. Acts of Parliament is another official publication containing all the Bare Acts Parsea in Particular years.

State Gazettes :

The State statutes are published in the respective state Gazettes. Some states have published state codes.

Private Publications

The Privately published case reports may have a section dealing with central as well as state legislative-materials. The ALL INDIA REPORTER' have published 'Air Manuals' in Multiple volumes. These volumes contain central and state legislative materials.

Madras Law journal has also published a manual known as civil court Manual.

Departmental Publications

A Few governmental departments to publish manuals from time to time giving the latest rules and notification on their respective subjects. 'Central Excise Manual', Civil service manual, custom manual, income Tax manual are some of them to be mentioned.

Delegate Legislation Statutory materials concerning delegates legislation can be found in the 'Gazette of India' and state Gazettes.

The Publication Like 'Constituent Assembly Debates'. Lok Sabha and Rajya Sabha rebates' may offer information regarding the Pre-legislative Discussions in the Research area.

The Federal Courts Reports (1939-50), and Supreme Court Reports (Since 1950) Published the cases decided by them. Private Publications like 'All India Reporter', Supreme Court Journal', 'Supreme Court cases' also report the case decisions' of the Supreme Court, the case decisions of High Courts are also published in 'All India Reporter' Madras Law Journal, Bombay Law Reporter etc.

Specialized Law Reports

The following are reports specialized on certain Branches giving information on specialized Branches:

Labour law Journal

Labour and Industrial case

Industrial court reporter

Criminal Law Journal

Income Tax Reports

Company cases and sales tax cases etc.

Academic Law Journals "The Journal of Indian Institute' Indian Journal of International Law' are some of the journals which carry, Research articles. 'Academy Law Review'. 'The administrator', Banaras Law Review', Civil and Military Law Journal etc. are some belong to this category.

citators' and ges a researcher to locate topic-wise materials.

"Index to legal periodical' and 'Index to Foreign Legal Periodicals' may rearcher to find the Article relevant to his Research and locate the name of the Journal, volume and number in which that has been published.

Law Libraries are the workshops to the legal researcher Law Library are not just a place where books and periodicals are housed, but it is a place where books are classified and placed in an orderly manner so as to provide easy access to the Researcher.

***Case Laws*:** are the evidential sources for the arguments in deductive analysis case laws are the secondary source of data to the Researcher. While reading the case-law, the Researcher may come across a problem of legal issue and he can form a hypothesis, Run an empirical inquiry and thus conduct the Research. The lawyers, Judges and Researchers use case-laws for their logical argumentation. Thus the case laws become the documentary source of material in legal studies.

Codification

Means promulgation compilation collection and systematization of the body if law in a coherent form by an authority in a state competent to do so. In Modern times the Indian Law commission drafted a number of codes such as Indian Penal Code, the civil procedure code etc.

Subordinate Legislation

Is made by any other authority than the Supreme Authority in the nation. It is made under the powers delegated by the Supreme authority, such legislation is also considered as law, subordinate laws are executive made laws and local laws by local bodies. But such bodies are subject to the control of the sovereign legislature. The Researched may gain knowledge by Municipal Legislation in which the power entrust to municipal authorities making special law for the district under their control.

Another forms of subordinate legislation is autonomous legislation in the form of university. Railway companies bodies, corporations and clubs.

Legislative Materials Including Subordinate Legislation

Bentham and Austin signify by the term 'Legislation' any form of law-making. The term is, however. Restricted to a particular form of law-making; viz. the declaration in statutory form of rules of law by a competent authority. Legislation is the most potent and sovereign source of law making. It is the only source which has all the power of enacting laws. Repealing old laws and modifying current laws. It is, therefore, to be distinguished from law derives from judicial decisions, for though the judicial may be said to have power to make law, it has no power to lay down general rules.

Colonial Legislation

Legislations by the legislatures of the colonies or other dependencies of the crown enjoying the power of self government are subject to the control of the imperial legislature.

Executive – Legislation

It is the legislation by the executive for conducting the administrative departments of a state, where the Act does not contain the whole legislation but delegated to a foreign authority to legislate in the matter, it is subordinate legislation.

Judicial Legislation

It is the rule making power of the Superior courts for the regulation of their own procedure. It is a true form of legislation except that it cannot create new law by way of precedent.

Municipal Legislation

The bye-law-making power of municipal authorities is another form of subordinate-legislation. The law entrusts to municipal authorities the limited power of making special law for the district under their control.

Autonomous Legislation

Legislation by autonomous bodies like universities or railway companies is also termed subordinate legislation.

Constitution of Legislative measures

Opinion of executive is not relevant the Bye laws of a co-operative society framed in pursuance of the provisos of the relevant Act cannot be held to be law or to have the force of law. They are neither statutory in character may they have statutory flavour so as to be raised to the status of law. Now if there is any conflict between a statute and the subordinate legislation, it does not require elaborate reasoning to firmly state that the statute prevails over subordinate legislation and the bye laws of not in conformity with the statute, in order to give effect to the statutory provision, the rule of by-law and must be complied with. It is the function of the court to construe legislative. Measures and in reaching the correct meaning of a statutory provision opinion of executive branch is hardly relevant. Nor can the court abdicate in favour of such opinion. (Baboji Kondaji Garad v. Nosik Merchants cooperative Bank Ltd., AIR 1984, SC 192).

Decisional Material

For a legal Researcher Material source of law that source which law derives not its validity but the matter of which it is composed. Material sources are divided into legal and historical. Legal sources of law are those sources which are authoritative. They are recognized as such by the law itself. These are the immediate sources of law.

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Judicial Writings

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and policies. Judges like justice Krishna Iyer P.N. Bhagwati on Human Rights. Upendra Bakshi, Subba Rao judicial writing of Gajender Gadkar on Public interest litigation Patanzali Shastri on Constitutional matters and the views and opinion in the form of writing play a very important role in Research work. Different commentaries and Digest Just like 'Edward Coke'. Mensfield, Bentham, Austin salmond also a good 'source to gain' knowledge for a Research. The documents express the inner-most feelings of the heart of the writer and at times. These documents throw light on such aspects of high as would have been difficult to know through observation or interview. They, generally are more realizable both as regards one description of the subject as well as the feelings of the writer. They contain the perfect type of socio-legal material necessary to characterize the life of social group.

9.5 SUGGESTED READINGS

1. Dr. H.N. Tiwari, Regal Research Methodology, Reprint, 2006.
2. Dr. S.N. Myaneni Legal Research Methodology, Reprint, 2008.
3. C.R. Kothari Research Methodology: Methods and Techniques. Reprint, 1994

9.6 TERMINAL QUESTIONS

1. Write an essay on legislative material for research.

2. What is the utility of legislative material in research?

3. Explain about the relevancy of legislative material in exploring the legal problems for research.

4. What is the utility of judicial writings in research?

LL.M. Part-2

Subject: LEGAL EDUCATION AND RESEARCH METHODOLOGY

Block III- Identification of Problem of research

Unit-10- Juristic writings - a survey of juristic literature relevant to select problems in India and foreign periodicals

STRUCTURE

10. 1. INTRODUCTION

Article 38(1)(d) of the Statute of the International Court of Justice instructs the Court to apply, as a subsidiary means for the determination of rules of law, "the teachings of the most highly qualified publicists," namely, scholarly writings. Based upon a survey of more than 600 Judgments, Advisory Opinions and Orders, this paper describes the International Court of Justice's use of these sources and analyzes the individual scholars and writings which have been most useful to the Court. It also explores the meaning of a 'subsidiary source' and the contexts in which judges are most willing to utilize such sources. When deciding disputes between States, in addition to the three principal sources of international law, the International Court of Justice ('ICJ') is to draw upon "the teachings of the most highly-qualified publicists of the various nations". However, the Statute is silent on the meaning of "most highly qualified", and the *travaux préparatoires* offer little guidance on this point. Unlike the other three sources of law, the Court may use the teachings of publicists only "as subsidiary means for the determination of rules of law". The drafters of the Statute disagreed as to the proper role for these teachings, referred to as 'doctrine', and the meaning of "subsidiary" in this context is unclear. The Court has only rarely invoked doctrine in its Judgments, Advisory Opinions, and Orders. This has not stopped counsel from routinely calling the teachings of publicists to the Court's attention in written and oral arguments, and individual judges freely cite *la doctrine* in their individual opinions. This latter practice led Sir Humphrey Waldock, later a Judge of the ICJ, to observe, "[t]he way in which individual judges quite often make use of them in their separate opinions indicates that they have played a part in the internal deliberations of the Court and in shaping opinion."1

The paper analyzes the language of the Statute and its negotiating history for guidance as to the meaning of both concepts. In Section 3, I describe some of the 'conventional wisdom' derived from prior scholarly analysis of the Court's use of highly-qualified publicists. In Section 4, I set out the methodology of my survey of the Court's writings, including a discussion of how I determined when the Court is "apply [ing] … the teachings of the most highly qualified publicists". In Section 5, I summarize the findings of my survey. I conclude by setting out plans for further study.

10. 2 OBJECTIVES

Research in common parlance refers to a research for knowledge. Research is a scientific and systematic search for pertinent information of a specific topic. In fact research is an art of scientific investigation. In the field of law research occupies a very significance portion. The purpose of research is to discover answers to questions through application of scientific procedures. The objective of this lesson is to study the relevance of juristic writings. One of the decision will be the what types of tools and techniques can be used for the collection of data and seeking answers to the question which will be useful in the research or study of a specific topic. Various juristic writings are discussed in this lesson which a researcher can use while doing research in the field of law.

10. 3 SUBJECT

According to Article 38(1) of its Statute, in rendering its judgments, the International Court of Justice relies upon three principal sources of law:(a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; (b) international custom, as evidence of a general practice accepted as law; [and] (c) the general principles of law recognized by civilized nations In addition, Article 38(1)(d) provides in very particular language for reliance upon a fourth source of law: subject to the provisions of Article 59, judicial decisions and the teachings of the most highly-qualified publicists of the various nations, as subsidiary means for the determination of rules of law.4Given the lack of clarity in these terms, reference to the *travaux préparatoires* of Article 38, as well as subsequent interpretation by experts in the procedure and practice of the Court, is in order.

10. 3 .1 The *travaux préparatoires* of Article 38(1)

The sources of law enumerated in Article 38(1) are drawn materially *verbatim* from the Statute of the Permanent Court of International Justice ('PCIJ'). It is therefore appropriate to review briefly the discussions of the Advisory Committee of Jurists; the multi-national committee of experts tasked by the League of Nations to draft the PCIJ Statute. Doctrine was not included in the original draft of the rules of law to be applied by Court. The President of the Committee, Baron Decamps, prepared a draft which enumerated only conventions, custom, the "legal conscience of civilized nations", and international jurisprudence. In his remarks the following day, however, Decamps indicated a desire to add "objective justice" to the sources of law, reasoning that "it is absolutely impossible and supremely odious to say to the judge that, although in a given case a

perfectly just solution is possible: 'You must take a course amounting to a refusal of justice' merely because no definite convention or custom appeared."6 He suggested that, in determining the rules of objective justice, the Court be permitted to use, *inter alia*, "the concurrent teaching of the authors whose opinions have authority". It was clear at this time that Baron Descamps intended for doctrine to be a 'tie-breaker', to avoid a *non liquet* in the event that principal rules of law were non-existent or inconclusive. He explained: If neither [treaty] law nor custom existed, could the judge pronounce a *non liquet*? The President was convinced that he could not; the judge must then apply general principles of law. But he must be saved from the temptation of applying these principles as he pleased. For that reason he urged that the judge render decisions in keeping with the dictates of the legal conscience of civilized peoples and for this same purpose make use of the doctrines of publicists carrying authority.Mr. Root and Lord Phillimore responded by submitting an alternative draft, which introduced the four-element structure reflected in present-day Article 38(1), albeit with an explicit hierarchy of sources. The Root-Phillimore proposal ranked doctrine fourth in this hierarchy, and described it as "the opinions of writers as a means for the application and development of law". Baron Descamps responded to the Root-Phillimore draft by emphasizing that "the judge must use the … coinciding doctrines of jurists, as auxiliary and supplementary means, only".10 Mr. Ricci–Busatti expressed skepticism that "it would be possible to find coinciding doctrine concerning points in relation to which no generally recognised rules existed".11 More fundamentally, he "denied most emphatically that the opinions of authors could be considered as a *source of law* to be applied by the Court". Lord Phillimore, the author of the draft, replied that doctrine was "universally recognised as a source of international law", but that "only the opinions of widely recognised authors" would be considered.Mr. Ricci-Busatti "doubted whether States would really accept rules which would be the result of the doctrine rather than of their own will, or of their usages", and asked *in fine* whether Lord Phillimore's own government would accept a judgment based solely upon the doctrine of legal writers; Lord Phillimore "thought that this was possible". Mr. Ricci-Busatti had in fact submitted a competing draft, which removed doctrine as a source of law, but instructed the Court to "take into consideration … the opinions of the best qualified writers of the various countries, as means for the application and development of law".Mr. de Lapradelle opposed including doctrine in the draft, but insisted that if it were included, it be "limited to coinciding doctrines of qualified authors *in the countries concerned in the case*".17 He also proposed that the sources of doctrine be "arranged according to their importance" with, for example, the *Institut de droit international* at the top of the

list.18 None of his proposals were taken up by the Committee. In the end, the issue was not resolved—with Baron Descamps and Mr.Ricci-Busatti repeatedly emphasizing "the auxiliary character of [doctrine] as elements of interpretation", and later emphasizing "doctrine and jurisprudence no doubt do not create law; but they assist in determining rules which exist",and Lord Phillimore insisting that "custom is formed by the usage followed in various public and formal documents, and from the works of writers who agree upon a certain point".The Committee agreed upon compromise language for the second reading,"the doctrines of the best qualified writers of the various nations as a means for the application and development of law".22 The drafting committee modified this to "rules of law derived from … the teachings of the most highly qualified publicists of the various nations".23 In the second reading, Baron Descamps proposed adding "as subsidiary means for the determination of rules of law",and this amendment was adopted along with the Article as a whole without recorded discussion.In conclusion, the Committee settled on intentionally ambiguous language ("as subsidiary means" and "the teachings of the most highly qualified publicists")without resolving the underlying disagreements between Root and Phillimore, on the one hand, and Descamps and Ricci-Busatti, on the other

10. 3 .2 Subsequent treatment by scholars

Writing in his private capacity while serving as a judge at the PCIJ, Manley O.Hudson described the ambiguity surrounding "subsidiary means" aptly: What is meant by *subsidiary* is not clear. It may be thought to mean that these sources are to be subordinated to others mentioned in the article, *i.e.* to be regarded only when sufficient guidance cannot be found in international conventions, international custom and general principles of law; the French term *auxiliaries* seems, however, to indicate that confirmation of rules found to exist may be sought by referring to jurisprudence and doctrine. Hudson concluded, however, "[j]judicial decisions and the teachings of publicists are not rules to be applied, but sources to be resorted to for finding applicable rules."Subsequent scholarly treatment has followed Hudson's reasoning. Scholars themselves have treated Article 38(1)(d) as not only subsidiary, but also qualitatively

different than the primary sources of subheads (a), (b) and (c).In his Hague Academy lectures upon stepping down from the Court, Judge Manfred Lachs summed up the spirit of the scholars when describing the status of even the best-known publicists as sources of law: "[n]nevertheless, of none, not even of my heroes, could I say: 'this man made law.' For teachers are not legislators, nor

lawmakers in international relations. The 'teachings' of the most highly qualified publicists of various nations are only 'subsidiary means for the determination of rules of law."Shabtai Roseanne reasoned from a voluntaries notion of public international law, observing that "[d]doctrines is not positive international law as previously did not describe, nor does it stand on the same basis as international judicial decisions since it is not the product of direct or indirect action of States. For that reason alone, the role of doctrine is truly 'subsidiary.'" He concluded that doctrine was "an entirely different aspect namely means for the determination of rules of law, that is rules falling into any one of heads (a), (b) and (c)". He described Article 38(1)(d) sources as merely "the storehouse from which the rules … can be extracted". This followed the earlier conclusion of Schwarzenegger—who described subhead (d) as simply enumerating "some of the means for the determination of alleged rules of international law"—and Waldock—who observed in 1962 that it was "universally agreed" that jurisprudence and doctrine were merely "evidentiary sources which may assist in satisfying the Court as to the existence of a conventional or customary rule or of a general principle of law". While the scholars are in universal agreement as to the meaning of "subsidiary", they offer little guidance as to the meaning of "most highly qualified". In addition to the quote from Schwarzenegger in the introduction, Rosanne observes, "[t]here is, of course, no way of establishing who is a 'most highly qualified publicist' of any nation. This is a matter for the skill, knowledge and appreciation of the individual legal advisor."

10. 3 .3 Prior scholarly analysis of the Court's use of doctrine

Having established its proper place in the sources hierarchy, scholarly discussion concerning doctrine has focused on two issues: the kinds of writings that constitute "teachings" and the paucity of doctrine cited by the Court in its Judgments, Advisory Opinions and Orders. In my review of the practice of the judges—principally in individual and joint opinions—I seek to examine the conventional wisdom concerning doctrine laid out in this section.

10. 3 .4 what constitutes a "teaching"?

The question of who is a "publicist" is closely related to that of what constitutes a "teaching". After all, "[w] hile one cannot possibly dissociate the 'teachings' expressed in writings or *viva voce* from 'the teacher', there are those other activities in which the teacher has participated throughout the centuries." The modern scholar wears at least two hats: that of faithful chronicler of the state of

the law, and that of passionate advocate for development of the law.Judge Lachs quoted with approval Justice Gray's remarks in *The Paquete Habana*, to the effect that "[s]uch works are resorted to by judicial tribunals, not for the speculations of their authors concerning what the law ought to be but for trustworthy evidence of what the law really was."The distinction is important, as the Court's "function is to decide in accordance with international law", that is, consistent with *lex lata*. The distinction has not always been respected: Lauterpacht noted "the prolific and occasionally indiscriminate citation of authors in the written and oral pleadings of the parties"; while Schwarzenegger castigated the scholars themselves, noting, "[n]othing has brought the doctrine of international law into greater disrepute than proneness of individual representatives to present desiderata *de lege ferenda* in the guise of propositions *de lege lata*."In light of this concern, Schwarzenegger demanded scholars "try [their] hardest not to blur the border lines between *lex lata* and *lex ferenda*". One purpose of this study is to determine whether publicists have succeeded and whether ICJ decisions reflect a corresponding care for those border lines.

10. 3 .5 Why has the Court not cited doctrine?

The Court has cited publicists in only 22 of its 139 Judgments and Advisory Opinions.41 Writing in 1958, Sir Hersch Lauterpacht noted that this practice was at odds with the plain language of the Court's Statute: Article 38 is explicit on that subject; it is mandatory in its reference to the "teachings of publicists" as a subsidiary source of the law to be applied by the Court. A study of the deliberations of the Committee of Jurists who drafted the Statute of the Court does not

bear out any suggestion that the authority thus conferred upon the Court ought to remain nominal.The contrast between the Statutory mandate and practice was—and remains—striking. At the time of Lauterpacht's observation, the Court had delivered 28 Judgments and Advisory Opinions, and had cited publicists on only two occasions: in the *Anglo-Norwegian Fisheries* case43 and in *Nottebohm*.Writers have commonly posited five causes for the reticence of the Court to refer explicitly to doctrine. The first theory derives from the voluntarist perspective. In this spirit,Waldock noted sympathetically, "the Court prefers, if possible, to base itself on evidence more obviously emanating from States or from tribunals invested by States with law-determining authority."45 This reason is unsatisfying, as it reduces the act of citation to a mere formality. After all, the parties' oral and written pleadings are publicly available, and "perusal of the

pleadings … will quickly show the authorities brought to the attention of the court or tribunal

And enable the discerning reader to see for himself what teachings of what publicists were adopted by the Court". The second cause presented suggests that jurisprudence is displacing doctrine as the preferred subsidiary source. Namely, "with the growth of international judicial activity … it is natural that reliance on the authority of writers as evidence of international law should tend to diminish". This suggestion fails for two reasons. First, while it may be (in the authors' minds) 'natural' to privilege jurisprudence over doctrine, such a preference is nowhere

Authorized or implied in the Statute, which makes no distinction between the two in subhead (d). Second and more importantly, it presupposes that at some early point in the Court's history, it did in fact rely upon doctrine; as noted above, this is simply not the case. The third cause may be termed 'technological'. If the role of the publicist is simply to summaries State practice or evidences of general principles, that function is progressively supplanted as publishers (first print, then electronic) make access to primary sources more readily available. Writing well before the advent of the Internet, Lauterpacht observed, "[t]here is no doubt that

the availability of official records of the practice of states and of collections of treaties has substantially reduced the necessity for recourse to writings of publicists as evidence of custom."48 This justification ignores, however, the true value of the learned publicist, namely, "to make a synthesis from the decisions, sometimes to detect a thread of principle running through them, and often to indicate the true line of development and the danger of getting onto the wrong track". The fourth concerns the process of the Court's deliberations. As demonstrated

by the wide divergence of opinion in Separate Opinions, individual judges frequently agree as to the result but disagree fundamentally as to the legal basis for that result. For this reason, "the practice of including citations of individual publicists does not sit well with the concept of a collective pronouncement of what the law is". Taken at face value, however, this rationale suggests that any disagreement among the majority judges as to the source of a rule—for example, in the situation where an obligation might derive from conventional or customary law, or from one of two conventions—results in the source being excised from the decision. This ignores the role that Separate Opinions play in the development of the law. As Rosenne observed, It has for some time been commonly felt among competent observers of the Court that individual opinions

which, so to speak, underpin the anonymous decisions of the Court, thanks to their greater freedom of expression and emphasis on underlying principles which the anonymous author of the majority view cannot always articulate fully, or which, in another direction, by indicating other legal principles which can govern the particular circumstances, may correct any misleading impression which the majority opinion might convey, or which, by flatly contradicting it, are seen by enlightened legal opinion to be expressive of better law, have a value of their own not so much for the development of the law as for the proper functioning of the Court. Finally, authors have noted that the reticence may simply be a matter of etiquette. Rosenne delicately refers to the "the inherent and embarrassing difficulty of saying who is a 'most highly qualified publicist"' and, by negative implication, who—among the countless others writing on the same topic—is less qualified. Pellet notes, less tactfully, "[i]nternational law is a 'small world 'not exempt from jealousy and envy and the Court is certainly well-advised not to distribute good or bad marks."However, the frequency with which individual and joint opinions name individual authors suggests that judges do not feel particularly embarrassed, though the point is taken that those judges, collectively, might wish to avoid giving the imprimatur of the Court to an individual scholar, paving the way for the creation of a new Digest. Furthermore, the decisions of the Court have frequently made use of both the deliberations and work-product of the UN International Law Commission. For the former, Alain Pellet cites the example of the 1969 *North Sea Continental Shelf* Judgment, "where the Court concluded from the work of the Commission that the equidistance rule was not envisaged by it as a customary rule", and for the latter, he notes the 1997 *Gabčíkovo-Nagymaros* judgment, "where the Court quoted not less than seven times from the Articles on State Responsibility adopted after first reading by the Commission".Rosenne convincingly justifies the "special place" reserved for the ILC,noting that "it is not composed of the representatives of States but of experts sitting in their individual capacity" and that it was "created by States in the General Assembly to enable the General Assembly to carry out its obligation under Article 13(1)(a) of the Charter, that is for the very purpose of the progressive development and codification of international law". This mandate

in particular distinguishes the ILC from other, freelance publicists.

10.4 SUMMARY

Article 38(1) (d) of the Statute of the International Court of Justice instructs the Court to apply, as a subsidiary means for the determination of rules of law, "the

teachings of the most highly qualified publicists," namely, scholarly writings. Based upon a survey of more than 600 Judgments, Advisory Opinions and Orders, this paper describes the International Court of Justice's use of these sources and analyzes the individual scholars and writings which have been most useful to the Court. It also explores the meaning of a 'subsidiary source' and the contexts in which judges are most willing to utilize such sources. When deciding disputes between States, in addition to the three principal sources of international law, the International Court of Justice ('ICJ') is to draw upon "the teachings of the most highly-qualified publicists of the various nations". However, the Statute is silent on the meaning of "most highly qualified", and the *travaux préparatoires* offer little guidance on this point. Unlike the other three sources of law, the Court may use the teachings of publicists only "as subsidiary means for the determination of rules of law". The drafters of the Statute disagreed as to the proper role for these teachings, referred to as 'doctrine', and the meaning of "subsidiary" in this context is unclear. The Court has only rarely invoked doctrine in its Judgments, Advisory Opinions, and Orders. This has not stopped counsel from routinely calling the teachings of publicists to the Court's attention in written and oral arguments, and individual judges freely cite *la doctrine* in their individual opinions. This latter practice led Sir Humphrey Waldock, later a Judge of the ICJ, to observe, "[t]he way in which individual judges quite often make use of them in their separate opinions indicates that they have played a part in the internal deliberations of the Court and in shaping opinion."1

According to Article 38(1) of its Statute, in rendering its judgments, the International Court of Justice relies upon three principal sources of law:(a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; (b) international custom, as evidence of a general practice accepted as law; [and] (c) the general principles of law recognized by civilized nations In addition, Article 38(1)(d) provides in very particular language for reliance upon a fourth source of law: subject to the provisions of Article 59, judicial decisions and the teachings of the most highly-qualified publicists of the various nations, as subsidiary means for the determination of rules of law.4Given the lack of clarity in these terms, reference to the *travaux préparatoires* of Article 38, as well as subsequent interpretation by experts in the procedure and practice of the Court, is in order.

The sources of law enumerated in Article 38(1) are drawn materially *verbatim* from the Statute of the Permanent Court of International Justice ('PCIJ'). It is therefore appropriate to review briefly the discussions of the Advisory Committee of Jurists; the multi-national committee of experts tasked by the League of

Nations to draft the PCIJ Statute. Doctrine was not included in the original draft of the rules of law to be applied by Court. The President of the Committee, Baron Decamps, prepared a draft which enumerated only conventions, custom, the "legal conscience of civilized nations", and international jurisprudence. In his remarks the following day, however, Descamps indicated a desire to add "objective justice" to the sources of law, reasoning that "it is absolutely impossible and supremely odious to say to the judge that, although in a given case a perfectly just solution is possible: 'You must take a course amounting to a refusal of justice' merely because no definite convention or custom appeared."6 He suggested that, in determining the rules of objective justice, the Court be permitted to use, *inter alia*, "the concurrent teaching of the authors whose opinions have authority". It was clear at this time that Baron Descamps intended for doctrine to be a 'tie-breaker', to avoid a *non liquet* in the event that principal rules of law were non-existent or inconclusive. He explained: If neither [treaty] law nor custom existed, could the judge pronounce a *non liquet*? The President was convinced that he could not; the judge must then apply general principles of law. But he must be saved from the temptation of applying these principles as he pleased. For that reason he urged that the judge render decisions in keeping with the dictates of the legal conscience of civilised peoples and for this same purpose make use of the doctrines of publicists carrying authority.Mr. Root and Lord Phillimore responded by submitting an alternative draft,which introduced the four-element structure reflected in present-day Article 38(1), albeit with an explicit hierarchy of sources.

The question of who is a "publicist" is closely related to that of what constitutes a "teaching". After all, "[w]hile one cannot possibly dissociate the 'teachings' expressed in writings or *viva voce* from 'the teacher', there are those other activities in which the teacher has participated throughout the centuries." The modern scholar wears at least two hats: that of faithful chronicler of the state of the law, and that of passionate advocate for development of the law.Judge Lachs quoted with approval Justice Gray's remarks in *The Paquete Habana*, to the effect that "[s]such works are resorted to by judicial tribunals, not for the speculations of their authors concerning what the law ought to be but for trustworthy evidence of what the law really was."The distinction is important, as the Court's "function is to decide in accordance with international law", that is, consistent with *lex lata*. The distinction has not always been respected: Lauterpacht noted "the prolific and occasionally indiscriminate citation of authors in the written and oral pleadings of the parties"; while Schwarzenegger castigated the scholars themselves, noting, "[n]nothing has brought the doctrine of international law into greater disrepute than proneness of individual

representatives to present desiderata *de lege ferenda* in the guise of propositions *de lege lata*."In light of this concern, Schwarzenegger demanded scholars "try [their] hardest not to blur the border lines between *lex lata* and *lex ferenda*". One purpose of this study is to determine whether publicists have succeeded and whether ICJ decisions reflect a corresponding care for those border lines.

The Court has cited publicists in only 22 of its 139 Judgments and Advisory Opinions.41 Writing in 1958, Sir Hersch Lauterpacht noted that this practice was at odds with the plain language of the Court's Statute: Article 38 is explicit on that subject; it is mandatory in its reference to the "teachings of publicists" as a subsidiary source of the law to be applied by the Court. A study of the deliberations of the Committee of Jurists who drafted the Statute of the Court does not

bear out any suggestion that the authority thus conferred upon the Court ought to remain nominal. The contrast between the Statutory mandate and practice was—and remains—striking. At the time of Lauterpacht's observation, the Court had delivered 28 Judgments and Advisory Opinions, and had cited publicists on only two occasions: in the *Anglo-Norwegian Fisheries* case43 and in *Nottebohm*.Writers have commonly posited five causes for the reticence of the Court to refer explicitly to doctrine. The first theory derives from the voluntarist perspective. In this spirit,Waldock noted sympathetically, "the Court prefers, if possible, to base itself on evidence more obviously emanating from States or from tribunals invested by States with law-determining authority."45 This reason is unsatisfying, as it reduces the act of citation to a mere formality. After all, the parties' oral and written pleadings are publicly available, and "perusal of the pleadings … will quickly show the authorities brought to the attention of the court or tribunal. And enable the discerning reader to see for himself what teachings of what publicists were adopted by the Court". The second cause presented suggests that jurisprudence is displacing doctrine as the preferred subsidiary source. Namely, "with the growth of international judicial activity … it is natural that reliance on the authority of writers as evidence of international law should tend to diminish". This suggestion fails for two reasons. First, while it may be (in the authors' minds) 'natural' to privilege jurisprudence over doctrine, such a preference is nowhere. Authorized or implied in the Statute, which makes no distinction between the two in subhead (d). Second and more importantly, it presupposes that at some early point in the Court's history, it did in fact rely upon doctrine; as noted above, this is simply not the case. The third cause may be termed 'technological'. If the role of the publicist is simply to summaries State practice or evidences of general principles, that function is progressively

supplanted as publishers (first print, then electronic) make access to primary sources more readily available. Writing well before the advent of the Internet, Lauterpacht observed, “[t]here is no doubt that

the availability of official records of the practice of states and of collections of treaties has substantially reduced the necessity for recourse to writings of publicists as evidence of custom.”48 This justification ignores, however, the true value of the learned publicist, namely, “to make a synthesis from the decisions, sometimes to detect a thread of principle running through them, and often to indicate the true line of development and the danger of getting onto the wrong track”. The fourth concerns the process of the Court’s deliberations. As demonstrated

by the wide divergence of opinion in Separate Opinions, individual judges frequently agree as to the result but disagree fundamentally as to the legal basis for that result. For this reason, “the practice of including citations of individual publicists does not sit well with the concept of a collective pronouncement of what the law is”. Taken at face value, however, this rationale suggests that any disagreement among the majority judges as to the source of a rule—for example, in the situation where an obligation might derive from conventional or customary law, or from one of two conventions—results in the source being excised from the decision. This ignores the role that Separate Opinions play in the development of the law. As Rosenne observed, It has for some time been commonly felt among competent observers of the Court that individual opinions which, so to speak, underpin the anonymous decisions of the Court, thanks to their greater freedom of expression and emphasis on underlying principles which the anonymous author of the majority view cannot always articulate fully, or which, in another direction, by indicating other legal principles which can govern the particular circumstances, may correct any misleading impression which the majority opinion might convey, or which, by flatly contradicting it, are seen by enlightened legal opinion to be expressive of better law, have a value of their own not so much for the development of the law as for the proper functioning of the Court. Finally, authors have noted that the reticence may simply be a matter of etiquette. Rosenne delicately refers to the “the inherent and embarrassing difficulty of saying who is a ‘most highly qualified publicist”’ and, by negative implication, who—among the countless others writing on the same topic—is less qualified. Pellet notes, less tactfully, “[i]nternational law is a ‘small world’not exempt from jealousy and envy and the Court is certainly well-advised not to distribute good or bad marks.”However, the frequency with which individual and joint opinions name individual authors suggests that judges do not feel

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10.5 SUGGESTED READINGS

1. Michael Peil,Scholarly writings as a source of law: a survey of the use of doctrine by the international court of justice *cambridge journal of international and comparative law* (1)3: 136–161 (2012)
2. Dr. H.N. Tiwari, Regal Research Methodology, Reprint, 2006.
3. Dr. S.N. Myaneni Legal Research Methodology, Reprint, 2008.
4. C.R. Kothari Research Methodology: Methods and Techniques. Reprint, 1994.
5. S.K. VERMA, Legal Research Methodology Indian Law Institute publication.

10.6 TERMINAL QUESTIONS

1. What is the utility of juristic writings in legal research?
2. Name the important juristic writings and explain them.

LL.M. Part-2

Subject: LEGAL EDUCATION AND RESEARCH METHODOLOGY

Block III- Identification of Problem of research

Unit-11 Compilation of list of reports or special studies conducted relevant to the problem.

STRUCTURE

11.1 INTRODUCTION

Legal writing is distinguished by a number of features. It should be as clear and concise and as precise as possible. Good legal writing is reasonably **formal** but not **archaic**. For example, it is not acceptable to use contractions such as *won't* or *isn't*, or to write in a chatty style. But at the same time, students should avoid using words such as *aforementioned* and *heretofore*, as well as avoiding the use of *we* instead of *I*. The tone should be **measured** (rather than involving excessive use of hyperbole, for instance) and the writing should be reasonably **objective**. Legal writing is often in the third person. For example, instead of writing "I would argue that ..." it is more acceptable to write "it is arguable that ...", Sometimes the first person might be preferable, such as in the introduction where you might say "In this essay, I will argue that ...". While students should develop their own views, they should also acknowledge and deal with any **counter arguments**. Adherence to conventions of grammar, spelling, etc., and also to requirements of style is very important - a lawyer's skills are very dependent upon his/her ability to make effective use of language. (A misplaced comma can alter the meaning of a clause, and documents that do not comply with required formalities may be rejected by a court.)

11.2 OBJECTIVES

Te objective of this lesson is to study the how to compile an excellent report and how reports are used: as a basis for criminal cases; as a basis for civil cases, including insurance, health department, risk management, environmental (AQMD), etc., a source of statistical information, to supply information to newspapers and the media, to evaluate the officer, by various reviewing audiences, to document different types of incidents.

11.3 SUBJECT

11.3.1 Legal writing and reports

What makes an excellent report

An excellent report is one that is well written, and is identified by six basic, necessary qualities. A well written report is:

1) Factual

2) Accurate

3) Clear

4) Concise

5) Complete

6) Timely

Deficiency in any of these areas cast doubts upon the capabilities of the officer who wrote the report.“Report writing ability” refers not just too writing skills, but to the totality of skills perceptual, analytical, information processing and language that work together to produce a written document.

11.3.2 Most common utilization of reports

Reports are written to document events. For law enforcement agencies, such documentation is important for future criminal prosecution as well as for liability in future civil litigation. In their original form, the reports are reviewed by detectives and supervisors and read by the prosecuting attorney and the defense attorney. Typically, the district attorneys base their decisions to file criminal charges on the contents of the original reports. These reports are also used to coordinate additional criminal investigations. Reports can assist detectives in identifying methods of operations (M.O.), certain crime trends, and can link similar or related crimes and criminal activity together in an attempt to identify the perpetrator. Reports are frequently used to assist officers and other participants to refresh their memories for testifying in court. For private security companies, reports most often tend to be used to document events by which the client could or would be affected. Incidents such as slip and fall accidents, crimes, internal losses, etc., are issues that cost the client money, and therefore, are directly affected by the effectiveness of the security company and its personnel. Adequate documentation in such cases can save both the client and the security company time and money. Of course, similar investigation and documentation are requirements in other professions, too. Professionals such as insurance investigators, private investigators, risk management investigators, human resources personnel, health department inspectors, code enforcement officers, etc., all deal with volatile incidents that could potentially expose an organization or individual to financial liability as well as harm the reputation of that organization or individual. Statistical Information Statistics compiled weekly, monthly, and yearly help local law enforcement agencies determine how to better

allocate resources, and to justify their activities. States collect their own crime statistics, which are then published yearly. Nationally, law enforcement agencies report certain criminal incidents to the Federal Bureau of Investigation, which then publishes a yearly report on all criminal activity within the country. This statistical information, along with the actual reports, provides evidence that the agency is meeting the needs of the community

Legal writing is usually less discursive than writing in other humanities subjects, and **precision is more important than variety**. Sentence structure should not be too complex; it is usually unnecessary to make extensive use of adjectives or adverbs, and **consistency of terms** is often required. For example, when describing a case, the plaintiff should always be referred to as "the plaintiff". Using multiple descriptions of a person by referring to him/her with a variety of terms (*the plaintiff*, *the person aggrieved*, *Mr. X*, and so on) may cause confusion. Generally the most important characteristic of the person in a legal argument is his/her legal role (i.e. the plaintiff, defendant, judge, or whoever).Students need to refer to primary sources (statutes and common law judgments) and not solely rely on secondary sources (expert commentaries on the law). Even if the secondary source is accurate, it is possible the law has since changed.

11.3.3 How should students approach primary sources?

- Usually, students will begin with secondary sources, and develop a sense of what the issues are and a framework for their approach to the assignment task. But then they need to check the current state of the law. The module on legal research teaches students how to go about such research.
- Secondary sources play an important role in helping students understand the kinds of issues surrounding any area of legislation and the arguments that are brought to these issues. This is especially important for students with very little or no background knowledge about an area of law and the policy or social or legal issues relating to it.
- Students may cite course materials when writing their assignments, but usually the first-year research assignment in Legal Process is deliberately set in such a way that the substantive content of the essay will not have been dealt with in lectures. Students will need to engage in extensive research in order to complete the assignment satisfactorily.

- be clear
- demonstrate an understanding of the law
- give reasons for the case being made

11.3.4 What distinguishes a legal argument from other kinds of arguments?

A most important part of a student essay is that they **demonstrate that they understand the law**. This usually involves students in identifying the current state of the law. However, they then need to discuss that law in terms of what is required by the task. For instance, students might be asked to discuss whether the law in that area should be relaxed, or made more restrictive. They would need to summaries and evaluate reasons given for and against.
Reasons may be of different sorts (moral, social, a need to change the law to meet policy objectives, a need to change the law to create better consistency with other laws, and so on). These reasons would be evaluated, and a conclusion reached on which position seems most persuasive.

1. Students may be asked to **compare the law** in Australia with the law in another country. Sometimes international students make a comparison with their own country, which can be very useful if it is done well, but sometimes this is a problem because students do not have the legal resources to quote. But where it is done well, it can offer them quite a lot of insight.
2. Although qualities such as clarity, conciseness, and the logical development of an argument are important in many forms of writing, they do seem to have a greater premium in legal writing. Being a lawyer is very much about describing, analysing, and generally communicating clearly. The **ability to use language well** is therefore regarded as a more important quality than it might be in many other disciplines.
3. In law, the actual words used perhaps have a greater significance than they do in many other disciplines. It is possible that in some other disciplines it is enough to demonstrate that you have grasped the concepts. But in law **the actual wording can be critical**. (This is perhaps obvious in the drafting of wills, or court documents, and other such legal documents. It is very important to avoid ambiguity. People may easily lose confidence in a lawyer whose language is perceived as poor.)
4. Time is at a premium for practising lawyers. But also important is the ability to **get to the heart of a matter very quickly**, to be able to recognise what is central and what is not. Therefore, discussion should be limited to only that which is necessary for the purpose at hand.
5. This focus on clarity can also lead to some stylistic differences between legal writing and other forms of writing. For example, as noted above, it is **better to use one term consistently**, such as "the plaintiff" when describing the person bringing a case.

6. When a client comes to see you they really do want some fairly precise advice. They want the law explained to them in a way they can understand, but which eliminates the superfluous. A common problem in assignments is that students include all the things that could possibly be related. What is important is that the student sifts through the legal material to **determine what is relevant** and irrelevant, and **distils it down to its core element**, and then **applies it to produce reasoned advice**. Reasoned advice includes identifying the arguments for and against, making clear the risks in proceeding with litigation or whatever.
7. Legal argument can be visualized in linear terms. You explain where you are coming from, develop your case step by step, and then come to your conclusion. You're trying to build up a chain in a very structured, straight-line fashion.

Legal reasoning is sometimes compared to mathematical reasoning. There is a kind of linearity: you **begin with step one, go to step two, three, etc**. But you have to demonstrate that reasoning too. In math's it is not just the conclusion that matters, but how you get there and the steps you took. There is an element of that in Law.

However, not only are there a number of different ways of getting to a possible answer, there is seldom only one possible answer. Student originality may partly lie in finding a slightly different way of dealing with an issue, but what is important is that the reasoning and the steps taken in doing that are made clear.

- make sure your reasoning is clearly demonstrated
- deal with the different arguments that might be brought to bear

- Although it may seem to students that much legal writing concerns the application of the law to a given scenario, this does not mean that critical thinking is not important. Some areas of law are exceptionally difficult in the sense that it is hard to work out what the legal position might be. You might have different scenarios and it might not be at all apparent what would be the outcome if they were litigated. The task may simply be to try and work that out and argue it out.

Your argument may then take the following form: You might first argue that a similar approach was taken in a previous case on a related issue; and that if you extrapolate to the present scenario, then the law might actually apply in this way here too. Such an approach may be required in

some tasks. But you would also need to show alternative interpretations of the law, and then decide - with reasons - which approach in your view is most persuasive.

- In other areas, it is much more apparent what the law actually is, and so in a hypothetical scenario it might be clear what the outcome should be. But you might need to look at the broader critiques that have been made. It might be argued that the law as it stands does not produce a sensible result. For example, negligence cases where people are able to sue might have had a negative policy impact.

  For instance, doctors might have stopped treating patients they see lying on the road because they could be sued for negligence. So there you are looking at the ramifications of the law. Thus, the form your critical thinking takes does depend very much on the nature of the task and the law you are looking at.

- Dealing with the arguments against - as well as presenting one's argument for - a particular proposition is the process used in the courtroom; and it translates more generally into legal reasoning and argument. Thus, when you are writing an article for lawyers to read, and trying to convince them, they would think poorly of the article if they see that you have neglected to deal with the counter arguments.

11.3.5 Evaluate the law in light of policy objectives

What we are really looking for is the rationale for the legislation or the objectives it is trying to meet, and the competing arguments for and against reform. In the case of an issue such as reform of euthanasia laws, people will hold a number of quite different views (some think the current state of the law is quite good, some think the laws should be tightened, and others think they should be relaxed).

It's a question of a student identifying what the current state of the law is, and then going on to evaluate the suggestions for how it might be changed. The question will make it clear as to what approach should be taken. It might be to evaluate suggestions for relaxing the law, or evaluate reasons or policy arguments for making it more restrictive. These could be looked at from a range of perspectives, such as political, sociological, or whatever, according to the context.

Those arguments then need to be evaluated, but with reference to what the law is, not simply stating in broad terms whether euthanasia is a good idea. So students need to be clear on **what exactly the position of the law is** at the moment, and **the basis of the criticisms**, and **then determine whether they agree or disagree** with the criticisms, and **why**.

Students are often told that their essays will be judged in part on its "originality". What kind of originality are students expected to demonstrate? What we are looking for is some unique input by the student: originality can be talked of in terms of "value added". You are trying to add something to the totality of what's been written before, putting your own personal stamp on it.

It is not necessarily something as radical as coming up with a new solution to the problem of, say, euthanasia. It is more a matter of **how you sift through the existing sources** and make sense of them, how you **evaluate the arguments** that have been raised, and how you **organise the material** and **your perspective** on the material. To the extent you do that well, you would rate high on originality.

A common trap is finding an excellent article and using that as your guide, and - while not exactly copying chunks out - rewriting and reorganizing them and presenting that as your essay. I think a lot of students who are a bit unsure tend to think that if they quote extensively from someone they are attributing properly - or if they simply say this is what some people have said about this - that they will be on safe ground. They are not confident enough to have a viewpoint, or they fear their viewpoint is not a valid one.

In addressing the task, the student must make a case that will be supported with evidence from those sources, but the answer itself will not be found in any of those sources. Originality could be as minimal as sorting out which is the worthwhile from the less worthwhile, and adding a perspective or approach. Thus, originality in students' writing is not necessarily a matter of coming up with new ideas. Originality is demonstrated most usually perhaps in thoughtfulness about the texts read and issues discussed. This goes beyond simply reproducing material and ideas we find in texts.

So what comes out is a product of what's gone in; it **acknowledges what has gone in, but it is assembled and thought of and linked together**

in a new way. It has something of the student's voice in it, as opposed to being simply reproduction.

- Students are strongly advised to **read a lot of examples of good legal writing** (e.g. articles published in the Monash Law Review, which uses an identical style guide). Looking at these might at first be a little discouraging to students - given that they may reflect months or even years of research experience - but they do assist students to understand what is looked for in their writing. As they read some examples of good legal writing, students should read in terms of thinking about the structure of writing, and not simply for the content.
- If you read articles and look at **how the authors use footnotes**, you soon recognize what sorts of things are put in footnotes, and how they are used. Students need to understand that footnotes are an easy way of showing their research without cluttering up the body of the text. The inclusion of an interesting side point may not fit in the word limit, but a reference to it can be put in a footnote. Reading good articles is helpful for other sorts of things, such as noticing how the author structures the article, at the way they introduce the topic, and how they build up and work through to the conclusion.
- The most important advice for students is to prepare adequately. This means that they should **read the question carefully** and give themselves sufficient time to undertake research, and to read and digest materials. Then they need to **plan the essay** structure before commencing writing. They should also think carefully about what is required in terms of writing style and formal requirements (e.g. use of footnotes) before writing. Ideally the essay should be completed a few days before it is due so that it can be put aside and then checked over with a fresh eye.

11.4 SUMMARY

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Reports are written to document events. For law enforcement agencies, such documentation is important for future criminal prosecution as well as for liability in future civil litigation. In their original form, the reports are reviewed by detectives and supervisors and read by the prosecuting attorney and the defense attorney. Typically, the district attorneys base their decisions to file criminal charges on the contents of the original reports. These reports are also used to coordinate additional criminal investigations. Reports can assist detectives in identifying methods of operations (M.O.), certain crime trends, and can link similar or related crimes and criminal activity together in an attempt to identify the perpetrator. Reports are frequently used to assist officers and other participants to refresh their memories for testifying in court. For private security companies, reports most often tend to be used to document events by which the client could or would be affected. Incidents such as slip and fall accidents, crimes, internal losses, etc., are issues that cost the client money, and therefore, are directly affected by the effectiveness of the security company and its personnel. Adequate documentation in such cases can save both the client and the security company time and money. Of course, similar investigation and documentation are requirements in other professions, too. Professionals such as insurance investigators, private investigators, risk management investigators, human resources personnel, health department inspectors, code enforcement officers, etc., all deal with volatile incidents that could potentially expose an organization or individual to financial liability as well as harm the reputation of that organization or individual. Statistical Information Statistics compiled weekly, monthly, and yearly help local law enforcement agencies determine how to better allocate resources, and to justify their activities. States collect their own crime statistics, which are then published yearly. Nationally, law enforcement agencies report certain criminal incidents to the Federal Bureau of Investigation, which then publishes a yearly report on all criminal activity within the country. This statistical information, along with the actual reports, provides evidence that the agency is meeting the needs of the community

Legal writing is distinguished by a number of features. It should be as clear and concise and as precise as possible. Good legal writing is reasonably **formal** but

not **archaic**. For example, it is not acceptable to use contractions such as *won't* or *isn't*, or to write in a chatty style. But at the same time, students should avoid using words such as *aforementioned* and *heretofore*, as well as avoiding the use of *we* instead of *I*. The tone should be **measured** (rather than involving excessive use of hyperbole, for instance) and the writing should be reasonably **objective**. Legal writing is often in the third person. For example, instead of writing "I would argue that ..." it is more acceptable to write "it is arguable that ...", Sometimes the first person might be preferable, such as in the introduction where you might say "In this essay, I will argue that ...". While students should develop their own views, they should also acknowledge and deal with any **counter arguments**. Adherence to conventions of grammar, spelling, etc., and also to requirements of style is very important - a lawyer's skills are very dependent upon his/her ability to make effective use of language. (A misplaced comma can alter the meaning of a clause, and documents that do not comply with required formalities may be rejected by a court.)

Legal writing is usually less discursive than writing in other humanities subjects, and **precision is more important than variety**. Sentence structure should not be too complex; it is usually unnecessary to make extensive use of adjectives or adverbs, and **consistency of terms** is often required. For example, when describing a case, the plaintiff should always be referred to as "the plaintiff". Using multiple descriptions of a person by referring to him/her with a variety of terms (the *plaintiff*, *the person aggrieved*, *Mr. X*, and so on) may cause confusion. Generally the most important characteristic of the person in a legal argument is his/her legal role (i.e. the plaintiff, defendant, judge, or whoever).

Students need to refer to primary sources (statutes and common law judgments) and not solely rely on secondary sources (expert commentaries on the law). Even if the secondary source is accurate, it is possible the law has since changed.

How should students approach primary sources?

- Usually, students will begin with secondary sources, and develop a sense of what the issues are and a framework for their approach to the assignment task. But then they need to check the current state of the law. The module on legal research teaches students how to go about such research.
- Secondary sources play an important role in helping students understand the kinds of issues surrounding any area of legislation and the arguments that are brought to these issues. This is especially important for students

with very little or no background knowledge about an area of law and the policy or social or legal issues relating to it.

- Students may cite course materials when writing their assignments, but usually the first-year research assignment in Legal Process is deliberately set in such a way that the substantive content of the essay will not have been dealt with in lectures. Students will need to engage in extensive research in order to complete the assignment satisfactorily.

- be clear
- demonstrate an understanding of the law
- give reasons for the case being made

Legal reasoning is sometimes compared to mathematical reasoning. There is a kind of linearity: you **begin with step one, go to step two, three, etc**. But you have to demonstrate that reasoning too. In math's it is not just the conclusion that matters, but how you get there and the steps you took. There is an element of that in Law.

However, not only are there a number of different ways of getting to a possible answer, there is seldom only one possible answer. Student originality may partly lie in finding a slightly different way of dealing with an issue, but what is important is that the reasoning and the steps taken in doing that are made clear.

- make sure your reasoning is clearly demonstrated
- deal with the different arguments that might be brought to bear

- Although it may seem to students that much legal writing concerns the application of the law to a given scenario, this does not mean that critical thinking is not important. Some areas of law are exceptionally difficult in the sense that it is hard to work out what the legal position might be. You might have different scenarios and it might not be at all apparent what would be the outcome if they were litigated. The task may simply be to try and work that out and argue it out.

  Your argument may then take the following form: You might first argue that a similar approach was taken in a previous case on a related issue; and that if you extrapolate to the present scenario, then the law might actually apply in this way here too. Such an approach may be required in some tasks. But you would also need

to show alternative interpretations of the law, and then decide - with reasons - which approach in your view is most persuasive.

- In other areas, it is much more apparent what the law actually is, and so in a hypothetical scenario it might be clear what the outcome should be. But you might need to look at the broader critiques that have been made. It might be argued that the law as it stands does not produce a sensible result. For example, negligence cases where people are able to sue might have had a negative policy impact.

  For instance, doctors might have stopped treating patients they see lying on the road because they could be sued for negligence. So there you are looking at the ramifications of the law. Thus, the form your critical thinking takes does depend very much on the nature of the task and the law you are looking at.

- Dealing with the arguments against - as well as presenting one's argument for - a particular proposition is the process used in the courtroom; and it translates more generally into legal reasoning and argument. Thus, when you are writing an article for lawyers to read, and trying to convince them, they would think poorly of the article if they see that you have neglected to deal with the counter arguments.

Students are quite frequently asked to evaluate the law in light of policy objectives. But what does this mean?

What we are really looking for is the rationale for the legislation or the objectives it is trying to meet, and the competing arguments for and against reform. In the case of an issue such as reform of euthanasia laws, people will hold a number of quite different views (some think the current state of the law is quite good, some think the laws should be tightened, and others think they should be relaxed).

It's a question of a student identifying what the current state of the law is, and then going on to evaluate the suggestions for how it might be changed. The question will make it clear as to what approach should be taken. It might be to evaluate suggestions for relaxing the law, or evaluate reasons or policy arguments for making it more restrictive. These could be looked at from a range of perspectives, such as political, sociological, or whatever, according to the context.

Students are often told that their essays will be judged in part on its "originality". What kind of originality are students expected to demonstrate? What we are looking for is some unique input by the student: originality can be talked of in terms of "value added". You are trying to add something to the totality of what's been written before, putting your own personal stamp on it.

It is not necessarily something as radical as coming up with a new solution to the problem of, say, euthanasia. It is more a matter of **how you sift through the existing sources** and make sense of them, how you **evaluate the arguments** that have been raised, and how you **organize the material** and **your perspective** on the material. To the extent you do that well, you would rate high on originality.

11.5 SUGGESTED READINGS

1. Dr. S.N. Myaneni Legal Research Methodology, Reprint, 2008.
2. C.R. Kothari Research Methodology: Methods and Techniques. Reprint, 1994.
3. S.K. VERMA, Legal Research Methodology Indian Law Institute publication.
4. Mona Sirohi, Legal Education and Research Methodology.
5. http://hiredbypolice.com/repbk.pdf.

11.6 TERMINAL QUESTIONS

- How law reports are compiled?
- **What makes an excellent report?**
- **How reports are utilized? Discuss.**

LL.M. Part-2

Subject: LEGAL EDUCATION AND RESEARCH METHODOLOGY

Block-IV-Preparation of the Research Design

Unit- 12- Formulation of the Research problem; Devising tools and techniques for collection of data: Methodology; Methods for the collection of statutory and case materials and juristic literature

STRUCTURE

12.1 INTRODUCTION

In the research process of legal issues, we pass through certain major steps and each step of them subsumes under it a set of interrelated operations. Every operation is important in its own way in affecting the value of the research results and their worth. Thus, 'major' steps should be considered as grouping or classes of operations or activities – hundreds of which are involved in research, each corresponding to some requirement of research.

12.2 OBJECTIVE

The present chapter deals with the major steps involved in doing legal research. It also describes selection or formulation of legal research problem or topic and collection of data in social-legal research and how to use it for reporting.

12.3 SUBJECT

12.3.1 Meaning and formulation of Research Problem

The formation of a topic into a research problem is the first step in a scientific enquiry. The term 'Problem'' comes from the Greek word ''Proballein' which means anything through forward; a question proposed for solution; a Matter stated for examination. A problem, in simpler words, is some difficulty experienced by the Researcher in a theoretical or Practical Situation According to John Dewey; the Need of clearing up confusion, of straightening out an ambiguity, of overcoming obstacles, of covering the gap between things as they are and as they may be when transformed, is, in germ a problem.

R.S. Woodworth defines problem as a ''Situation for which we have no ready and successful Response by instinct or by previously acquired habit we must find out what to do. A Problem can be called a legal research problem only when it satisfies the following conditions: Identification of Research Problem:

1. The Problem must be worth studying:
2. It must have social and Legal relevance;
3. There must be facts needed for Research'
4. It must come out with a Practical Solution to the issues;
5. It must be up to-date or relevant to the current social or legal happenings.
6. It must involve clarity of meaning and limited scope of study;
7. It must be explicit and original
8. It must be verifiable and testable

Cox suggested the following questions to be asked for the selection of a research problem:

9. Is this type of problem than can be solved effectively throughout the process of Research?
10. Can relevant Data be gathered to test the theory or find the answer to the problem?
11. Is the problem a new one? Is an importance involved?
12. Whether it can be able to carry out through a successful conclusion?

Only if a Research gets a positive answer for these entire questions, he can select the problem for doing research. The researcher must immerse himself thoroughly in the subject area within which he wishes to pose a special problem. For example if a research is interested in the broad problem of juvenile delinquency, he will have to visit Remand homes, Juvenile-centers, courts, families of the Juvenile and localities. This is called the formulation of the situation.

At the outset the researcher has to decide the area or aspect of a subject matter in which he is interested such a decision affords only a crude indication. Hence he Researcher needs to formulate a specific problem from within his general area of interest-before he can take any decision relating to collection and analysis of data. It is more difficult to find and to Formulate a Problem that to solve it. He has to put a great deal of thought into the Formulation a problem he expects to get anything worth from his efforts to solve them. Research begins when the Researcher experience a difficulty or a challenge which is the Basic component of a Research Problem. There are no principles which can guide an investigation to pose significant problems for Research. A careful study of literature will guide him an a his sensibility. Experience direct him to Formulate the Problem.

12.3.1.1 Formulation of Hypothesis

The suggested explanation or solution to the problem formulated as propositions are called hypothesis. Such tentative explanation i.e. Hypothesis may be the solution of problem. The enquiry is trisected at finding out whether they really the solution to the problems.

12.3.1.2 Analysis of Concepts

The researcher needs to define the concepts which would be used in organizing the data. Such definitions include formal definitions that one designed to convey then into observable events. He has to formulate his problem in terms so general and abstract as to make clear its Relation to other knowledge one permit replication of study in other concrete situations.

12.3.1.3 Research Design

After Formulation of the Research Problem, the Researcher has to work out design for the study, a plan comprising the Researcher's decisions about the procedures of sampling, data, Collection and analysis of data in respect of a given study, which aims to fulfill the objects of the study.

The purpose of working out research design involves, making decision about the techniques to be employed for collection of Relevant data, the safeguards to be employed to safeguard the validity, reliability and precision, the mode of drawing the sample analyzing the data, interpreting the results. Through designing the Research, investigator achieves his Research objectives with the economy of amount, time and energy.

12.3.2 Collection of Data in Socio Legal Research

Collection of data is regarded as fascinating phase of research. Through the collection and handling of information, the researcher begins to feel the actual excitement of research. A researcher can either collect the data himself or rely on others for their collected data or information available with them. In both the cases, there is a great need for data of high quality. The selection of data requires great skill and experience.

Data is based on our sense-observations. The word ‘observation’ as used here includes all forms of perception used in recording responses as they impinge upon our senses. But response is not a datum. A response is some manifest kind of action, whereas a datum is the product of the process of recording the response.

In data collection stimuli (questions, tests, pictures or other objects) is presented to the respondent (subject). The stimuli may be classified as systematic stimuli, and unsystematic stimuli. By systematic stimuli, we mean those that are kept constant while objects are changed. The unsystematic stimuli are those which lack standardization e.g., questions asked in informal interviews.

The responses of the subjects (i.e., respondents) to the stimuli may also be classified as systematic and unsystematic responses. Systematic responses have a reference to constant (definite, standardized) response categories. Thus, the responses of subject to a stimulus are recorded. The unsystematic responses are those which are recorded verbatim with due regard to all possible individual variations and character logical nuances. Bringing these categories of stimuli and responses, we can decide the settings for the collection of data as :—

- Informal,
- Formal unstructured, and
- Formal structured.

The responses of the subjects may be called as 'acts'. Acts may be classified as verbal and non-verbal. The verbal acts may be sub-divided into oral and written. Verbal acts are acts where verbal symbols are used to communicate. The non-verbal acts are the signals like bowing, clapping, etc. The oral-verbal acts consist of the subject replying to a stimulus by the word of the mouth. The other kind of verbal acts consist in writing out the responses to the stimulus.

Data collection is related to : (i) Primary and secondary sources of data, (ii) Census and sampling techniques, and (iii) Methods of data collection.

The sources of legal data can be classified on several grounds, such as, reliability, personal efforts, availability and so on. On the basis of reliability they may be broadly divided into two categories: Primary data, and secondary data. Some divided the sources of data into documentary source and, field sources. Lundberg classified them as historical source and field sources.

Primary and Secondary Sources of Data Collection

(a) Primary source of data.—it is original information collected for the first time. It is also called as internal source of data as the data is collected directly from the subjects. They are obtained from living persons directly related to' the problem or through observation. This primary source can again be sub-divided into: (a) Direct Primary, and (b) Indirect Primary

(i) Direct primary sources: The researcher personally goes and observes events, things, behavior, activities and so on. He has to display great skill and objectivity Observation can be of three sub-types : (i) participant observation, (ii) non-participant observation, and (iii) quasi-participant observation. Direct observation is the best, but difficult. In some cases it may be either legally inadmissible or physically impossible.

(ii) Indirect primary sources: As the researcher cannot observe things which occurred long back, he needs to contact those persons who have made observations relevant to his research. This can be done through interviews, questionnaires or schedules.

(b) Secondary source of data.—this information is obtained from outside either a published source or from someone else who has already 'worked on the subject. They save a researcher's labor of collecting data again and prevent unnecessary expenditure. They can be broadly divided into two types: (a) Personal documents, and (b) Published documents. Personal documents consist of life histories, diaries, letters, and memories. It is very difficult to obtain them or put them to proper' use. Public documents come from public bodies, government and private organizations. Apart from books, available in libraries, this category includes records, published statistics, reports of newspapers and journals and special reports, film or T.V. programmes, tapes and so on. Unpublished documents are not easily available. Documentary sources are very important because past events can be known only through them. They may reveal certain secrets. They can help to save time, money and energy. But a researcher should verify the contents with the help of other sources. The secondary materials of law possess only on persuasive value but not authoritative value.

Relationship between Primary and Secondary Sources

The primary data once collected will become secondary data for others. The researcher collecting primary data knows the reality and the limitations, of the problem. Second-hand data provides hypotheses for the problem. These hypotheses can be tested or verified on the basis of first-hand data. Secondary data become third-hand data if they are mentioned by someone else. Primary data can be considered as being most reliable. The secondary sources are available in a Law Library.

12.3.2.1 Original Material Sources of Law

Material source of law is that source from which law derives not its validity but the matter of which it is composed. Material sources are divided into legal and historical. Legal source of law are those sources which are authoritative. They are recognized as such by the law itself. These are the immediate sources of law. The law which comes through the legal source may be divided into the following classes

(1) Enacted law, having its source in legislation.—the supreme legislation is made by the sovereign power of the nation. In democratic countries, Parliament is sovereign. It is considered not only supreme but legally omnipotent. But there may be certain constitutional restrictions upon its power.

Subordinate legislation is made by any other authority than the supreme authority in the nation. It is made under the powers delegated by the supreme authority. Such legislation is also considered as law. Subordinate laws are executive made laws and local laws by local bodies.

(2) Case law, having its source in precedent.—Precedent is defined as "a previous instance or case which is, or may be taken as an example of rule for subsequent cases, or by which some similar act or circumstances may be supported or justified. In the judicial field, it means the guidance or, authority of past decisions for future cases. Only such decisions as lay down some new rule or principle are called judicial precedents. The first general rule of doctrine of precedent is that each court is absolutely bound by the decisions of the courts above it. The second rule is that to a certain extent higher courts are bound by their own decisions.

(3) Customary law, having its source in custom.-—Customs are the most important source of law. But with the progress of the society they gradually diminish and legislation and judicial precedents become the main sources. In every legal system and at all the stages of legal development there are some customs accepted by the society The customs having sanction are those customs which are enforced by the State. Legal customs operate on a binding rule of law. They have been recognized by the courts and have become a part of the law of the land. They are enforced by the courts.

(4) Conventional law, having its source in agreement. — The conventional law are those customs which govern the parties to an agreement. Parties agree to them. Such customs are binding not due to any legal authority independently possessed by them, but because it has been the contract between the parties to it. There is a bulk of conventional law in every country.

(5) Statutory interpretation.— The law which comes into being through legislation is called enacted or statute law. It is for the courts to apply these formulas to specific cases. The court has to ascertain the meaning of the letters and expressions of the enactment for its application. This process of ascertaining the meaning of the letters and expressions by the court is called 'interpretation'. In this process the judge exerts very considerable influence on the statute law.

The interpretation is mainly of two kinds: (i) literal and (ii) liberal. The principle of literal interpretation is that the judge should not go beyond the letters of the law. The liberal interpretation is that the judges should go beyond the letters of the statute in order to ascertain the true intention.

(6) Codifications.—Codification means promulgation, compilation, collection and systematization of the body of law in a coherent form by an authority in a State competent to do so. In India, there are the codes of Manu, Yajnavalkya, Brihaspathi, Narada, Parashara, etc. These various codes are applied in different parts of the country. In modern times, the Indian Law Commission drafted a number of codes such as Indian Penal Code, The Civil Procedure Code, etc. The Law Commission made comprehensive and voluminous recommendations of which many have been implemented. There are other sources of law like: (1) morals and equity and (2) opinions of experts. All these sources are available in documentary form in general and legal libraries.

12.3.3 Documentary Sources of Data

Data can be made available from different sources. P.V. Young has classified the data into two groups: (1) Documentary and (2) Field sources. Documentary sources include material already collected whether published or unpublished. Such data can be obtained from libraries and from persons and public documents.

A legal document is anything that contains matters of socio-legal importance. Most of the documents are written in the past when the phenomena took place and are not specially prepared for the study of the present problem. Documents can be divided into two categories: (i) Primary, and (ii) Secondary. Primary documents provide primary data collection and compiled by the same authority that originally prepared those documents. Secondary documents provide data that has been transcribed or compiled from original sources. The published documents were categorized by John Madge into: **(i) personal documents, and (ii) public or official documents.**

(1) Personal documents (direct source).—Personal documents include all such written material as is written by an individual to narrate his views upon personal relationship or social phenomena. Most of these documents are written from personal point of view. There are many kinds of personal documents such as: **(i) life histories, (ii) diaries, (iii) letters and (iv) memories.**

A life history includes all biographical material, even autobiographies. The author of a life history records his personal views about contemporary happenings. Such writings prove a useful source of material for researchers. Diaries are another important source of information. In a diary, events are recorded in a regular manner. In a diary the author's personal experiences are reflected. Letters are another valuable tool of the socio-legal researcher. They contain the facts of the phenomena. But letters have their own limitations. Some persons write their memories in which they record some of the main events of their social life.

The personal documents express the inner-most feelings of the heart of the writer and at times, these documents throw light on such aspects of life as would have been difficult to know through observation or interview. They, generally, are more reliable both as regards the description of the subject as well as the feelings of the writer. They contain the perfect type of socio-legal material necessary to characterize the life of social group.

Limitations of Personal Documents

(1) The availability of personal documents may be difficult if they contain some confessions which are likely to damage his reputation.

(2) Unreliability of the data may be there due to personal bias of the writer.

(3) Personal documents do not provide a representative sample and the document may not be considered as a valid one.

Public Documents or Official Documents

Public documents also supply a huge fund of information. They deal with different subjects and are usually published by various institutions, organizations and associations. Records, parliamentary debates, judgments, etc. are regarded as important public documents. These documents are easily available and, to a large extent, also reliable. The public documents may be in the form of unpublished records and published documents. A good deal of information regarding socio-legal problems is now collected and released for publication by the Government.

Documentary Sources of Legal Material

(1) Central Legislative Material in Gazettes of India.— Generally, all current legislative materials such as Bills, Acts, Rules, Notifications, etc. are published in

the Gazette of India. The relevant portions of the 'Gazette of India' dealing with legislative material can be of much use for a researcher.

(2) Official Publications of Central Acts.—'Indian Code' is one of official publications containing all the Acts in force in India. 'Acts of Parliament' is another publication containing all the bare Acts passed in a particular year.

'General Statutory Rules and Orders' is the official publication of all the Rules, Orders and Notifications issued by the Central Government which are in force. To trace the material, the subject heading should be traced by consulting 'the Index to Indian Code'.

The Union Government publishes the reports of Various Committees and Commissions such as Law Commission of India, Commission for Scheduled Castes and Scheduled Tribes, Committee on Public Undertakings, Pay Commission, Finance Commission, Sarkaria Commission etc.

(3) State Gazettes.—The State statutes are published in the respective State gazettes. Some States have published State Codes.

(4) Private Publications.—the privately published case reports may have a section dealing with Central as well as State legislative materials. 'The All India Reporter' is one of such reputed legal periodicals. The publishers of 'All India Reporter' have published 'AIR Manuals' in multiple volumes. These volumes contain Central and State legislative materials. Madras Law Journal has also published a manual known as Civil Court Manual.

(5) Departmental Publications.—A few Government Departments do publish manuals from time to time giving the latest rules and notifications on their respective subjects. 'Central Excise Manual', 'Civil Services Manual', 'Customs Manual', 'Income Tax Manual', Foreign Exchange Manual' are some of them to be mentioned.

(6) Delegated legislation.—statutory materials concerning delegated legislation can be found in the 'Gazette of India' and State Gazettes.

(7) The publications like 'Constituent Assembly Debates', 'Lok Sabha and Rajya Sabha Debates' may offer information regarding the pre-legislative discussions in the research area.

(8) 'The Federal Court Reports, (1939-50) and 'Supreme Court Reports' (since 1950) published the cases decided by them. Private publications like "All India

Reporter', 'Supreme Court Journal', 'Supreme Court Cases' also report the case decisions of the Supreme Court. The case decisions of High Courts are also published in 'All India Reporter', Madras Law Journal, Bombay Law Reporter, etc.

(9) Specialized Law Reporter.—The following are reports specialized on certain branches giving information on specialized branches

(i) Labour Law Journal

(ii) Labour and Industrial Cases

(iii) Industrial Court Reporter

(iv) Criminal Law Journal

(v) Income Tax Reports

(vi) Company cases and Sales Tax cases, etc.

(10) Contribution of Individual Academicians.—such as— (i) Indian Legal Materials (1970) and Law Library Administration and Reference (1972) by H.C. Jain published by Indian Law Institute, New Delhi.

(11) Academic Law Journals.—"The Journal of Indian Law Institute", 'Indian Journal of International Law' are some of the journals which carry research articles. 'Academy Law Review', 'The Administrator', 'Banaras Law Review', 'Civil and Military Law Journal', etc. also belong to this category.

(12) 'Citations' and 'digests' help a researcher to locate topic-wise materials. The A.I.R. published Fifty Years Digests (1901-1950) and Fifteen Years Digests (1951-1965) etc. Income Tax Digest, Company Law Digest, Labor Law Digest etc. are some of the Digests which are specialized in the particular fields.

(13) 'Index to Legal Periodical' and 'Index to Foreign Legal Periodicals' may help the researcher to find the article relevant to his research and locate the name of the journal, volume and number in which that has been published.

(14) Law Libraries are the workshops to the legal researchers. Law library is not just a place where books and periodicals are housed, but it is a place where books are classified and placed in an orderly manner so as to provide easy access to the researchers.

Importance of Documents

(1) They can help to save time, money and energy. There is no need to purchase books. There is no need to go from place to place as they are available in a library

(2) Data is collected periodically, making the establishment of trends over time possible.

(3)The documentary sources does not require the cooperation of the individuals about whom the information, is desired.

(4)There will be no scope for the bias of the investigator.

(5)Available records may be used to supplement or to check information gathered specifically for the purpose of a given investigation.

(6) Past event can be known from the documentary source.

(7) They can be quoted as authoritative.

Limitations of Documentary Data

(1) Non-reliability of data.—It may be that the data might have been deliberately twisted because the researcher had a stake in a particular result or he was not equipped with the knowledge of methodology.

(2) Non-suitability of data.—Even if the data is accurate, it may not be suitable for the purpose of present study. The data may be old and out of date.

(3) Lack of direct contact.—The dependence on documents leads to lack of direct contact with the people.

12.3.4 Case Law as a Source of Law

The legal practitioner, judge, researcher of law have to involve in search of law to be applied to a case in hand because “no lawyer knows more than a relatively infinitesimal part of the law, nor does any judge”. But they have to know how to find law and where to find law.

Lawyers draw relevant proposition of law to be applied in a case in hand from two important sources: the judgments made by higher courts, i.e., the precedents and the legislations. One cannot find out a law applicable to a fact situation covered by a single source of law. Often the legal proposition to be applied in a

fact situation cannot be drawn from a particular source of law. A sound knowledge in substantive and procedural laws enables a lawyer to identify relevant facts of a case from a mountain of facts made available to him by a client. On the identification of relevant facts and the law to be applied thereto a lawyer uses his logic to correlate them.

A precedent is primarily a case law which serves as an authority for deciding a similar case. In many instances, case-laws have played an important part in the interpretation of statutes. Case-law consists of the rules and principles stated and acted upon by judges in giving decisions. In a system based on case-law, a judge in a subsequent case has to decide the case before him in the same way as that in which the previous case was decided unless he can give a good reason for not doing so. That means, cases must be decided in the same way when their material facts are the same. Of course, it does not require that all the facts should be the same.

Case law consists of the rules and principles stated and acted upon the judges in giving decisions. The case laws are the necessary subject-matter in any doctrinal enquiry because the law declared by Supreme Court and High Courts binding the subordinate courts. The Indian law is largely a system of case law. That is the decision in a particular case constitutes 'precedent'. According to the doctrine of precedent, it is not everything and by a judge when giving judgment that constitutes precedent. But only the reason for the decision given in the judgment constitutes precedent. So, the reason stated in the judgment of an appeal case becomes a necessary subject-matter of inquiry and analysis by a lawyer.

Case laws are the secondary source of data to the researchers. While reading the case laws, the researcher may come across a problem of legal issue and he can form a hypothesis, run an empirical inquiry and thus conduct the research.

Case laws are the evidential source for the arguments in deductive analysis. The lawyers, judges and researchers use case laws for their logical argumentation. Thus, the case laws become the documentary source of data in legal studies.

12.3.4.1 Case Study Method

The case study method is very popular form qualitative analysis and involves a careful and complete observation of a social unit, be that unit a person, family, an institution, a cultural group or even the entire community. It is a method of study in depth rather than breadth. The case study places more emphasis on the full

analysis of a limited number of events or conditions and their interrelations. The case study deals with the processes that take place and their inter relationship.

According to H. Odom, "the case study method is a technique by which individual factor whether it is a institution or just an episode in the life of an individual or a group is analyzed its relationship to other in the group". Burgess has used the "Social microscope" for the case study method. Pauline v. young describe case study as comprehensive study of a social unit be that unit a person, group, a social institution a district or community".

Characteristics of case study method -The important features of the case study method are:

i) Under this method the researcher can take one single social unit or more of such units for his study purpose.

ii) Selected unit is studied intensively.

iii) In this method we make complete study of the social unit covering as facts.

iv) Under this unit, the approach happens to be qualitative not quantitative.

v) In this method an efforts is made to know the mutual inter relationship of casual factors.

vi) Under this method the behavior pattern of the concerning unit is studied directly and not by an indirect and abstract approach.

vii) Case study method results in fruitful hypotheses along with the data which may be helpful in testing them, and thus it makes the generalized knowledge to set richer and richer.

Evolution and scope:

The case study method is widely used systematic field research technique in sociology. The credit for introducing this method to the field of social investigation goes to Frederic Le Play who used it as a hand-maiden to statistics in his study of family budgets. Herbert Spencer was the first to use case material in his comparative study of different cultures. Dr. William Healy resorted to this method in his study of juvenile delinquency, and considered it a better method over and above mere use of statistical data. Similarly anthropologists, historians, novelists and dramatist have used this method concerning problems pertaining to their areas of interests. Even management experts use case study methods for getting

clues to several management problems. In brief, case study method is being used in several disciplines.

Assumptions:

The case study method is based on several assumptions. The important assumptions are :

- The assumptions of uniformity in the basic human nature in spite of the fact that human behavior may vary according to situation.
- The assumption studying the natural history of the unit concern.
- The assumption of the comprehensive study of the unit concerned.

Main Phases:

i) Recognition and determination of the status of the phenomenon to be investigated or the unit of attention.

ii) Collection of data, exemption and history of the given phenomenon.

iii) Diagnosis and identification of casual factors as basis for remedial or development treatment.

iv) Application of remedial measures.

v) Follow up programme to determine effectiveness of the treatment applied.

Advantages of case study method:

i) The case study method enables us to understand fully the behavior pattern of the concerned unit:

ii) Through case study researcher can obtain a real and enlightened record of personal experiences and motivations that drive him to action along with the forces that direct him to adopt a certain pattern of behavior.

iii) This method enables the researchers to trace out the natural history of the social unit and its relationship with the social factors and the forces involved in its surrounding environment.

iv) It helps in formulating relevant hypotheses along with the data which may be helpful in testing them.

v) This method facilitates intensive study of social units.

vi) Information collected under the case study method helps a lot to the researcher in the task of constructing the appropriate questionnaire or schedule for the said task requires through knowledge of the concerning universe.

vii) The use of different methods such as depth interviews, questionnaires, documents, study reports of individuals, letters and the like is possible under the case study method.

viii) The case study method is alternatively known as “mode of organizing data.”

ix) Case study method enhances the experiences of the researcher and this in turn increases his analyzing ability and skill.

x) This methods makes possible the study of social changes.

Limitations:

i) Case situations are seldom comparable.

ii) It is not a significant scientific data.

iii) Dangers of false generalization is always there.

iv) It consumes more time and require lot of expenditure.

v) The case data are often vitiated.

vi) Case study method is based on several assumptions.

vii) Case study method can be used only in a limited sphere.

viii) Response of the investigator is an important limitations of the case study method.

12.3.5 JURISTIC LITERATURE

When pursing a legal research the person should keep in mind the importance of judicial writings on the concerned subject or topic. There are number of books of foreign and Indian Authors who influenced the legislatures to make law, rules and policies. Judges like justice Krishna Iyer P.N. Bhagwati on Human Rights. Upendra Bakshi, Subba Rao judicial writing of Gajender Gadkar on Public interest litigation Patanzali Shastri on Constitutional matters and the views and opinion in the form of writing play a very important role in Research work.

Different commentaries and Digest Just like 'Edward Coke'. Mensfield, Bentham, Austin salmond also good 'source to gain' knowledge for a Research. The documents express the inner-most feelings of the heart of the writer and at times. These documents throw light on such aspects of high as would have been difficult to know through observation or interview. They, generally are more realizable both as regards one description of the subject as well as the feelings of the writer. They contain the perfect type of socio-legal material necessary to characterize the life of social group.

A legal writing is anything that contains matters of socio-legal importance. Most of the writings are written in the past when the phenomenon took place and are not specially prepared for the study of the present problem.

Not only judicial writings but personal documents include all such written material is written by an individual to narrate his views upon personal. Relationship or social phenomena. Most of these writings are from personal point of view. But & researcher should take proper precautions to understand it and its consequences because there as some draw-backs of the writings which are mentioned below.

Unreliability of the data man be there due to personal Bias of the writes. Writings do not provide a representative sample and the documents not be considered as a valid one. The availability of writing may be difficult if the y contain some confessions which are like to damage his reputation.

Judicial documents also supply a huge fund of information. They deal with different subjects and are usually published by various institutions, organizations and associations records, parliamentary debates, judgments etc one regarded important public documents. These writings are easily available and to a large extend, also reliable. A good deal of information regarding socio-legal problems is now. Collected and released for publication by the Government.

These personal documents including life-histories of the people in general and important persons in particular, public and private documents like diaries, confidential files, Literature, Newspapers etc. are important sources. Apart from this, Articles, Papers and Books on legal history and Constitutional history are equally important.

Compilation of List of Reports or Special Studies: The Legal Research Report is the statement that contains in Brief the procedure adopted and the findings aimed at by the researcher of a legal. Problem a legal report is not a complete description of work done by the researcher. It is only I brief statement of most

significant facts that are necessary for understanding the generalization drawn by the investigator. After the collected data have been analyzed and interpreted and various generalizations have been drown, the report has to be prepared. It is the last phase of the research.

A vast planning and preparation is necessary for writing the report. Writing the report requires considerable through effort patience and penetration. Writing a legal research report is a technical activity which demands skill and patient from the researcher. The report should focus on the target audience; report should be simple, interesting and lucid. Only hard and patient work on the facts, careful and critical assessment and intelligent planning of the organization of the report can facilitate the communication. There is no standard criterion for organization of legal research report.

Reporting the research requires on order of skills come what different from these needed in the earlier phases of research. The chief purpose of a report is communication with the readers. It should contain the following aspects:

Reporting the research requires an order of skills come what different from these needed in the earlier phases of research. The chief purpose of a report is communication with the readers. It should contain the following aspects.

A. The problem of research.
B. The research procedure
C. The result of outcome
D. The importance of findings

R.L. Ackoy offered a model representing the process of inquiry which illustrates both the problem salvation and communicative phases. The communication model of inquiry involves four communicants (1) The consumer who has a problem (2) The research scientists, (3) The observer (4) The observed. These four communicants need not be four district individuals; rather they refer to four communicative roles.

The report representation makes it quite clear that the problem solving phases of inquiry are –

1. Existence of a problem
2. Formulation of the problem and designing
3. Movement into the environment in which observations one to be made (data-collection)
4. Recording of data
5. Treatment of data (Analysis and interpretation)

6. Reporting the results.
7. Action based on the reported results to solve the problem.

Purpose or Importance of a Report: the purpose of a report is to the interested persons the whole result of the study in sufficient details in orderly manner. The main aim of the thesis writer is accuracy and truth. He should himself to the validity of conclusions the purpose of report is thus the spread of knowledge.

2.Report also crates grown & for hypotheses and leads to further research on the same or allied problems the report will generally be conformed to the objects of the study of the problem. Suggestions will be given to researcher to studies the items of gaps on additional items which are traced out in the present study.

3.The Research is sometimes undertaken at the instance of third parts which are interested in the problem. The report of such problem is not meant for general public and for their practical purposes. The sponsored persons are simply interested in the results and findings only.

12.4 SUMMARY

The formation of a topic into a research problem is the first step in a scientific enquiry. The term 'Problem" comes from the Greek word "Proballein' which means anything through forward; a question proposed for solution; a Matter stated for examination. A problem, in simpler words, is some difficulty experienced by the Researcher in a theoretical or Practical Situation According to John Dewey; the Need of clearing up confusion, of straightening out an ambiguity, of overcoming obstacles, of covering the gap between things as they are and as they may be when transformed, is, in germ a problem.

Public documents also supply a huge fund of information. They deal with different subjects and are usually published by various institutions, organizations and associations. Records, parliamentary debates, judgments, etc. are regarded as important public documents. These documents are easily available and, to a large extent, also reliable. The public documents may be in the form of unpublished records and published documents. A good deal of information regarding socio-legal problems is now collected and released for publication by the Government.

The legal practitioner, judge, researcher of law have to involve in search of law to be applied to a case in hand because “no lawyer knows more than a relatively infinitesimal part of the law, nor does any judge”. But they have to know how to find law and where to find law.

Lawyers draw relevant proposition of law to be applied in a case in hand from two important sources: the judgments made by higher courts, i.e., the precedents and the legislations. One cannot find out a law applicable to a fact situation covered by a single source of law. Often the legal proposition to be applied in a fact situation cannot be drawn from a particular source of law. A sound knowledge in substantive and procedural laws enables a lawyer to identify relevant facts of a case from a mountain of facts made available to him by a client. On the identification of relevant facts and the law to be applied thereto a lawyer uses his logic to correlate them.

A precedent is primarily a case law which serves as an authority for deciding a similar case. In many instances, case-laws have played an important part in the interpretation of statutes. Case-law consists of the rules and principles stated and acted upon by judges in giving decisions. In a system based on case-law, a judge in a subsequent case has to decide the case before him in the same way as that in which the previous case was decided unless he can give a good reason for not doing so. That means, cases must be decided in the same way when their material facts are the same. Of course, it does not require that all the facts should be the same.

Case law consists of the rules and principles stated and acted upon the judges in giving decisions. The case laws are the necessary subject-matter in any doctrinal enquiry because the law declared by Supreme Court and High Courts binding the subordinate courts. The Indian law is largely a system of case law. That is, the decision in a particular case constitutes ‘precedent’. According to the doctrine of precedent, it is not everything and by a judge when giving judgment that constitutes precedent. But only the reason for the decision given in the judgment constitutes precedent. So, the reason stated in the judgment of an appeal case becomes a necessary subject-matter of inquiry and analysis by a lawyer.

Case laws are the secondary source of data to the researchers. While reading the case laws, the researcher may come across a problem of legal issue and he can form a hypothesis, run an empirical inquiry and thus conduct the research.

Case laws are the evidential source for the arguments in deductive analysis. The lawyers, judges and researchers use case laws for their logical argumentation. Thus, the case laws become the documentary source of data in legal studies.

The case study method is very popular form qualitative analysis and involves a careful and complete observation of a social unit, be that unit a person, family, an institution, a cultural group or even the entire community. It is a method of study

in depth rather than breadth. The case study places more emphasis on the full analysis of a limited number of events or conditions and their interrelations. The case study deals with the processes that take place and their inter relationship.

According to H. Odum, “the case study method is a technique by which individual factor whether it is a institution or just an episode in the life of an individual or a group is analyzed its relationship to other in the group”. Burgess has used the “Social microscope” for the case study method. Pauline v. young describe case study as comprehensive study of a social unit be that unit a person, group, a social institution a district or community”.

The case study method is widely used systematic field research technique in sociology. The credit for introducing this method to the field of social investigation goes to Frederic Le Play who used it as a hand-maiden to statistics in his study of family budgets. Herbert Spencer was the first to use case material in his comparative study of different cultures. Dr. William Healy resorted to this method in his study of juvenile delinquency, and considered it a better method over and above mere use of statistical data. Similarly anthropologists, historians, novelists and dramatist have used this method concerning problems pertaining to their areas of interests. Even management experts use case study methods for getting clues to several management problems. In brief, case study method is being used in several disciplines.

12.5 SUGGESTED READINGS

1.Dr. H.N. Tiwari, Regal Research Methodology, Reprint, 2006.
2.Dr. S.N. Myaneni Legal Research Methodology, Reprint, 2008.
3.C.R. Kothari Research Methodology: Methods and Techniques. Reprint, 1994

12.6 TERMINAL QUESTIONS

1. **How formulation of research problem is made? Discuss**
2. **How case law is used in data analysis?**
3. **Write an essay on Juristic Literature?**
4. **Write short notes on the following**
   (a) hypothesis (b) Research Design

LL.M. Part-2

Subject: LEGAL EDUCATION AND RESEARCH METHODOLOGY

Block-IV- Preparation of the Research Design

Unit-13- Use of historical and comparative research materials; Use of observation studies; Use of questionnaires/interview

STRUCTURE

13.1. INTRODUCTION

Research work is not something which can be completed in one stroke on in one step. It consists of a number of closely related activities which very often overlap. At the very outset the researcher must choose the area in which he wants to carry on research. In the field of Law the researcher has a very wide scope. He can select any area. After selecting the area he is required to select topic or subject for his study.

A research cannot said to be duly carried out unless the relevant materials have been examined. The collection of relevant materials is most difficult and comprehensive work and requires lot of energy, attention as well as patience. The collection of material depends upon the research design, selected by the research. In this chapter we will discuss various tools and techniques for the collection of data, with Pros x cons of each method so that the data be analysed.

13.2 OBJECTIVES

Research in common parlance refers to a research for knowledge. Research is a scientific and systematic search for pertinent information of a specific topic. In fact research is an art of scientific investigation. In the field of law research occupies a very significance portion. The purpose of research is to discover answers to questions through application of scientific procedures. The objective of this lesion is to define the research design. One of the design decision will be the what types of tools and techniques can be used for the collection of data and seeking answers to the question which will be useful in the research or study of a

specific topic. Various methods are discussed in this lesion which a researcher can use while doing research in the field of law.

13.3 SUBJECT

13.3.1 Observation Method

The observation method is the most commonly used method specially is studies relating to behavioural sciences. In a way we all observe things around us, but this sort of observation is not scientific observation, observation becomes a scientific tool and the method of data collection for the researcher, when it serves a formulated research purpose, is systematically planned and recorded and is subjected to checks and controls on validity and reliability. Under the observation method, the information is sought by way of investigator's own direct observation without asking from the respondent. The main advantage of this method is that subjective bias is eliminated, if observation is done accurately. Secondly, the. information obtained under this method relates to what is currently happening. Thirdly, this method is independent of respondent's willingness to respond. This method is partially suitable in studies which de1 with subject who are not capable of giving verbal reports of their feelings for one reasons or the other.

13.3.1.1 Limitations of observation method:

Observation method has various limitations. Firstly, it is an extensive method. Secondly, the information provided by this method is very limited. Thirdly, sometimes unforeseen factors may interfere with the observational talk.

13.3.1.2 Kinds of observation

(a) Structure observation: In case the observation is characterized by a careful definition of the units to be observed, the style of the recording the observed information, standardized conditions of observation and the selection of pertinent data of observation, then the observation is called as structured observation.

(b) Unstructured Observation: when the observation to take place without these characteristics to be thought of in advance, the same is termed as unstructured observation.

(c) Participant observation : If the observer observe by making himself, more or less, member of the group he is observing so that he can experience what the members of the group experience, the observation is called as the participant observation.

There are several merits of the participant type of observation:

- the researcher is enabled to record the natural behaviour of the group.
- The researcher can ever gather information which can not easily be obtained if he observes in a disinterested fashion.
- The researcher can even verify the truth of statements made by information in the context of a questionnaire or a schedule.

d) Non-participant observation: When the observer observes as a detached emissary without any attempt on has part to experience through participation what others feel, the observation of this type is termed as non-participant observation.

e) Controlled observation: When observation takes place according to definite pre-arranged plans, involving experimental procedure, the same is termed as controlled observation. In controlled observation we use mechanical instruments as aids to accuracy and standardization. Controlled observations takes place in various experiments that are carried out in a laboratory.

f) Uncontrolled observation: If the observation takes place in the natural setting, it may be termed as uncontrolled observation. The main aim of this type of observation is to get a spontaneous picture of life and persons. This observation is resorted to in case of exploratory researchers.

13.3.2 The Interview Technique

To most people, the word Interview' carries a specific connotation. It is invariable interpreted inter context of Job-seeking, where in a person is interviewed for assessment of his capabilities for a particular job. In media such as newspapers, magazines, radio and television, one come across interviews held with prominent personalities in which they are induced to talk about themselves and about their experiences and views on particular issues. But the idea that an ordinary person could be talked by a stranger who, in a matter of fact manner, in one sided conversation, would seek one's views and opinions on topics on which may be of deep concern to oneself all in the pursuit of some abstract scientific goal — is quite a novel one for most people in India. Interview is one of the most powerful

techniques to yield sociological data and highly adaptable in working out various research problems and in dealing with different segments of the society.

Interviews in methodology books have been categorized as being either structured or non-structure. The brief interview in which the interviewer seeks information on a limited number of specific topics by referring to questionnaire which carries simple yes — no type of closed ended questions, has been described as the structured interview, on the other hand, fairly long encounter in which the interviewer talks to the respondent, aiming to draw out from him lengthy and detail articulation of his views and experiences, on the basis of written or unwritten list of open ended question pertaining to the research the me, is termed as the non-structured interview.

The interviewing method of collecting data involves presentation of oral — verbal stimuli and reply in oral — verbal responses. This method can be used through personal interviews, and if possible, through telephone interviews.

13.3.2.1 Personal Interview

This method requires a person known an interviewer asking questions generally in a face to contact to the other person. This sort of interview may be in the form of adequate personal investigation or it may be indirect oral investigation. In the case of a direct personal investigation the interviewer has to collect the information personally from the sources concerned. But in certain cases it may not possible to contact directly the person concerned in such cases an indirect oral examination can be conducted under which the in viewer has to cross-examine other persons who are supposed to have knowledge about the problem under investigator and the information, obtained is recorded. Most of the commission and committees appointed by the government to carry on investigation make use of this method.

Focused interview is a focus attention on the given expertise of the respondent and its effects. Under it the interviewer has the freedom to decide the manner and sequence in which the questions would be asked and ha also freedom to explore reasons and motives: the main task of the interviewer in case of focussed interview is to confine the respondent to a discussion of issues with which he seeks conversance, such interviews are used generally in the

development of hypotheses and constitute a major type of un structured interviews.

The clinical interview is concerned with broad underlying feelings or motivations or with the course of individual's life experience. The method of eliciting information under it is generally left to the interviewer's discretion.

In case of non directive fine interview the interviewer functions is simply to encourage the respondent to talk about the given topic with a base-minimum of direct questioning. The interviewer often acts as a catalyst to a comprehensive expression of the respondent's feelings and beliefs and of the frame of reference within which such feelings and beliefs takes on personal significance.

13.3.2.2 Merits of interview Techniques

The chief merits of the interview technique are

i. More information and that too in greater depth can be obtained,
ii. Interviewer by his own skill can overcome the resistance, if any of the respondents: the interview method can be made to yield an almost perfect sample of the general population.
iii. There is greater flexibility as the opportunity of restructure questions is always there, especially is case of unstructured interviews.
iv. Observation method can as well be applied to recording verbal answers to various questions.
v. Personal information can be obtained easily.
vi. Samples can be controlled more effectively.
vii. The interviewers can usually control which person (s) will answer the questions.
viii. The interviewer may catch the information off-guard.
ix. The language of the interview can be adopted to the ability or educational level of the person interviewed and as such misinterpretation concerning questions can be avoided.
x. The interviewer can collect supplementary information about the respondent's personal characteristic and environment which is often great value in interpreting results.

13.3.2.3 Demerits of Interview Technique

There are also certain weaknesses of this method which are as follows:

i. It is very expensive method.
ii. There remains the possibility of the bias of interviewer as well as that of the respondent.

iii. Certain types of respondents such as important officials or executives, people in high income groups may not be easily approachable and to that extent data may prove inadequate.
iv. The method is relatively more time consuming.
v. The presence of the interviewer on the spot may over-stimulate the respondent, some time even to the extent that he may give imaginary information just to make the interview interesting.
vi. Interviewing at times may also introduce systemic errors.
vii. The organization required for selecting, training and supervising the field – staff.
viii. Effective interview pre supposes proper rapport with respondents that would facilitate the free and frank responses.

13.3.2.4 Telephonic Interview

This method of collecting information consists in contracting respondents on telephone itself. It is not a very widely used method, but plays important part in industrial survey.

(a) Merits

The chief merits of telephonic interview are :

i) It more flexible

ii) It is faster than other methods

iii) It is cheaper than personal interview

iv) Recall is easy; call backs are simple and economical

v) There is higher rate of responses

vi) Replies can be recorded

Vii) Inter viewer can explain require merits more easily

viii) No field staff is required

(b) Demerits

i) Little time is given to respondent

ii) Surveys are restricted to respondents who have telephone facilities

iii) Extensive geographical coverage may get restricted

iv) It is not suitable for extensive surveys

v) Possibility of the bias of the interviewer is relatively more

vi) Questions have to spot and to the point, pobes are difficult to handle.

13.3.3 Questionnaire

13.3.3.1 Meaning of Questionnaire

Questionnaire is a printed list of questions sent through mail to respondents to be returned by respondents after filling up the questionnaire. In the questionnaire, as the name indicates, there is a set of selected questions whose answers the research seeks from respondent in order to gain knowledge about specified matter. According to Lundberg, Fundamentally, the questionnaire is a set of stimuli to which literate people are exposed in order to observe their verbal behaviour under these stimuli." According to WJ. Gode and R.K. Hatt, "in general, the work questionnaire refers to a device for securing answers to questions by using a form which the respondent fills in himself."

13.3.3.2 Formulation of questionnaire

The following consideration should be kept in mind while formulating questionnaire

(a) Appeal: The appeal should be short, clear and direct establishing the genuineness of the research and its utility for all concerned. The long and wordy appeals tax the patience of the respondents. Appeal must cover the following points

(i) The appeal must state clearly the individuals or organizations undertaking the research.

(ii) The appeal should set forth in clear terms the aim and purpose of the proposed study and also the benefits likely to accrue from it.

(iii) The appeal should make clear, why it is important for the respondents to fill it up.

(iv) Appeal offer to the respondents that their names will be kept anonymous and that all steps will be taken to ensure no one comes to know anything about them.

(b) Instructions for filling up the questionnaire:

The questionnaire must carry a list of instructions for filling it up and dispatching it.

(c) Form of the questionnaire: The get up and appearance of the questionnaire should be attractive. It must be printed on high quality paper. The sentences by which the questions are asked should be direct and forceful.

(d) Clarity of questions: Formulate the questions clearly and precisely, without any ambiguity

(e) Serial Order of Questions: The question should be broken up into classes and each class should have a number of questions which are mutually interrelated.

(f) Attractiveness: Upon the attractiveness of the questionnaire depends to a large extent the success of the questionnaire.

13.3.3.3 Preliminary test of Questionnaire:

It is advisable to try out questionnaire on a select group before making it final. This calls for preliminary testing of the questionnaire. For preliminary test following points should be kept in mind

i. The questionnaire to be tested should be complete in all respects.
ii. If, after preliminary test, some drastic changes are made in the questionnaire, the revised questionnaire must be re-tested.
iii. The respondents, to whom the questionnaire is mailed must be representative of the class whose problems are discussed in the questionnaire.
iv. If the preliminary test show following responses, it should be considered defective (a) If it is unreturned (b) If the majority of questions are wrongly answered. (c) If the majority of questions remain unanswered (d) If the different persons are giving varying answers to the mutually contradictory.

13.3.3.4 Methods of getting response:

The self addressed and prepaid envelope must be attached with questionnaire

i) Thus incentives must be given

ii) The reminders must be issued at adequate intervals.

iii) The time allowed between receipt and returns of the questionnaire should neither be too long nor too short.

13.3.3.5 Limitations of Questionnaire:

Questionnaire method is limited in value and application. It cannot be used in every situation and its conclusion is not always reliable. Followings are the limitations of questionnaire method i) Limited response; ii) Lack of personal contact iii) Useless in depth problem; iv) Possibility of wrong ensures in-depth problems; v) Illegibility; and vi)Incomplete response.

Significance of Questionnaire:

Following are the Merits

i) Economical ; ii) Time saving ; iii) Most reliable in special cases

13.4 SUMMARY

Research work is not something which can be completed in one stroke on in one step. It consists of a number of closely related activities which very often overlap. At the very outset the researcher must choose the area in which he wants to carry on research. In the field of Law the researcher has a very wide scope. He can select any area. After selecting the area he is required to select topic or subject for his study.

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Interviews in methodology books have been categorized as being either structured or non-structure. The brief interview in which the interviewer seeks information on a limited number of specific topics by referring to questionnaire which carries simple yes — no type of closed ended questions, has been described as the structured interview, on the other hand, fairly long encounter in which the interviewer talks to the respondent, aiming to draw out from him lengthy and detail articulation of his views and experiences, on the basis of written or unwritten list of open ended question pertaining to the research the me, is termed as the non-structured interview.

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ii. Interviewer by his own skill can over come the resistance, if any of the respondents : the interview method can be made to yield an almost perfect sample of the general population.
iii. There is greater flexibility as the opportunity of restructure questions is always there, especially is case of unstructured interviews.
iv. Observation method can as well be applied to recording verbal answers to various questions.
v. Personal information can be obtained easily.
vi. Samples can be controlled more effectively.
vii. The interviewers can usually control which person (s) will answer the questions.
viii. The interviewer may catch the information off-guard.
ix. The language of the interview can be adopted to the ability or educational level of the person interviewed and as such misinterpretation concerning questions can be avoided.
x. The interviewer can collect supplementary information about the respondent's personal characteristic and environment which is often great value in interpreting results.
xi.

There are also certain weaknesses of this method which are as follows:

i. It is very expensive method.
ii. There remains the possibility of the bias of interviewer as well as that of the respondent.

iii. Certain types of respondents such as important officials or executives, people in high income groups may not be easily approachable and to that extent data may prove inadequate.
iv. The method is relatively more time consuming.
v. The presence of the interviewer on the spot may over-stimulate the respondent, some time even to the extent that he may give imaginary information just to make the interview interesting.
vi. Interviewing at times may also introduce systemic errors.
vii. The organization required for selecting, training and supervising the field – staff.
viii. Effective interview pre supposes proper rapport with respondents that would facilitate the free and frank responses.

Questionnaire is a printed list of questions sent through mail to respondents to be returned by respondents after filling up the questionnaire. In the questionnaire, as the name indicates, there is a set of selected questions whose answers the research seeks from respondent in order to gain knowledge about specified matter. According to Lundberg, Fundamentally, the questionnaire is a set of stimuli to which literate people are exposed in order to observe their verbal behaviour under these stimuli." According to WJ. Gode and R.K. Hatt, "in general, the work questionnaire refers to a device for securing answers to questions by using a form which the respondent fills in himself."

Formulation of questionnaire

The following consideration should be kept in mind while formulating questionnaire

(a) Appeal: The appeal should be short, clear and direct establishing the genuineness of the research and its utility for all concerned. The long and wordy appeals tax the patience of the respondents. Appeal must cover the following points

(i) The appeal must state clearly the individuals or organizations undertaking the research.

(ii) The appeal should set forth in clear terms the aim and purpose of the proposed study and also the benefits likely to accrue from it.

(iii)The appeal should make clear, why it is important for the respondents to fill it up.

(iv) Appeal offer to the respondents that their names will be kept anonymous and that all steps will be taken to ensure no one comes to know anything about them.

(b) Instructions for filling up the questionnaire:

The questionnaire must carry a list of instructions for filling it up and dispatching it.

(c) Form of the questionnaire: The get up and appearance of the questionnaire should be attractive. It must be printed on high quality paper. The sentences by which the questions are asked should be direct and forceful.

(d) Clarity of questions: Formulate the questions clearly and precisely, without any ambiguity

(e) Serial Order of Questions: The question should be broken up into classes and each class should have a number of questions which are mutually interrelated.

(f) Attractiveness: Upon the attractiveness of the questionnaire depends to a large extent the success of the questionnaire.

Preliminary test of Questionnaire:

It is advisable to try out questionnaire on a select group before making it final. This calls for preliminary testing of the questionnaire. For preliminary test following points should be kept in mind

i. The questionnaire to be tested should be complete in all respects.
ii. If, after preliminary test, some drastic changes are made in the questionnaire, the revised questionnaire must be re-tested.
iii. The respondents, to whom the questionnaire is mailed, must be representative of the class whose problems are discussed in the questionnaire.
iv. If the preliminary test show following responses, it should be considered defective (a) If it is unreturned (b) If the majority of questions are wrongly answered. (c) If the majority of questions remain unanswered (d) if the different persons are giving varying answers to the mutually contradictory.

13.5. SUGGESTED READINGS

1.Dr. H.N. Tiwari, Regal Research Methodology, Reprint, 2006.
2.Dr. S.N. Myaneni, Legal Research Methodology, Reprint, 2008.
3.C.R. Kothari, Research Methodology: Methods and Techniques. Reprint, 1994

13.6 TERMINAL QUESTIONS

1. Explain the merits and demerits of interview method.
2. Examine the, merits and limitations of the observation method in collecting material.
3. What are the guiding considerations in the construction of questionnaire? Explain

LL.M. Part-2

Subject: LEGAL EDUCATION AND RESEARCH METHODOLOGY

Block-IV-Preparation of the Research Design

Unit-14- Use of case studies; Sampling procedures -design of sample, types of sampling to be adopted; Use of scaling techniques.

STRUCTURE

14.1. INTRODUCTION

A sample design is a definite plan for obtaining a sample from a given population. It refer to the techniques or the procedure the researcher would adopt in selecting items for the sample. Sample design may lay down the number of items to be included in the sample. Sample design is determined before data is collected. There are many sample designs from which a researcher can choose one sample design. Some designs are relatively more precise and easier to apply than others. Researcher must prepare a sample design which should be reliable and appropriate for his research study.

14.2. OBJECTIVES

The objective of this lesson is to define the sampling design. To explain different parts of sampling design, what aspects should be considered by the researcher while opting for sampling design. To describe different kinds of sampling design and its importance in the research work.

14.3. SUBJECT

14.3.1 Case study method

According to H. Odum, “the case study method is a technique by which individual factor whether it is a institution or just an episode in the life of an individual or a group is analyzed its relationship to other in the group”. Burgess has used the “Social microscope” for the case study method. Pauline v. young describe case study as comprehensive study of a social unit be that unit a person, group, a social institution a district or community”.

14.3.1.1 Use of case study method

i) The case study method enables us to understand fully the behaviour pattern of the concerned unit:

ii) Through case study researcher can obtain a real and enlightened record of personal experiences and motivations that drive him to action along with the forces that direct him to adopt a certain pattern of behaviour.

iii) This method enables the researchers to trace out the natural history of the social unit and its relationship with the social factors and the forces involved in its surrounding environment.

iv) It helps in formulating relevant hypotheses along with the data which may be helpful in testing them.

v)This method facilitates intensive study of social units.

vi) Information collected under the case study method helps a lot to the researcher in the task of constructing the appropriate questionnaire or schedule for the said task requires through knowledge of the concerning universe.

vii) The use of different methods such as depth interviews, questionnaires, documents, study reports of individuals, letters and the like is possible under the case study method.

viii) The case study method is alternatively known as “mode of organizing data.”

ix) Case study method enhances the experiences of the researcher and this in turn increases his analysing ability and skill.

x) This methods makes possible the study of social changes.

14.3.2 CENSUS AND SAMPLING METHODS

The primary purpose of the legal research is to discover principles that have universal application. For this, the data has to be collected and analysed. There are two methods of data collection, i.e., Census Method and Sampling Method.

Census method.—When the whole area or population of persons is contacted, the method is known as census method. Population is constituted of all the individuals, things, events, documents or observation, cases, etc. belonging to a designed category characterizing specific attributes which a particular study should principally cover. The type of collecting information from all units of a population is usually called census method. If the size of the units of the study is a small one, census method is generally used to collect data. In socio-legal study the time, money and men required for the purpose is so fully large that it is not practicable to undertake such a study. Exhaustive and intensive study is also rendered impossible because of the large number. Under these circumstances, a small portion is selected for analysis from which conclusions are drawn. This selected portion is called the ‘Sample’.

Sampling method.—Most research studies are based on samples. When a small group is selected as representative of the whole it is known as sample method. The method of selecting for study a portion of the universe with a view to draw conclusions about the universe in toto is known as 'sampling'.

Goode and Hatt defined sample as "a smaller representation of large whole'. Nan Lin defines it as "a subject of cases from the population chosen to represent it'. Thus, the whole group from which the sample has been drawn is known as 'population' and the group selected for study is known as sample.

A population or universe is a set of large number of objects or the total number of conceivable observations of any kind or possessing some common specified characteristics.

The sample should represent the characteristics of the population as closely as possible like a reflection in a mirror to the original. Sampling is used when—

i. the researcher has to collect or gather information from a wider area;
ii. the researcher does not require cent percent accuracy;
iii. the population is homogeneous; and
iv. it is not possible to adopt census method.

14.3.2.1 Merits of Sampling

(1) Saving of time.—Comparatively smaller number of units are studied in sampling method and naturally it requires much less time than in census method.

(2) Less expensive.—Sampling method requires a small staff to collect the data and it requires less money.

(3) Detailed study.—When the units are less in number, a more minute observation and detailed study is possible.

(4) Accuracy of result.— In census method if there is mistake in data collection, the whole results go wrong. In sampling method, we can calculate the sampling error and make the study accurate.

(5) Administrative convenience.—A small sample is usually more convenient for an administrative point of view as the units of sample can be easily manageable.

(6) Impossibility of the use of census method.—When the universe is too vast and geographically scattered so that every unit cannot be contacted, the sampling method should be followed.

(7) Scientific base.—As the statically tools are being used in the sampling method, it has its scientific base.

14.3.2.2 Demerits of Sampling Method

(1) Chances of bias.—There may be bias in selection and thereby lead us to draw false conclusions. A bias in a sample may be caused either by faulty method of sampling or the nature of the phenomena itself.

(2) Need of specialized knowledge.—The use of sampling method cannot be made by everybody and anybody. It requires the knowledge of sampling technique, skill in calculation of sampling error, etc.

(3) Difficulties in sticking to sample.—While we collect data, we may be forced to change the units as per the changed circumstances. It is not easy to stick to it. When the units refuse to cooperate, we have to deviate from the selected sample.

(4) Less accuracy.—If the selected sample is not the true representative of the universe, the results will go wrong and there will be no use of the study.

(5) Impossibility of sampling.—When the whole universe is itself small in number and too heterogeneous, it is impossible to draw a representative sample.

14.3.2.3 Qualities of a Good Sampling Unit

Major characteristics of a good sample are :—

(1)It must be representative of the population. If the sample is not a representative, it will be considered as a biased sample.

(2) It must be adequate in size in order to be reliable.

(3) The unit should be clear, unambiguous and definite.

(4) The unit of sample should be suitable for the problem under study.

(5) The unit selected should be standardized if possible.

(6) The unit should be easily ascertainable.

(7) The unit of sample should contain independent character.

(8) It should have homogeneity character.

(9) The unit of sample should have the same chance for inclusion and be selected on the basis of mathematical law of chance.

(10) The samples selected should represent the different areas of the universe.

14.3.2.4 Procedure to Select a Sample

Following steps have to be taken in selecting the sample

(1) Preparation of source list.—We must have a clear idea of the universe or the whole group from which the sample is to be drawn. The universe should be a definite universe, i.e., the units can be definitely ascertained. The units of the definite universe should be listed out. This is called the source list. The source list should possess the following qualities :—

(i) The list should be exhaustive.

(ii) It should be up to date and valid.

(iii) It should contain full information about the units.

(iv) The units should not be repeated in the list.

(v) It should be suitable for that particular study.

(vi) It must be reliable.

(vii) It must be within the reach of the researcher.

(2) Deciding the sampling unit.—Before drawing a sample we have to decide the unit of sample. We have to decide which type of the following sample units to be selected

(i) Geographical units;

(ii) Structural units;

(iii) Social group units;

(iv) Individuals.

(3) Selecting the sampling techniques.—After deciding the sampling units to be selected from the source list, we must use one of the following sampling techniques to select the sampling units

(i) Purposive sampling;

(ii) Random sampling;

(iii) Cluster sampling;

(iv) Multi-stage sampling, etc.

14.3.2.5 Size of the Sample

The size of the sample is an important issue as it has a direct bearing upon accuracy, time, cost and administration of the research. According to **Panten**, 'An optimum sample is one which fulfils the requirements of efficiency, representativeness, reliability and flexibility." A large size of a sample is not insurance of its representativeness. Small sample properly selected may be much more reliable than large samples improperly selected. The size of sample is influenced by the following factors

(1) The nature of population.—If the universe is comparatively homogeneous (i.e., of the same characteristics) a small size of the sample may be sufficient. If the universe is heterogeneous (i.e., of different characteristics) the sample has to be essentially larger in size.

(2) Number of classes proposed.—If a large number of classes are to be formulated, the sample must be large enough. It will be suitable for statistical treatment.

(3) Nature of study.—If an intensive study is to be made continuously for a long time, large sample is unfit for the purpose as it requires very large finance and other resources. In case of general study, larger number of cases can be taken but if the study is of a technical nature, a large number may become difficult to manage.

(4) Practical considerations-Practical considerations such as availability of finance, time, number of trained field workers, etc. may also be taken as

important factors in deciding the size of the sample. The limitations of these resources necessarily limit the size of the sample.

(5) Standard of accuracy.—The larger the size of the sample, greater is the standard of accuracy or representativeness.

(6) Size of the schedule.—The size of the schedules and the nature of questions to be asked is also a limitation of the size of the sample. Larger the size of schedule, smaller is to be the size for proper administration.

(7) Nature of cases to be contacted.—If the cases are geographically scattered, a small sample is more suitable. If the refusal rate is high, a larger sample has to be selected.

(8) Type of sampling method used.—If absolute random sampling is used, a much larger sample is required. If stratified sampling is used, reliability can be achieved in a much smaller size.

In fact, no rigid number can be prescribed for an optimum size of the sample. The size of sample is entirely dependent on the nature of the problem.

14.3.2.6 Types of Sampling

Sampling methods are broadly divided into two types probability sampling and non-probability sampling.

(a) Probability Sampling

In this method, it is possible to state in advance the probability that any given unit will be included in the sample. Once such a probability model is set up, a mechanical procedure is devised to select elements from the population. The probability model is set up having in mind : (i) the type of the universe; (ii) characteristics of the units; and (iii) objectives of the study.

This method has the advantage of elimination of human bias in sampling. The sampling error in this method can be estimated. The random error decreases as the sample size increases. Through this method we can get always a good estimate of population. Estimates which are unbiased, consistent, efficient and sufficient are called good estimates. Statistical techniques can be used to test the hypothesis. The following are the probability sampling methods

(i) Random Sampling.—A simple random sample is selected in such a way that each person in the universe has an equal chance of being selected in the sample. According to Prater, "Random sampling is the form applied when the method of selection assures each individual or element in universe an equal chance of being-chosen." Random sampling is not the same as chance selection. The 'random' suggests a selection without any system of design but does not mean haphazard, careless or unplanned. It is also called 'proportionate sampling' because each class of item of sample is in the same proportion in the universe. When the universe is composed of different groups of extremely varied sizes, the method cannot be successfully used.

(ii)Systematic Sampling.—Systematic sampling requires that the population be accurately listed in such a way that each element of the population can be uniquely identified by its order. A systematic sample consists of the selection of each term from the list. Here sample is selected at every sampling interval. This method has an advantage over random sampling if neighboring observations resemble one another. This method serves almost the same purpose as stratification in distributing the sampling units more evenly over the entire population.

(iii) Stratified Random Sampling.— In this method, the population is first divided into a number of strata based on same characteristic, such as age, sex, educational level, etc. Then a simple random is taken from each stratum and such samples are brought together to form the total sample.

While simple random sample is quite representative, a stratified random sample is still more perfectly representative.

(iv) Cluster Sampling or Sub sampling.—A sampling procedure in which the sampling unit is a cluster of elements and after selecting a sample, cluster information is collected on each element in the sampled clusters is called cluster sampling. For example, for selecting burglars for study, we select some jails in each State by random sampling methods and information is collected from each burglar kept in that jail.

It is a type of sampling in which clusters of units are selected instead of elementary units. The sampling of clusters from the population is done by simple or stratified random sampling methods. From these selected clusters, the constituent elements are sampled out.

(b) Non-probability Sampling

In this technique, sample is not based on the probability with which a unit can enter the sample but by other consideration such as common sense, experience, intention and expertise of the sampler. The main defect of such samples is that they are biased samples. The following techniques represent the non-probability sampling.

(i) Representative Sampling.—This sampling technique is based on intuition and commonsense but not on probability. The sample selected in general represents characteristic variables and may not represent the universe with respect to other variables. There will be a bias and this can never be determined and there is no way of applying statistical techniques to get a good estimate of population characteristics.

(ii) Judgment Sampling.— In this method, the researcher selects the units to form his sample on his judgment. Due to bias good estimate cannot be prepared by this type of sampling. Only experienced researcher could do this in a justified way.

(iii) Accident Sampling.— In this method, the researcher selects any case he comes across. In this it is not possible to know whether the sample is representative or not as they give preference to the cases which come first.

(iv) Purposive Sampling.—According to Adolph Jenson, "A purposive selection denotes the method of selecting a number of groups of units in such a way that selected groups together yield as nearly as possible the same average or proportion as the totality with respect of those characteristics which are already a matter of statistical knowledge.' In purposive selection the researcher deliberately or purposively selects the cases. The following are the essential features of the purposive selection :–

(1)The purposive sample should possess representativeness. To achieve representativeness, the sample should have the following criteria—

(a) Different variables are in the same proportion both in the sample as well as in the universe;

(b)The frequency distribution of the sample and the universe may be similar;

(c) The average of sample should tally the average of universe;

(d) Variables of the sample and universe is the same; and

(e) The sample must possess a complete idea of the nature of universe.

(2) The sample should be free from bias.

(c) Quota Sampling

In this method, both stratification and judgment is used. In this type, samples of prefixed size are taken from each stratum of the universe using judgment sampling method.

14.3.3 SCALING TECHNIQUES

A scale is a method of measurement. In socio-legal research, attitude, behaviour and other qualitative characteristics can be measured by means of different scales. A scale must be reliable. Let us take up some of the important scaling technique often used in context of research.

14.3.3.1 Measurement scales

There are four main types of measurement scales.

a) Nominal scale : A nominal scale consists of two or more named categories into which individuals, objects or responses are classified. In a nominal scale, it is possible to distinguish two or more categories relating to the specified attitude. The members of these categories differ with respect to the specified attribute which is being measured. It is a simple method of classification rather than the arrangement along a continuum. Classification of individuals according to religion is an example of nominal scale.

b) Ordinal Scale : In this type of scale, numbers, i.e. 1,2,3 are assigned to indicate only the relative position. The scate purposts to give ranks to the individual along with the specific continuum. In this scale, it is very essential to determine the order of position in relation to the attribute which is being measure.

c) Interval (Cardinal) Scale : This scale has equal units of measurement and it is possible to interpret not only the order of scale scores but also the distance between them.

d) Ratio scale : This scale incorparates the properties of an interval scale together with a fixed origin or zero point. Weights, lengths and times are obvious

example. On the basis of the ratio scale, one can compare both differences in scores and relative magnitude of scores.

14.3.3.2 Rating Scales

The rating, ranking and attitude scales have one common method of assigns numerical position to individuals so that variations in degree may be ascertained. While preparing point along a continuum and a numerical value is attached to the point, the followings are the main types of rating scales which may be used in socio-legal research :

(a) Graphic rating scale : Under this method, the rater indicates his rating by putting a tick at the point selected by him on a line chosen for measuring an attributed and specifying points from lowest to the highest.

b) The itemized rating scale : This is also known as the 'specific category scale' or 'numerical scale'. In this scale, the rater has to select me of the limited number of categories that are in order in terms of their scale position. In this scale, there are five or seven categories. The number of specification depends on the nature of the research problem.

c) Comparative rating scale: In the comparative rating scale, the rater may be asked to specify the comparative ability of a judge with reference to the judgment in a court. The comparative ability of the individual or the group in question may be expressed in terms of percentage by the rater. The raters themselves must be unbiased and trained. The specifications of the reference groups must be objective and clear. The rating scales are very simple and useful to apply irrespective of the method of data collection.

14.3.3 Rank order scale

This is another method of comparative and relative rating. In this method, the judge is required to rank individuals in relation to one another. When the population is very limited the judge has to prepare a rank order of individuals from highest in the scale to the lowest.

In a rating scale, the individual rater himself may be the subject of rating. This is known as self-rating which has its own advantages as well as limitation. The self-ratings has been found to be useful in measuring the attitudes, such as intensity, importance and liking. The following two methods may be illustrative :

a) Paired Comparison : This is a simple method of ranking scale. In this type o scale two stimuli are presented before the judges, out of which the other one is to be selected. The continuum is properly defined. The investigator can make several pairs of jobs available. The respondent may be asked to point out which of the two jobs he/she likes. The result which is obtained becomes the scale value for that particular job. On this basis, score value are ascertained. The scale value is explained numerically as follows :

Persons Preferring	Number of preferences
A	6
B	5
C	5
D	4
E	3
F	1
The scale value = 2416 = 4	

This method is only rough and simple method. It can, however, be made more meaningful by constructing a paired comparison matrix.

b) Horowitz method: Horowitz applied a ranking for testing the racial prejudices. He took 8 pictures of Negroes and 4 pictures of White children. These 12 pictures were shown to the school children who are asked to indicate their preferences. First preference was indicated by number 1, second by 2, third by 3, and so on. Then, separately; the scores for the White and for the Negroes were added and compared. I this way, it was possible to know the attitudes towards Negroes and Whites. Picture tests have been used many investigators to find out the decisive factors governing individual preferences and attitudes.

14.3.3.4 Attitude scales

In this type of scale, the attitude of an individual towards a matter, object or system can be known from the score of his responses given on the questionnaire. The score will place him on a scale. He simply express his liking or disliking, agreement or disagreement with the issue involved, as given in the form of question. On the basis of this reply, he is assigned a score in measuring the social attitudes. Let us discuss, various types of attitude scales :

a) Point scale : In this scale, at first, a crucial number of words about which the opinion is required is selected. The words may be dowry, eve-teasing, prostitution, divorce, and so on. The respondent is to cross out every word that is more annoying than pleasing to him. One point is given to each agreement or disagreement what wherever is to be choosen.

There may be another variety of point scale. In such a scale, two sets of words, indicating both favorable and unfavorable opinions, are given. The unfavorable items may be crossed and favourable items may be left uncrossed. For example, if a person scores out words favouring capitalism and leaves out of those favouring communism, he can be said to be communist.

b) Differential (Turnstone) scale : This scale is associated with the name of L.L. Thurstone. In this scale, a number of statements whose position on the scale has been determined by judges, is used. This position is determined by the method of equal – appearing intervals.

c) Summated Likert Scale : This type of scale frequently used in the measurement of social attitude was first deviced by likert. Like the differential scale likert scale uses only the definitely faourable and unfavourable statements. Likert scale excludes the intermediate opinions. This scale consits of services of statements to which the respondents is to react. The respondent indicates the degrees of agreement or disagreement. Each response is given a numerical score. The total score indicates his position on the continuum.

d) Cumulative (Bogardus) scale : The cumulative types of scale was successfully used by Bogardus which is known as Bogardus social distance scale. The main purpose of social distance scale is to measure the attitude towards a particular racial graph.In the Bogardus type scale, the respondent has indicate his first feeling. He has to give his reaction to each race or religion as a group and he should not take into account any individual member of a group best or wrong into account.

e) Scalogram (Guttman Method) : The Guttman scale is based on the assumption that the various attitude statements in the. scale belong to the same dimension. The attainment of a high degree of uridimensionality is the major concern of the Guttman scale. However, Guttman scale belongs to the broad category of cumulative scaling. According to Guttman, a universe of content can be considered to be unidemensional only it yields a perfect or nearly perfect, cumulative scale.

Guttman model is deterministic in nature. It assures that a person who responds positively / negatively to one item, must respond positively / negatively to a series of others.

14.4 SUMMARY

According to H. Odum, “the case study method is a technique by which individual factor whether it is a institution or just an episode in the life of an individual or a group is analyzed its relationship to other in the group”. Burgess has used the “Social microscope” for the case study method. Pauline v. young describe case study as comprehensive study of a social unit be that unit a person, group, a social institution a district or community”.

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Probability Sampling In this method, it is possible to state in advance the probability that any given unit will be included in the sample. Once such a probability model is set up, a mechanical procedure is devised to select elements from the population. The probability model is set up having in mind: (i) the type of the universe; (ii) characteristics of the units; and (iii) objectives of the study.

This method has the advantage of elimination of human bias in sampling. The sampling error in this method can be estimated. The random error decreases as the sample size increases. Through this method we can get always a good estimate of population. Estimates which are unbiased, consistent, efficient and sufficient are called good estimates. Statistical techniques can be used to test the hypothesis. The following are the probability sampling methods

A simple random sample is selected in such a way that each person in the universe has an equal chance of being selected in the sample. According to Parter, "Random sampling is the form applied when the method of selection assures each individual or element in universe an equal chance of being-chosen." Random sampling is not the same as chance selection. The 'random' suggests a selection without any system of design but does not mean haphazard, careless or unplanned. It is also called 'proportionate sampling' because each class of item of sample is in the same proportion in the universe. When the universe is composed of different groups of extremely varied sizes, the method cannot be successfully used.

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Stratified Random Sampling.— In this method, the population is first divided into a number of strata based on same characteristic, such as age, sex, educational level, etc. Then a simple random is taken from each stratum and such samples are brought together to form the total sample. While simple random sample is quite representative, a stratified random sample is still more perfectly representative.

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Scaling Techniques

A scale is a method of measurement. In socio-legal research, attitude, behaviour and other qualitative characteristics can be measured by means of different scales. A scale must be reliable. Let us take up some of the important scaling technique often used in context of research.

14.5 SUGGESTED READINGS

1.C.R. Kothari Research Methodology : Methods and Techniques. Reprint, 1994.
2.Dr. H.N. Tiwari, Regal Research Methodology, Reprint, 2006.
3.Dr. S.N. Myaneni Legal Research Methodology, Reprint, 2008.
4.Anwarue Yagin, Legal Research and Writing Methods, 2008.

14.6 TERMINAL QUESTIONS

1. What is the applicability and utility of the sampling method?

2 What are the Demerits of Sampling Method?

3. What is the Procedure to Select a Sample?

4.What is the difference between measurement and rating scale?