

## COURSE ON RESEARCH METHODOLOGY IN LAW

*Narmada Khodie\**

THIS IS a brief report of a short term summer course on research methodology in law conducted by the Department of Law of the University of Bombay in April 1982. About 50 Ph. D. scholars and LL.M. students participated in the course. The course was optional and was conducted on a non-examination basis. Research methodology is an integral part of the post-graduate teaching, but is not taught as a part of the curriculum because every subject which forms part of the LL.M. course has got to be taught in the context of the research, and the development of the subject is portrayed through the research suitable to that particular branch of law. However, students who are doing Ph.D. do require some sort of guidance to begin with and therefore a course on research methodology was a welcome feature along with several other co-curricular programmes.

Legal research is done by teachers primarily to benefit students through lectures. These days there is a great demand for Ph.D. degree holders. This degree is recognised as the minimum qualification for getting a job in the universities. According to the University Grants Commission, a teacher should possess a Ph.D. or an equivalent published work to his credit. In case a qualified person is not available an appointment can be made on an undertaking that the appointee will earn Ph.D. or give evidence of equivalent published research within a period of five years of his appointment; otherwise his increments would be stopped. Further, inability to do so might come in the way of his promotion to the post of reader or professor. Scholarship in the theory of law, sociology of law and social impact of law is to be cultivated in the process of research. Mere registration for Ph.D. is not enough; what is required is constant activity leading to new ideas. This will be a contribution of the researcher to existing knowledge.

Sixty years ago hardly anybody in India talked about research, and doctorates were very rare. Today research is an overworked term. Professor Bonamy declares that "research is the purest blessing that we know."

Somebody said that knowing more and more about less and less is research. But it is true that most of us merely talk about research and know very little about its true meaning. According to those who are not trained in the techniques of research, "research requires a pair of scissors and a bottle of gum." Such remarks and observations not only

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\* LL.M., M. Phil. (London), Ph.D. (Bombay), Professor & Head, Department of Law, University of Bombay, Bombay.

distort the correct perspective of research but are also derogatory to the researcher's status and objective of research, It is to be emphasised that a researcher who has undertaken the mission has to be a dedicated person who can explore the possibilities of innovation in pursuit of academic excellence for making original contribution to existing knowledge for the betterment of the system which we live in.

Despite the fact that the society hardly acknowledges the contribution of researchers, the importance of research should not be underestimated and scholars should be well equipped with the tools of research so that they do not grope in the dark. It was in this context that the summer course was organised.

### **Meaning of research**

The prefix "re" in the word "research" according to the *Concise Oxford Dictionary* means "frequentative or intensive"; therefore, only that category of investigation can properly be called research which attempts to collect data from various sources and in a variety of ways, and which exposes the data to a severe and intensive scrutiny.

"Research" should mean "investigations consisting of determination and inspection of, or reflection upon, facts with a view to determining or searching something which may satisfy the curiosity of the investigator (and, as a result of the same, carry his knowledge forward)."

### **Importance of research**

It is a misconception that legal research is only for the theoretician or academician and not for the lawyer as it tends to undermine the importance of legal research. Law is omnipresent, embraces the whole society and runs through the gamut of multifarious human activities. There is a constant stream of statutes, statutory rules and orders, and judicial decisions flowing at a tremendous speed. Law does not operate in vacuum. It has to reflect social attitudes and behaviour and also mould and control the same to ensure that they flow into proper channels.

Research comprises fact finding (that is, what the law is on a particular subject), fact ordering, fact systematising and studying and predicting legal trends. Sometimes law is expressed in ambiguous language and leaves gaps to be filled in, during the process of its application, from case to case, and, therefore, it is not easily knowable.

A lawyer or a student has to do research to find as to how the law should be interpreted. In view of the importance of legal research, lawyers in the U.S.A. and other Western countries are playing a pivotal role in promoting legal research through the establishment of various institutions like the American Law Institute. In India, the University Grants Commission, Indian Council of Social Science Research, universities and its various departments, a number of institutes of education and research institutes established by the Council of Scientific and Industrial Research, government departments, industries and foreign foundations encourage research ventures by providing some study grants.

### Types of research

According to Dr S.N. Jain, a scholar of law may adopt any of the following courses in doing research :

- “(1) Write a historical essay showing the development in a field of law or a particular doctrine.
- (2) Write a kind of survey on the recent developments in law summarising the most important cases, analysing how they have followed, or deviated from, the past cases, and make a guess as to what the courts would do in future. The *Annual Survey of Indian Law* published by the Indian Law Institute falls in this category of research.
- (3) Analyse doctrines to see whether the case-law is consistent, ambiguous, left gaps and to state what in his opinion are the correct propositions of law by applying his own rationale or reasons or *a priori* method. This does not rule out application of the policy approach but this policy approach is evolved by doing arm-chair research (by *a priori*).
- (4) Write about relationship between law and other behavioural sciences.”

In his view, “[t]he above classification could be put into two broad categories—doctrinal research and non-doctrinal research. Doctrinal research is defined as research into legal doctrines through analysis of statutory provisions and cases by the application of the power of reasoning. Non-doctrinal research is defined as research into relationship of law with other behavioural sciences. Here the emphasis is not on legal doctrines and concepts but on people, social values and social institutions. These categories are not mutually exclusive and a person concentrating on doctrinal research may occasionally support the legal doctrines by the help of economic and social data.”<sup>1</sup>

### What is methodology

Methodology designates analytical studies of such problems as what is the meaning, nature and scope of objectivity, experiment, predictions, laws or explanations. In other words it refers to the methods, techniques or tools employed for the collection and processing of data. Sometimes it is used to designate the concepts and procedures employed in the analysis of data, howsoever collected, to arrive at conclusions.

First of all, the researcher has to identify the area of the problem to be investigated in consultation with his guide. This is indeed a very difficult job as it has many facets, such as, is the study feasible, is the problem a

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1. “Legal Research and Methodology”, 14 *J.I.L.I.* 487 at 491 (1972).

2. *Ibid.*

significant one, are library facilities sufficient, can the topic be completed in the required time, and will it really sustain the interest of the researcher throughout the period of research? After the problem has been identified the researcher must design the study. It is advisable for him to prepare a gist of the problem which will be the nucleus of his thesis. When such nucleus is ready, all aspects of this nucleus can be taken up for the purpose of his research. Being equipped with this preliminary design of the study a researcher is directed to collect information relevant to his topic. Primary sources of information include first hand accounts of experimentation and investigation. They are :

- (1) H.C. Jain, *Indian Legal Materials : A Bibliographical Guide* (1970) (Indian Law Institute, New Delhi).
- (2) H.C. Jain, *Law Library Administration and Reference* (1972) (Indian Law Institute, New Delhi).
- (3) Charles Henry Alexandrowicz (Ed.), *A Bibliography of Indian Law* (1958) (Oxford University Press).
- (4) Central enactments.
- (5) Statutory rules and orders.
- (6) Supreme Court cases.
- (7) Reports of proceedings of Parliament, Law Commission of India, government departments and other agencies.
- (8) Original documents, such as letters, diaries and autobiographies.
- (9) Articles in professional journals, monographs, doctoral theses, interviews and questionnaires.

Secondary sources of information are summaries of information gathered from primary sources. These include translations, reviews of research, abstracts, books and other publications containing factual information and commentaries. Textbooks are also useful as reference books since they contain authoritative account of the subject concerned.

A researcher is advised to prepare a bibliography on the basis of the above mentioned sources, which represents the possible source material for the work. During the course of study the bibliography will expand since the researcher will come across a number of other references furnishing useful information. It is also likely that some references given in the bibliography may have to be scored off as irrelevant. This process will facilitate carve out a select bibliography to be given at the end of the thesis. However, it will be necessary to recast the same according to the acceptable specifications. This job can be undertaken after the completion of the writing of the thesis. Researchers are advised to follow some standard works in law in order to find out as to what are acceptable specifications.

#### **Taking of notes from source material**

To avoid working in a haphazard manner, we should have some idea of what aspects of the subject will have to be explored and in what

order. We have to be flexible. Taking notes means recording the information which we collect as we proceed with our study. The study should be guided by the ideas emerging from the nucleus of the work. The information we take down as notes from different sources will be used to support these ideas. As far as possible we should stick to one idea per card or sheet of the paper. At the end the source reference should be noted accurately. This way we may collect some quotations, historical accounts, opinions, theses, summaries and other relevant materials.

However, before the process of taking down the notes starts, it is necessary to plan the subject. For example, the subject of "Law and Poverty" can be discussed in four parts :

- (1) Poverty, law and judicial system ;
- (2) law and social inequality ;
- (3) law and economic inequality; and
- (4) legal aid as an instrument of socio-economic justice.

The study and reference will be guided by the above mentioned four heads, and in the process we will evolve the subtopics which can be accommodated under the main heads. Thus a good research will unfold the entire gamut of the socio-economic legislation relating to law and poverty. After the data is collected a systematic, logical and chronological arrangement by shuffling and reshuffling of the cards or sheets of paper has to be made so that the areas in which there is inadequate information or no information can be identified for purposes of original contribution to existing knowledge.

The arrangement of the material will also indicate the effectiveness of the law as an instrument of social change. And it is in this respect that the scholar can suggest improvement having regard to the shortcomings of the law. Since laws should reflect adaptability to the felt necessities of the time, it will be seen that in all doctrinal research there is plenty of scope for making original contribution provided, of course, the researcher himself is fully seized of the theme and grapples with the realities of legal effectiveness. The involvement should be so complete with the problem that one scholar advises us to "get up in the morning with the problem before you, breakfast with it, go to the laboratory with it, eat your lunch with it, keep it before you after dinner, go to bed with it in your mind, dream about it." This is the very *yoga* of research, a continued and sustained exposure of the whole of life to the problem so that it might yield its secret, and the truth of the matter might unfold itself at last. At this stage writing should commence with the help of the notes and first draft should be prepared with as much precision as possible and never lose hold over the references since authentic documentation is one of the sheet-anchors of a good research.

After the first draft is ready, the researcher should take some time off and prepare the bibliography in the final form. When the draft is seen after a lapse of time, he will be amazed to come across the weak areas in the thesis on account of omissions and lack of coherence. He

should sit down and find out various ways and means of revising and improving upon the first draft and exhaust the primary and secondary sources so as to make it comprehensive. This evaluation when completed in consultation with the guide would certainly expedite the course of the final draft. Now what remains is to arrange every minute reference according to the standardised form of referencing, the acceptable method of citation, composition of footnotes, abbreviations *etc.* Sound reasoning and intellectual honesty are the hallmarks of scholarly writing. Quotations must be accurately cited, suitably acknowledged and contributions of other writers duly recognised. As the package industry has come up along with the goods industry, form of presentation is important in research field. Good research may be marred by poor reporting. Proper presentation is an integral part of the project. At the same time we should not miss wood in the trees, the knowledge behind information. These requirements appear to be minor but they are important from the point of view of further research or another research. It is always advisable to do some checking of the references to make sure that every cited reference is authentic. Thereafter the scholar should prepare concluding remarks which will provide the reader with the gist of the research.

It may be remembered that the above mentioned process of research methodology is not exclusive and exhaustive. The researcher must in a way play Columbus and sail across the sea of learning with great expectations of stumbling on the enchanted shores of some new world. Methods and mechanics in that odyssey will then become incidental and nothing more. It is actually a voyage of discovery leading to further research. And thus it continues to thrive unbound.