BOOK REVIEWS

LEGAL RESEARCH METHODOLOGY (2017) Edited by Manoj Kumar Sinha & Deepa Kharb, Lexisnexis & Indian Law Institute, New Delhi, Pp xxxvii+417, Price Rs. 425

The Indian Law Institute, New Delhi (ILI), founded in 1956 for *inter alia* promoting, developing advanced studies and research in law, and cultivating, encouraging and conducting research in law and allied fields in India,[1] has in 1982 brought out a Special Issue of its *Journal of the Indian Law Institute* (JILI) on 'Legal Research and Methodology'.[2] In the following year, ILI, on the occasion of its Silver Jubilee, sought papers from authors of repute on certain facets of research & methodology that were not covered in the Special Issue and selected a few from papers published earlier in different acclaimed foreign and Indian journals and clustered them, along with the select ones published in the Special Issue of JILI, in an anthology '*Legal Research and Methodology*'.[3] Almost two decades after the first publication, the ILI in 2001 brought out its second edition after getting the select essays revised/updated by the respective authors, wherever possible, and adding a few essays published in overseas journals.[4]

In 2017, ILI, in collaboration with LexisNexis, has brought out another anthology of twenty-two essays, *Legal Research Methodology*,[5] which is under review. Interestingly, editors of *Legal Research Methodology* have neither dwelt on the need to have it nor highlighted its thematic proximity (or otherwise) with the ILI's earlier anthology (of forty-four essays), *Legal Research and Methodology* (published in 1983 and revised in 2001), which is highly appreciated by academia and research scholars and is regarded as a classic treatise on legal research methodology.[6] However, the editors have asserted that the anthology under review is brought out with a view, *inter alia*, to: (i) expose law students to the available methods of research; (ii) put together methodological concepts and skills

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1 For research activities of the ILI see, S N Jain, the Research Programme of the Indian Law Institute, in S K Verma & M Afzal Wani (eds), *Legal Research and Methodology* (Indian Law Institute, New Delhi, 2nd edn, 2001) 196; Rajeev Dhavan, Legal Research in In India: The Role of the Indian Law Institute, 34 *Am Jr of Comp L* 527 (1986); Rajeev Dhavan, Means, Motives and Opportunities: Reflecting on Legal Research in India, 50 *Mod L R* 728.

2 Vol 24 (issues 2-4) 1982.

3 S N Jain, J K Mittal, *et al,* (eds), *Legal Research and Methodology* (N M Tripathi, Bombay, 1983).

4 *Supra* n 1. These essays are clustered under four thematic parts: (i) research precepts; (ii) techniques of research; (iii) supervision and conduct of research, and (iv) some specialised research patterns.

5 Manoj Kumar Sinha & Deepa Kharb (eds), *Legal Research Methodology* (LexisNexis & Indian Law Institute, New Delhi, 2017).

6 Even the two essays, *namely*, 'Socio-legal Research in India-A Programschrift' (by Upendra Baxi), and 'Indian Legal Research: An Evolutionary and Perspective Analysis' (by Rajkumari Agrawala), reprinted from S K Verma & M Afzal Wani (eds), *supra* n 4, do not cite the first anthology as their source.

related to legal research in a comprehensive manner, and (iii) acquaint readers thereof with the methodology of inquiry into law and inter-disciplinary areas and to familiarise them with the nature, scope, and significance of legal research.

Further, the editors claim that it: (i) provides a complete and practical guide on how to carry out research using popular tools; (ii) is a compilation of relevant scholarly articles; (iii) addresses the academic expectations of law students, keeping in view the curriculum of various universities and law schools, and (iv) discusses the modern methods, tools and techniques of legal research.[7] Plausibly dictated by the proclaimed motto and asserted claims, editors of the anthology have clustered the twenty-two essays, purportedly dealing with the claimed aspects of legal research, under five thematic segments.[8]

Anthology under review[9] obviously needs to be viewed in the backdrop of not only the assertions and claims of the editors made therein, but also the ILI's earlier acclaimed comprehensive treatise *Legal Research and Methodology*.[10]

The six essays put in 'Part A: Legal Research Methods of the anthology are seemingly to deal with, and address to, different legal research methods. 'Basics of research',[11] (please do not read it as 'basic research'), hardly exposes readers to any 'basics' or 'prerequisites' of 'research'. It merely offers a scanty account of 'method of reasoning' and enumerates (from other sources) the 'variants of legal research'.[12] However, a reader, in the backdrop of the essays on evolutionary & perspective analysis of legal research,[13] and current scenario of legal research in India,[14] gets insight into some theoretical/pragmatic aspects of, and issues associated with, research *in* law and research

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7 See, Preface, *supra* n 5.

8 They are: (A) Legal Research Methods, (B) Ethics in Legal Research; (C) Legal Research and Law Reforms; (D) Research Process-Research Design, Tools and Techniques, and (E) Library Resources. Presumably, the editors, through their assertions, perceive that the earlier anthology does not satisfactory address to these perceptions of legal research methodology.

9 *Supra* n 5.

10 *Supra* n 4.

11 K V Bhanumurthy, Basics of Research, *supra* n 5, chap VI.

12 *Ibid*. p. 126-127.

13 Rajkumari Agrawala, Indian Legal Research: An Evolutionary and Perspective Analysis, *supra* note 5, chap x. It primarily highlights the non-exitance of legal research in the early stages of legal education in India and the reasons therefor. It offers a lucid sketch of different phases of legal research (i.e. locative; descriptive, and academic phases) in India; highlights major lacunae (i.e. absence of institutional and behavioural analysis; lack of impact & futuristic studies; lack of institutional & financial support), and pleads that legal research in India needs to be built upon Indian legal facts with indigenous legal & other materials, otherwise legal research in India, it apprehends, is bound to continue to be imitative, superficial with no in-depth analysis.

14 L Pushpa Kumar and Shachi Singh, Encouraging Socially Significant Legal Research, *supra* n 5, chap XI. This essay is not placed under Part A.

about law.[15] The essay on analytical legal research[16] stresses the jurisprudential & practical significance of analysis & synthesis of law and of legal concepts/norms/propositions; premises, and sources & status of norms in the hierarchy thereof in legal research. It also delves into different techniques involved in understanding the meaning and status of legal norms/propositions for weaving the strands of thoughts for consolidating and presenting coherent legal propositions/norms and thereby constructing law. Analytical legal research is pre-requisite for doctrinal, comparative and empirical legal research. The essay 'Socio-Legal Research in India- Programschrift',[17] which not only highlights the 'setting' and 'scenario' of legal research India, but also offers a list of priority areas for legal research by way of mapping of Formal Legal Systems & Informal Control Systems, is still relevant. It indeed provides a list (of mission & vision) for legal scholars, established or budding, who are interested in undertaking socially relevant legal research & impact studies and cautions them about certain inhibitive or discouraging factors. The essay on legal education,[18] in opinion of the reviewer, hardly fits into thematic paradigm of Part A as it, even remotely, does not touch upon either legal research or methodology. It merely traces, rather outlines, the development of legal education in India.

The three essays, two on plagiarism[19] and one on qualities of a good researcher,[20] clustered in Part B captioned 'ethics in legal research', do not adequately address to 'ethics' of research, except to academic honesty (the absence of which ultimately results in plagiarism). The two essays on plagiarism give undue emphasis on copyright (and the issues relating to its acquisition, protection and remedy for its violation) rather than on plagiarism and precautions to be taken by researchers to avoid it. Both the essays, to a great extent, exhibit thematic as well as referral repetitions. Another essay, dealing with qualities of a good researcher, merely, *inter alia*, offers mundane explanation of 'value neutrality'; 'integrity'; 'confidentiality', and 'plagiarism' as research 'ethics'. It delves into qualities of a good researcher and challenges in creating him/her. It,

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15 S K Verma, Doctrinal Legal Research: Methods and Methodology, *supra* n 5, chap I; P Ishwara Bhat, Analytical Legal Research for Expounding the Legal Wor(l)d, *supra* n 5, chap II.

16 P Ishwara Bhat, *ibid.*

17 Upendra Baxi, Socio-legal Research in India-A Programschrift', *supra* n 5, chap IV. The essay, though originally published as an occasional monograph by the ICSSR in 1975 has not lost its relevance today as a 'Programschift.

18 Ranbir Singh, Development of Legal Education in India, *supra* n 5, chap III.

19 Rattan Singh and Arvindeka Chaudhary, Protection of Intellectual Research from Plagiarism in the Era of Copyright Law, *supra* n 5, chap VII, and Lisa P Lukose, Ethics in Legal Research: Plagiarism and Copyright Infringement, *supra* n 5, chap IX.

20 Furqan Ahmed, the Researcher as the Central Figure in Legal Research Qualities of a Good Researcher and Challenges in Creating One, *supra* n 5, chap VIII.

therefore, hardly fits into the thematic paradigm (i.e. ethics in legal research) of Part B of the anthology.

The third thematic segment, Part C: Legal Research and Law Reforms, of the anthology is comprised of three essays.[21] The first essay in the cluster, authored by Upendra Baxi, highlighting research trends in vogue, stresses, *inter alia*, the need to study the intersectionality between social movements and courts, and impact assessment of judicial decisions (the idea which he mooted almost four decades ago but has failed to adequately provoke research scholars from India),[22] though there exist different attributes of: 'impact'; 'implications (of 'judicial decision'- jural, social, or legal)'; 'impact communities (intended or unintended with differential interpretation of impacts of judicial decisions)', and 'dimensions of impact analyses (symbolic and instrumental)'. He, nevertheless, with certain clues and ways out to meet the ensuing challenges, insists on undertaking of impact studies. Authors of the second essay on socially significant legal research, sketching legal research scenario in India and delving into the factors that generally discourage research scholars in India for undertaking socially relevant legal research, offering a set of measures for strengthening legal research, make a strong plea for socially relevant multi-dimensional & India specific legal research. However, they have not come out with, or hinted at, concrete research methods that need to be employed by scholars in the identified areas of socially significant legal research. They merely focus on the prevailing inhibitive scenario and stress the need to undertake socio-legal research in India. Similarly, author of the third essay on reforms in legal sector, stressing a mundane proposition that legal research plays a dominant role in law reforms, merely examines the hitherto contribution made by 'eminent personalities from different fields of legal sector to revamp the standards of legal profession' and 'evaluates the approach towards the legal research initiated by the committees and commissions dealing with legal reform'. She also offers a sketch of contribution made by judiciary, lawyers, academicians, and the ILI in reforms in legal sector. She, however, neither highlights nor offers any reflections on the research methods/methodology used by the so-called 'eminent personalities' and 'committees and commissions' mentioned therein, though she stresses that 'the method of research undertaken (by commissions & committees) needs a detailed study'. Referring to an earlier piece on legal research and law reform,[23] she observes that analytical, historical,

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21 Upendra Baxi, Dimensions of Impact Analysis (chap X); L Pushpa Kumar & Shachi Singh, Encouraging Socially Significant Legal Research (chap XI), and Susmitha P Mallaya, Reforms in Legal Sector: Need to Focus on Development of Research Skill (chap XII).

22 Upendra Baxi, Who Bothers about the Supreme Court? The Problem of Impact of Judicial Decisions, 24 *Jr of the Ind L Inst* 842 (1982). Also reprinted in S K Verma & M Afzal Wani (eds), *supra* n 4, 500.

23 P M Bakshi, Legal Research and Law Reform, in S K Verma & M Afzal Wani (eds), *supra* n 4, 111.

comparative, statistical and critical study methods are suitable for reform-oriented legal research. But, except offering a very brief, that too referral, account of historical & comparative methods, fails to offer any further methodological input to, or pragmatic (or comparative) assessment of, the mentioned methods.[24]

Part D: Research Process: Design, Tools and Techniques, pulling together a cluster of nine essays, occupies major space of the anthology under review. A mere cursory look at the structural outlay of the Part D reveals that the arrangement of the essays is neither in consonance with the conventional major steps that ostensibly constitute 'research process', which ideally starts with identification & formulation of research problem followed by review of literature, research design, collection, analysis and interpretation of data, and ends with writing research report, nor thematically well inter-knitted & inter-linked. The last essay in the cluster on feminist methodology in legal education,[25] which is well-written from the feminist perspective, seems to be thematically odd to find a place in the instant Part. It primarily deals with, and pleads for, feminist way of teaching law. Similarly, other two essays of the cluster,[26] which address to, and deal with, the essence of, and major stages involved in, writing a legal research paper and formulating a doctoral research proposal (after undertaking literature review), though educative, are not in fine tune with the central theme (i.e. research process) of the Part D. They exclusively deal with the technique of writing a research paper and a Ph D proposal. Legal research is not merely confined to writing research papers & and undertaking doctoral dissertations.

The essay dealing with research problem, research question, and hypothesis,[27] in opinion of the present reviewer, does not offer a conclusive explanation of hypothesis & its contours, though the author, with a view to appreciating general and legal meaning of hypothesis, has referred to, quoted from, dictionaries of repute. Hypothesis, as hitherto perceived, is a tentative, testable statement about relation between two or more than two variables (which is unknown to the researcher but strives to prove or disprove it with empiricism). It is a proposition that can be put to test to determine its validity.[28]

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24 For comparative account of these methods and further insights therein see, P M Bakshi, *ibid;* Ishwara Bhat, Comparative Method of Legal Research: Nature, Process and Potentiality, 57 *Jr of the Ind L Inst* 148 (2015).

25 Latika Vashist, Feminist Methodology and Legal Education: Some Reflections, *supra* n 5, chap XXI.

26 P B Pankaja, Writing for Academic Excellence: How to Start and Finish a Legal Research Paper-A Few Guidelines, *supra* n 5, chap XIII; K V Bhanumurthy, A Chapter on Literature Review and Writing a Good Ph D Proposal, *supra* n 5, chap XIX.

27 Anurag Deep, Research Problems, Research Questions and Hypothesis in Legal Research, *supra* n 5, chap XIV.

28 See, William J Goode & Paul K Hatt, *Methods in Social Research* (McGraw Hill, 1952), chap 6: Basic Elements of the Scientific Method: Hypothesis.

Mere statement, howsoever inquisitive and researchable it may be, cannot be termed a hypothesis, unless it refers to, or relates with, another apt variable(s) and has empirical referents. Such a proposition merely operates as a statement of research problem or question, with or without any further research questions.[29] Further, contrary to the favourable inclination of the author, hypothesis, in the present submission, is not essential in every legal research.[30] Hypothesis, for example, is not necessary in analytical, expository, exploratory, identificatory, evolutive, collative, descriptive, and historical legal research.[31] What obviously necessary in such a legal research is a precise statement of research problem or question, touching a single or multi disciplines, and not a hypothesis. In this context, it is also difficult for the present reviewer to appreciate the author's poser as to whether a research question or hypothesis comes first and his silence on the conflicting views, cited by him, on their sequence,[32] and the confusing/ imprecise illustrations (indicating topics and feasible hypotheses/research questions, & research questions/hypotheses that may emerge therefrom).[33] The essay, however, offers illustrative account of different steps, though the present reviewer has his own reservations on their presentation & propriety, involved in research process.[34] Lack of smooth thematic flow, crept in at many places in the essay, and numerous inconclusive/ unsubstantiated propositions/conclusions of the author, unfortunately, make the essay less interesting and academically rewarding.

Research design, after formulation of research problem and undertaking literature review, occupies prominence in research process. It indeed offers a blue print or skeleton of the proposed research. It sets out the purpose, scope, sources, and *situs* of the

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29 In a theoretical legal research, researcher's aim is to explore, describe or explain 'what', 'why', 'how' something, rather than to prove or disprove an assumption formulated in the form of statement of research problem. In fundamental legal research, tentative proposition of law formulated for inquiry is simply considered as research question that guides the researcher in examining or pursuing it in a systematic manner. See, Terry Hutchinson, *Researching and Writing in Law* (Law Book Co, Sydney, 2002) p. 131-132. An important difference between problem statement and hypothesis is that the former is phrased in question form and is interrogative in nature while the latter is a statement that is declarative in nature and can be empirically tested. See, William G Zikmund, *Business Research Methods* (South Western, Ohio, 6th edn, 2000) 92; Fred N Kerlinger, *Behavioural Research: A Comparative Approach* (Holt Rinehart and Winston, New York, 1979) 34.

30 *Supra* n 27, at p. 248.

31 See generally, Rajkumari Agrawala, *supra* n 5; P Ishwara Bhat, *supra* n 15; Anwarul Yaquin, *Legal Research and Writing Methods* (LexisNexis Butterworths, 2008), chap 3: Research Design in a Legal Study.

32 See, Anurag Deep, *supra* n 27, p. 249-250.

33 *Id.* p. 274-279.

34 *Id.* p. 254-273.

requisite information, and the most feasible tools for collecting it, and the method(s) of analysis. The essay on research design[35] not only very lucidly delves into different aspects of research design but also highlights its significance, and elaborately deals with its various types & components.

In any analytical, interpretative, and explanatory legal research, reliance on, and a study of, judicial pronouncements of higher judiciary becomes inevitable. Judicial decisions of higher courts, in the backdrop of legislative intent and issues involved therein, offer authoritative interpretation of law in question and enunciate/highlight, *inter* alia, theoretical, doctrinal, and functional aspects thereof.[36] The essay on significance of case law in legal research[37] not only highlights importance of study of judicial decisions in legal research, particularly in research *in* law, but also acquaints its readers with different techniques of case analysis; the prerequisites therefor, and dual approaches thereto -'one good case approach' (involving demonstration of precedential weight of a case by referring to apt subsequent cases) & 'latest case approach' (involving understanding a latest case in the area that juridically articulates and deliberates on the existing law in the backdrop of prior significant judicial pronouncements).[38] The latest case approach, the author claims, and rightly so, helps us in appreciating the present law, with sketch of its historical development (along with reasons therefor) and evolving (judicial, legislative & social) trends.[39] However, researcher needs to remember that identification of 'one good-case' that facilitates him/her to exemplify nuances of the development of law and to extract its *ratio* with precision,[40] as a starting point of the query, and locating subsequent cases that have, with approval, followed *ratio* of the identified ' one good case' is not an easy task. Such an exercise at both the levels, in spite of due diligence on part of the researcher, obviously becomes subjective. Further, sometimes dissenting or minority opinions, having bearing on the identified 'good case' (and its *ratio*), may have more force or precedential value than the majority or concurring judicial pronouncements that have ritually, as a constitutional obligation or exigency of judicial propriety, followed *ratio* of the identified 'good case'. It is not clear

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35 Mallika Ramachandran, Research Design: Its relevance, Types, and Components, *supra* n 5, chap XX.

36 Redmount, A Conceptual View of the Legal Education Process, 24 *Jr of Led Edu* 129 (1972).

37 Uday Shankar, Significance of Case Law in Legal Research, *supra* n 5, chap XVII.

38 *Id.* p. 313-319.

39 *Id.* p. 319.

40 For precedent/*ratio* see generally, Rajiv Dhavan, *The Supreme Court of India-A Socio-Legal Critique of Juristic Techniques* (N.M. Tripathi, Bombay, 1977); Upendra Baxi, *The Indian Supreme Court and Politics* (Eastern Book Co, L ucknow, 1980); K I Vibhute, Law Declared by the Supreme Court-Some Reflections on its Meaning and Scope, 9 *Jr of Bar Council of India* 52 (1992), and A Lakshminath, *Judicial Process and Precedent* (Eastern Book Co, Lucknow, 4th edn, 2016).

from the essay as to whether (s)he is required/not required to 'demonstrate' precedential value of the 'good case' with or without paying heed to the judicial dissents noticed during her/his search. In either case, the assessed 'precedential weight' of the 'good case' obviously becomes questionable. Researcher, in such an exercise, also needs to recall that every judicial decision (and the issues deliberated therein) need to read in its legislative, political and historical context as well as philosophical underpinning of the judge who delivered it. The essay hardly sheds sufficient light on these and allied issues.

The essay on sampling,[41] which gives an account of sampling (with its advantages & disadvantages) and of different contours thereof from borrowed sources, hardly makes any significant contribution in understanding use of sampling in non-doctrinal legal research. It does not adequately address to, and delves into, major sampling techniques (with their facets) & the situations/considerations that navigate or dictate preference of one technique over another. It has not even remotely hints at the key theoretical and pragmatic assumptions on which sampling is allowed; precautions to be taken while drawing sample from the given universe; the ways of assuring/convincing oneself that the sample drawn is replica of universe of the study & is reliable, and the means of, or tips for, keeping ensuing sampling error at the minimum.

Once sample is ready, the researcher, in the backdrop of the research objectives and questions, needs to opt for apt research tool(s) - interview, questionnaire, schedule or observation - for collecting data. If (s)he opts for interview or questionnaire, (s)he is required to formulate a set of questions for her/his (identified) respondents for seeking the requisite data. Of course, developing & preparing such a set of questions is a highly skilled task. The essay on developing questionnaire,[42] after stressing the need to have a good questionnaire; highlighting its role in the success of empirical research; listing characteristics of a good questionnaire, and outlining advantages & disadvantages thereof as a tool of data collection, indeed offers a set of worthy tips for designing & developing a good questionnaire and administering it with more reliability.

Case study method, which primarily is an intensive focused holistic study of a single unit (an individual, a family, an organisation, a community, an institution, an event, or a phenomenon) by making analysis of qualitative information collected from different sources by employing varied tools of data collection,[43] known to sister disciplines,[44]

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41 Varun Chhachhar, Sampling- An Effective Tool of Non-Doctrinal Legal Research, *supra* n 5, chap XVIII.

42 Kamal Kishore & Vidushi Jaswal, The Art of Developing a Questionnaire, *supra* n 5, chap XV.

43 Generally, in a case study method, interview, questionnaire, and observation are extensively used for collecting data. Personal documents, and life histories are also used for obtaining reliable information about the 'unit'under study. See, J C Mitchell, Case and Situation Analysis,

has also become relevant and significant in the domain of law.[45] The essay on case study method[46] deals with the assumptions, characteristics, purposes of, and procedure to be followed in, interpretative case studies. It also delves into sources, importance and limitations of case study as a research method.

The last essay,[47] in Part E: Library Resources, of the anthology offers instructive and strategic tips for accessing legal print and online sources originating from India and abroad for legal research.

In the backdrop of the editors' 'intent' in bringing it out and recalling rich contents of the essays clustered under apt thematic segments in the ILI's earlier comprehensive anthology, namely, *Legal Research and Methodology*, the anthology under review, on the whole, makes peripheral contribution in understanding of 'methodology' of 'legal research'. It leaves out a many key facets of legal research and methodology. A few of the essays placed therein, as mentioned earlier, seem to be 'out of context' and thereby 'out of box' because of their superficial thematic 'nexus' and contextual 'knitting' with other essays in the same Part. A penetrating look at different 'Parts' of the anthology, in the backdrop of their asserted focal thrust and the central theme of the anthology, reveals that the thematic bridge between most of its 'Parts' is not 'too strong' to hold them together intact to 'construct' a convincing paradigm, with its hitherto accepted sequential components, of contemporary legal research methodology. Deliberation on some of the significant contours of legal research (like identification & formulation of research problem, multi-inter-disciplinary legal research, policy (oriented) research, behavioural research, and action research); tools of data collection (like interview, schedule, observation); different research approaches (like content analysis, case study method, historical & comparative legal research, and survey method), and techniques (like analysis of data & interpretation), which is most desirable in a book on legal research methodology (and which are convincingly dealt under the ILI's earlier *Legal*

32(2) *Sociological Rev* 261 (1963); Robert K Yin, *Case Study Design and Methods*, (Sage, California, 1994); Pauline V Young, *Scientific Social Survey and Research* (Printice Hall, New Delhi, 1984).

44 Case study method is used in social sciences like sociology (community studies & deviant behavioural studies); social anthropology (tribal culture); political science (policy research); public administration (management and organised studies); psychology (clinical psychology).

45 K I Vibhute, Open Prison at Paithan-A Case Study, 8 *Cochin Uni L Rev* 367 (1984); Aikaterini Argyrou, Making the Case for Case Studies in Empirical Legal Research, 13 *Utrecht L Rev* 95 (2017).

46 Rupam Jagota, Interpretative Case Study Method of Research: Relevancy in the Modern Era, *supra* n 5, chap XVI.

47 Sonam Singh, Access and Use of Legal Information Resources: Know What-to-Know How, chap XXII.

Research and Methodology), does not find place in the anthology under review. Re-orientation to, and re-organisation of, some of the essays and of Parts of the anthology, and addition thereto a few ones addressing to certain fundamentals of legal research (like critical thinking, scientific method & ethical issues), in opinion of the present reviewer, also deserve serious attention of the editors (when they in future bring out subsequent edition/version of the anthology) not only to make the anthology more comprehensive but also to effectively tune it to the objectives with which they have ventured to bring it out under the ILI's banner in spite of the fact that there already exists the ILI's own well-received and much-admired compendium *Legal Research and Methodology*.

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