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LEGAL RESEARCH: THREE DIMENSIONS

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Abstract

Law, which is a multi-dimensional and multi-disciplinary subject, operates in a complex social setting. Socio-eco-politico-cultural values in vogue, to a great extent, have bearing on the emergence, continuation, operation, and consequence of law/legal norm. There exists constant inter-play between law and social *mores*, values and ethos. Proper *understanding* of *law* and its *performance* warrant periodic systematic inquiry into different *facets/phases* of *law* and its social audit. Nature and focal theme of such an inquiry, of course, depends upon one's *perception* of *law* and its *contextual variant*. The instant paper offers a few glimpses of *legal research* when *law* is perceived as: a system of law; a system of social behaviour, and a catalyst of social change.

I Introduction

LAW, AS a discipline, is not insular. It is intrinsically intertwined with social, religious, cultural, historical, philosophical, psychological, economical, or/and technological dimensions. Law has multi-disciplinary facets to exhibit, operate and impact. Loaded with certain values, goals, and missions, *law* operates in a complex social order. It has a widest turf to move in and multiple goals to attain. There hardly seems to be any aspect of human life that does not fall within the operational orbit of *law*. It has even gained legitimate access to our intimate inter-personal, spousal and familial relations. Law has emerged as one of the essentials and pervasive facts of the social conditions. Collective human life is directly or indirectly shaped as well as governed by law.[1]

Law has social context and contents. Law without social context, content or significance is 'law without flesh, blood or bowels' and it turns out to be mere noteworthy mental exercise.[2] Invariably, social values and norms, not only play a vital role in the law (re)making, but also influence, rather dictate, contents and operational orbits of law.

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1 Liknas Luhman, *A Sociological Theory of Law* 1972 1(English Translation, Routledge, 2nd edn., London, 2013).

2 S P Simpson and Ruth Field, "Law and the Social Sciences" 32 *Va L Rev* 862 (1946).

Law reflects in it the socio-eco-politico ethos and values (of the Legislature).[3] Law, sometimes, tacitly supports/endorses or tunes itself with the social perceptions, values, and attitudes, or endeavors to systematically control, channelize, change, (re)mould, or replace them with the new ones (on certain greater ideals or values and through well-articulated formal processes). Law, in this backdrop, can be perceived as symbolizing the public affirmation of social facts and norms as well as means of social control and an instrument of, or catalyst for, social change.[4] There exists constant inter-play between law and social *mores*, values and ethos.[5]

However, law's social contents and context are proximately linked with the politico-socio-eco-cultural values, norms, and ideals, which are seemingly dynamic and complex. These changing values obviously make the system of law more dynamic and complex. Law, as a system, is intertwined with political, social, and/or economic policies, concerns, perceptions and/or ideals of the Legislature. A legislative Act, in essence, knits these perceptions, concerns and ideals and puts them in a goal-oriented structural as well as operational paradigm. Such a complex, dynamic, and multi-disciplinary nature of *law* and its operation in an equally complex *social-setting*, reflecting varied 'segments' grounded on distinct political, religious, and/or cultural 'principles/values/ideologies', warrants systematic inquiry of its varied contours/facets for better *understanding* of *law*, legislative *intent*, its *operational facets*' and *achievements*. Such an inquiry not only helps us in having deeper peep into the existing and emerging legislative policies and proposals, but also to appreciate social relevance and dimension of these policies and proposals. Inquiry into *law* also enables us to assess its efficacy as an instrument of, or catalyst for, the intended change, to identify/highlight bottlenecks/impediments, and to devise, in advance, apt precautionary measures to overcome them.

The spectrum of such an inquiry is very wide as it takes into its fold any of the phases of law from its *concretization* to *consequences*. The nature and extent of inquiry obviously depends upon the inquirer's professional background, perception, and perceived context

3 'The center of gravity of legal development', it is argued, 'lies not in legislation, nor in juristic science, nor in judicial decision, but in society itself'. See, Eugen Ehrlich, *Fundamental Principles of Sociology of Law* (Harvard Uni Press,1936); Georges Gurvitch, *Sociology of Law* (Alliance Book Corporation, New York, 1942). Also see, Larry Barnett, *Legal Construct, Social Concept: A Macro-sociological Perspective on Law* (Routledge, New York, 2017); Richard K Greenstein, "Towards a Jurisprudence of Social Values" 8(1) *Washington Uni Jurisprudence Review* 1 (2015); Yehezkel Dror, "Values and the Law" 17(4) *the Antioch Review* 440 (1957); John C Wahlke and Heinz Eulau (eds), *Legislative Behavior-A Reader in Theory and Research* (Free Press of Glencoe, Illinois, 1959).

4 See, Lawrence M Friedmann and Steward Macaulay, *Law and Behavioral Science* (Bobbs-Merrill Co, Inc, Indianapolis, 1969); Roscoe Pound, (2) *Jurisprudence* (St Paul, Minn., West Publishing Co., US), and Sir Carleton Kemp Allen, *Law in the Making* (Oxford, London, 7th edn., 1964) ch. IV: On Legislation. Also see, M D A Freeman, *Lloyd's Introduction to Jurisprudence* (Sweet and Maxwell, London, 7th edn., 2003) ch. 7: Sociological Jurisprudence and the Sociology of Law.

5 See, "Yehezkl Dror, Law and Social Change" 33 *Tul L Rev* 787 (1958-59); Sheryl J Grana, Jane C Ollenburger, and Mark Nicholas, *The Social Context of Law* (Prentice Hall, 2nd edn., 2001).

of law. Conceiving and concretizing *law* can be better articulated and divulged by a student of political science than by a student of law or of sociology. Translating the conceived and concretized *idea* into *law* and putting it in a normative and functional framework, on the other hand, can effectively be unfolded by a person trained in law and legislative drafting. While adequacy and efficacy of a given law in attaining its intended goal, identifying bottlenecks, inbuilt or external, and gap between the legislative intent and social reality may well be assessed/highlighted by a student of law and/or of sociology.

Legal research,[6] thus, has a very wide spectrum and multiple facets that can be put to scientific inquiry. *Understanding*, in true sense of the term, *law*, which is multi-disciplinary in nature; multi-dimensional in outlook and operation, and multi-missions to achieve in a complex social setting, is not an easy task to accomplish with satisfaction. Any systematic inquiry into *law* (and/or its facet) and its contribution obviously depends upon the researcher's *perception* of *law* (and the facets emanated/emanating therefrom).

Against this backdrop, the instant paper, from the view-point of legal research, offers some reflections on three *dimensions* of *law* grounded on perception or contextual variant of *law*.

II Law and legal research: Perceptions and contextual variants

Law, in the backdrop of the preceding 'introduction', wherein the nature, social context and complexities of law are broadly outlined, can be perceived in three principal ways, *namely*, a system of norms; a system of social bahaviour, and an agent of social change.[7] These dimensions or perceptions of 'law', in fact, set different issues for systematic inquiry, and thereby offer an orbit of the inquiry. Let us sketch each one of these and peep into research avenues associated therewith.

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6 'Legal research', which is difficult to define precisely, connotes a systematic inquiry in the field of *law* addressing a specific legal fact, may be a legal norm, a policy statement, an institution, a system, or background or assessment of operation, efficacy, implication or impact of the legal fact. It primarily involves ascertainment and understanding of law in pursuit of knowledge and making advancement in the science of law. See generally, S N Jain, "Legal Research and Methodology" 14 *Jr of Ind L Inst* 487 (1972); B A Wortley, Some Reflections on Legal Research, in S K Verma and M Afzal Wani (eds), *Legal Research and Methodology* (Indian Law Institute, New Delhi, 2nd edn, 2001) 5; George D Braden, "Legal Research: A Variation on an Old Lament" in S K Verma and M Afzal Wani (eds), *Legal Research and Methodology*, *ibid*, 17; C G Weeramantry, "Towards More Purposeful Legal Research" in S K Verma and M Afzal Wani (eds), *Legal Research and Methodology*, 53(2001).

'Legal research' is different from 'legal search', which involves finding of authorities in the primary legal sources (like Acts and Case Reports), and 'legal bibliography', which is the description and identification of the published sources of law. See, J Myron Jacobstein and Roy M Mersky, *Fundamentals of Legal Research* (Foundation Press, Mineola, New York, 1981).

7 Upendra Baxi, *Socio-legal Research in India-A Programschrift* (Indian Council of Social Science Research (ICSSR), New Delhi, 1975).

Law: A system of articulated norms

Legislature does not legislate simply because it is entrusted with the law-making power. It also does not legislate at random. No law, as we know, is either *sui generis* or extempore or accidental. Legislature enacts *law* deliberately to meet certain social needs, solve problems, or handle situations. However, Legislature needs to convince itself that the need, problem or situation is susceptible to legislative treatment. Ideally, it, by intensive deliberation and design, sets a 'goal', deliberates, with pros and cons, on the possible measures and strategies for achieving the identified goal, opts for the most apt alternative, and puts a mechanism in place to attain the goal. It enacts law only when none of the identified alternatives, in its wisdom, is not adequately enough to bring the intended result. While doing so, it may look for, and look at, the 'identical law', if any, prevailing in other jurisdictions and apprise itself with its *raison d'etre* for articulating the proposed law. It may also seriously peep into failure and/or success of the foreign law and identify major reasons for its failure, if any, so that it, while drafting the law at hand, block their entry points and keep them at bay.[8] Nevertheless, it is expected to make a cautious assessment of probable 'social response' and 'social consequences'- positive as well as negative- of the proposed legislative measure.

In a democratic polity, like India, the proposed enactment goes through different formal as well as informal *fori* that accord opportunities for intensive deliberations thereon, including the voice of dissent with or without proposals for changes in the proposed law.

Law, in this sense and in essence, emerges as a set of synthesized norms and standards, invariably grounded on certain socio-cultural values, ideals, and judgments. These norms and standards constitute a sort of articulated formal rules of conduct and the law an aggregate of legal norms.

Researcher, perceiving law as a system of norms, may, for example, undertake a systematic inquiry on, or revolving around: What *urge* motivated the Legislature to pick up a particular fact from an array of facts and to transform it into a legal norm? What factors-social, cultural, religious, political, economic, constitutional, or international- have been responsible for crafting a legal norm out of a vast heterogeneous mass of normative materials? Are these considerations objective and tenable? Are there any justifications, and if yes, are they convincing and justified on certain higher ideals? Are there any in-built gaps or contradictions, intentional or accidental, in the legislative articulation of the norm? Do these gaps/contradictions,

8 For comparative legal research in general, see James Gordley, "Comparative Legal Research: Its Function in the Development of Harmonized Law" 43 *Am Jr of Comp L* 555 (1995); P Ishwara Bhat, "Comparative Method of Legal Research: Nature, Process and Potentiality" 57 *Jr of the Ind L Inst* 147 (2015).

directly or indirectly, cater to, or protect, vested interests of any of the social segments or pressure groups? What would be (or have been) effects of these gaps or internal contradictions on the performance of law? What are the most appropriate measures to bridge the gap or plug the loopholes or do away with the contradictions? Is the newly created legal norm consistent and coherent with the thitherto existing norms and in tune with the legislative intent? Does the legislative norm fit into the existing policy framework or intend to carve a new one, and for what reasons? Does the intended new legislative paradigm, if any, fit into the existing jurisprudential (or constitutional) canons or underpinnings? If not, what considerations or factors justify such a new paradigm and do they have any legal premise to stand on and justify it? Is the statutory mechanism created (or assigned) to enforce the legal norm professionally competent or compatible with the legislative spirit of the norm? Is judicial interpretation of the norm in tune with the legislative intent? If not, for what reasons and on what premises the judicial interpretation departs from the legislative one? Which one- the legislative intent or judicial interpretation-seem to be more convincing/justified? What are the consequences of the gap between the two-legislative intent and judicial interpretation-on the *performance* and *outcome* of the legal norm? What is a way to overcome the contradictions, and resolve the conflicts and confusion, if any, between the two-legislative intent and judicial interpretation? What are the operative values or social factors or pragmatic compulsions that influenced (or influencing) the judiciary to go away from the legislative intent and create/modify certain legal doctrine or formulate guidelines (to fill-up the so-called legislative vacuum)? What are the socio-legal consequences of creating, invoking or applying doctrine and/or stipulating guidelines?

Response to these and similar queries or deeper systematic revelations thereof prominently involves careful *reading*, with the background materials, of the statutory norm, in isolation or in combination with other related provisions or statutes, and meticulous tracing of *legal reasoning*. To put it in other terms, research undertaking, perceiving law as a system of norms, involves *analysis*, with historical traces, of not only of the legal norm(s), but also of the way the given norm or law is *found*. Researcher needs to resort to, and rely upon, the traditional analytical methods to *understand* law and *explain* it. Ideally, analysis of *law* starts with the discourse on the *sources* and *intent* of the law. Traces of the sources/intent of the legal norm(s), under inquiry, can invariably be found in the statement of objects and reasons (SOR), and preparatory background material, such as working papers, proceedings of the Houses[9] or

9 Reading of debates on the Legislative Bill on the floor of the House(s) reveals the political and social forces that played significant role in the initiating and formulating legislative policy and converting it into law in the preset form. It also enables the researcher to appreciate the social stakes that law intends to protect, change or mould and reasons therefor. It also divulges the underpinning of the given law and/or legal institution and its legislative targets and strategy.

committee/commission reports, if any,[10] press-reports (commenting on pre and post legislative move), and opinions/editorials/comments published in leading dallies, periodicals or journals. Constitution, leading judicial pronouncements,[11] ideology of the political party in power, public opinion expressed from public platforms, and national as well as international policy documents also reflect on the need, rationale and broad framework of the legislative Act.

Establishing and assigning *meaning* to a legal norm is generally done by establishing what the legislature said, its subjective purpose, and assigning meaning to the norm in the light of objective purpose. A careful reading of judicial interpretations on the legal norm under inquiry may further assist the researcher in unraveling the hidden meanings of the norm. In common law jurisdictions, like India, interpretation of a legal term by a constitutional court brings further clarity and finality to the norm.[12] Further reliance may be placed on authoritative legal treatises, commentaries, textbooks, reference books, encyclopedias, research papers and comments published in journals of repute in search of *meaning*, with reasoning, and *intent* of the legal norm. A holistic reading of these statutory materials and rigorous analysis thereof makes him to *understand* the true gamut, underlying principles of the legal norm, appreciate, in the backdrop of its 'intent' and judicial interpretation, its formal and functional paradigm, consistency/correlation with other related laws, inbuilt gaps and/or tuning between it and other laws or judicial interpretations. Further, holistic reading of law through systematic analysis of statutory norms and judicial opinions, highlighting/appreciating principles and propositions of law derived therefrom, and logical and systematic ordering thereof, with reasoning, ascertains the *place* and *significance* of the legal norm in the larger legal framework.[13] Researcher, through systematic analysis of the norm, not only brings out clarity in understanding, but also, through legal reasoning, highlights glaring in-built loopholes, ambiguities or inconsistencies in the statutory and interpretative articulation of the

10 In the common law jurisdictions, sometimes, controversial draft legislations are referred to the joint parliamentary committee/select committee for its careful perusal, consideration and recommendations to the Parliament. It is also common practice in these jurisdictions that the Law Commission, on its own or on direction of the government, minutely examines the substantive as well as operative aspects of the existing legislations and suggest reforms therein. It also proposes or offers a broad blue print of a new legislation, if the existing one, in it's opinion, has/is proved/proving ineffective.

11 Courts, particularly constitutional courts, in the process of adjudication of issues arising from social legislations invariably deliberate on, or hint at, legislative intent (and its sources), highlight in-built-weaknesses and shortcomings thereof, and suggest corrective measures to overcome them. While doing so, the courts may inject new ideas and ideals that fit into the legislative intent but have not been, inadvertently or advertently, identified or perceived by the Legislature.

12 See, *for example*, in India law declared by the Supreme Court is binding on all the courts within the territory of India. See, art. 141 of the Constitution of India, 1950.

13 See, Terry Hutchinson and Nigel Duncan, "Defining and Describing What We Do: Doctrinal Legal Research" 17 *Deakin L Rev* 83 (2012).

legal norm as well as the principles, propositions, or doctrines derived therefrom and suggests corrective measures. Systematic knitting of principles/propositions of law, with sound legal reasoning, obviously, leads to a well-developed legal norm and offers its theoretical base.

However, the inquiry confines merely to the discipline of law. It primarily involves textual analysis of black-letters of law or normative contents of law (in the light of judicial pronouncements thereon) as well as of the principles, propositions, or concepts that have emerged (or likely to emerge) therefrom. Its primary purpose is to *ascertain* law and to offer an explicit *normative comment*. It, thus, turns out to be merely theoretical exposition of the legal norm/facet.[14] In essence, it is 'research *in* law'. In research *in* law, inquirer's quest and zeal is to find/clarify law (on the fact under inquiry) and its underlying intent; conceptual or theoretical premise, and underlying principles of the existing legal norm; to examine its internal consistency, and suggest measures for improvement.[15] He gives emphasis on the analysis of statutes, statutory provisions and judicial pronouncements by using his power of reasoning. His findings, howsoever they are logically articulated and projected with convincing reasoning, do hardly reflect social dimension, performance, or impact of law, and have any social value or reality. He, like analytical positivists,[16] views law as a self-contained and autonomous system, completely divorced from the social setting (in which law indeed operates).

Law: A system of social behaviour

A system of law can be perceived as system of patterned social behaviour of, and between, its different sub-units or institutions. There indeed, though most of the

14 Such an approach to legal research is known as doctrinal legal research (or fundamental or theoretical legal research) as the researcher undertakes a critical conceptual analysis of all relevant legislative and judicial propositions of law to reveal a statement of the law relevant to the matter under inquiry. See, W T Murphy and S Roberts, "Introduction" 50 *Mod L Rev* 677 (1987); S N Jain, Legal Research and Methodology, *supra* note 6; S N Jain, "Doctrinal and Non-doctrinal Legal Research" 17 *Jr of Ind L Inst* 516 (1975); Terry Hutchinson and Nigel Duncan, "Defining and Describing What We Do: Doctrinal Legal Research", *ibid*; J Smit, "What is Legal Doctrine: On the Aims and Methods of Legal-Dogmatic Research" in R van Gestel, H-W Micklitz, and E Rubin (eds), *Rethinking Legal Scholarship: A Transatlantic Dialogue* 207 (Cambridge Uni Press, Cambridge, 2017).

15 See, Michael Pendleton, "Non-empirical Discovery in Legal Scholarship-Choosing, Researching and Writing a Traditional Scholarly Article" in Mike McConville and Wing Hong Chui (eds), *Research Methods for Law* 159 (Edinburg Uni Press, Edinburg, 2010).

16 Traditional analytical jurisprudence perceives law as a system of norms. Positivists indulged in finding logical coherence of the several propositions of law as well as parts of a legal order, and formulating definitions of the norms that maximize such coherence. They concentrated merely on 'form of law', as emanating from its sources, and endeavored to identify 'law' and 'legal order' with logical legal reasoning. See, Julius Stone, *Social Dimensions of Law and Justice* (Stanford Univ, Stanford, 1966); W Friedmann, *Legal Theory* (5th edn., 1967); John Austin, *the Province of Jurisprudence Determined* (Cambridge, 1995).

times invisible, exists frequent interactive behavioral patterns between the law-creators/moulders/extinguishers (*i.e.*, Legislature); law-interpreters (*i.e.,* Judiciary); law-enforcers (*i.e.* Executive); law-breakers (*i.e.,* deviators), and norm-compliers (*i.e.,* law abiders). Each one of these legal actors, through patterned behavior and on-going interactions, has potentials to influence (un)making of law and legal institutions, and in turn, development of, or reforms in, law/legal institutions. Overt acts, attitudes, beliefs, expectations, motivations and aspirations of persons manning each one of these legal actors (including beneficiaries and victims of legal governance) have potentials to influence, to a great extent, *law* in terms of its contents, context, operation, and outcome and legal institutions.[17] In this sense, *law* may be perceived as a (sub)social system, whereby behavioral patterns of these (sub)sects may put to systematic/scientific inquiry. Such a behavioural study, though reveals dynamics of law, obviously cannot be confined to a single discipline. It transcends disciplines more than one.[18]

Legislature occupies the central place in the formulating law-making policy and translating it into law. No law, as mentioned earlier, can be *sui generis* or extempore or accidental. Law, theoretically, is an outcome of intensive deliberations at different levels of the legislative process. In a democratic polity, wherein Legislature, like in India, is composed of multi-political parties with distinct (most of the times conflicting) ideologies, formulating legislative policy and translating it into law becomes complex, if not challenging. Invariably, main political parties take a definite 'stand' and 'position', with 'justification' in the name of the so-called 'public opinion' and 'public interest', at various stages of (un)making 'law' and pursue it with sincerity. Sometimes, civil societies, NGOs, or groups whose vested interests are likely to be jeopardized, spontaneously/zealously organize themselves, take a 'position' and 'lobby' for (or against) it or apt changes therein. These groups, though penetrate into the political system from the society and their 'interests' are intertwined with the intractable problems of justifications, operate as 'pressure groups'. A study of their role in the law-making becomes relevant and significant for understanding role and intent of the legislators in formulating or articulating legislative intent and interest.

Law and its intent, thus, in essence, is a synthesis of different choices, stands, and reasoning. Mere reading an enactment passed by Legislature, therefore, cannot be adequate enough to 'understand' law and/or legal institution. In order to have a serious peep into true legislative intent, one needs to look deeply into the political, educational, cultural, religious, ethnic, and social background; social outlook, and intent of the

17 See, S K Agrawala, "Law and Behavioural Studies in India" in S K Verma and M Afzal Wani (eds), *Legal Research and Methodology*, *supra* note 6 at 90.

18 See generally, Rensis Likert and Samuel P Hayes, *Some Applications of Behavioral Research* (UNESCO, 1957); Sir Carleton Kemp Allen, *Law in the Making* (Oxford, London, 7th edn., 1964) ch. IV: On Legislation; K C Wheare, *Legislature* (Oxford, 1963); Shane Martin, Thomas Saalfeld, Kaare W Strom (eds), *The Oxford Handbook of Legislative Studies* (Oxford, 2014).

'Legislators' as well as of 'other interest groups'. A study of their 'attitude', 'role', and 'floor behavior' at different stages of the legislative process also carries significance in any search for legislative intent and its theoretical premise. Interest-oriented apathy/ sympathy or sensitivity/insensitivity of the Legislators and of other interest groups influences the structural as well as operational paradigm of the law.

In this context, a systematic inquiry into a few aspects of legislative behavior may prove apt for understanding a given law. A few prominent aspects are: What forces – social, political, cultural or international - influenced a particular law/legal institution and for what reasons? How and why legislators, individually or collectively, with or without joining hands with other 'interest groups' behaved at different stages of legislative process? What pressure-groups (and on what considerations) lobbied (for and against the proposed legislation)? Who are the beneficiaries thereof? Have they, out of sympathy/apathy or sensitivity/insensitivity, deprived/replaced the most expected beneficiaries for whom the legislative move was initiated or pursued? Is their *stand*, though legally or politically correct, socially/morally upright and tenable? Responses to these and incidental questions unfolds the intent with which law is proposed, mooted & pursued; the kind of modifications the legislative proposals went through and the support or resistance (along with the reasons therefor and sources thereof with motive) it received in its way to becoming an Act. It also assists us in identifying the legislative targets as well as unravelling underpinnings of the law and its mission.

Judiciary is another major player in a legal system. In fact, it, through application and interpretation of law, injects life into black letters of law. It, while adjudicating *lis* brought before it, not only identifies and applies relevant law to the issues involved therein, but also through interpretation gives *meaning* to the legislative provisions/ letters involved therein. While doing so, sometimes it offers/articulates certain propositions/principles, and/or legal doctrines or concepts. Interpretation of a legislative letter/provision, however, is not a mere mechanical application of law. In essence, it is a judicial opinion, with justifications, grounded on, derived from, a blend of jurisprudential, constitutional, sociological, historical, and philosophical perspectives of the law/statutory provision involved. What matters more to us is not a legislative provision/letter but its judicial interpretation or exposition.

In most of the common law jurisdictions, like India, constitutional courts are vested with the judicial power of wide amplitude. They are entrusted with the power to adjudge constitutional *vires* of *law* (primary as well as secondary)[19] and of administrative action, and to *declare* law (that binds all courts subordinate thereto).[20]

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19 See, art. 13(2), Constitution of India, 1950.

20 See, art. 141, Constitution of India, 1950.

Obviously, educational, personal, cultural, religious,[21] and professional background;[22] judicial philosophy[23] and attitude; social & political outlook; [24] judicial courage and craft;[25] among other things,[26] of a judge play crucial role in interpretation of legislative letter/provision and response to the issues at hand. These factors play certain role in his decision to dissent, concur, follow, or deviate from the thitherto judicial norms or canons thereof. His choice for any of the judicial techniques available to him, in the prevalent broader context of law, socio-politico expectations, controversies, challenges, or conflicts,[27] presumably, depends on his personal and professional traits.[28] He, while exercising his *choice* and judicial power, is expected to ensure that his judicial reasoning meets the basic judicial canons, the constitutional aspirations as well as social expectations.

Behavioural study of judges, who have a major role to play in attributing *meaning* to *law* and to, thereby, add new dimensions thereto, not only help us in appreciating nuances of judicial process but also knowing the judge's *choice* and *preferences* as well as his justifications and reasoning therefor, and his *outlook* influenced by his personal, philosophical attributes and attitude, in the judicial-making. A study of judicial behavior also reveals the way and compulsions, if any, in which legal principles, doctrines or concepts are evolved and help us in assessing their validity, reliability, and propriety in the current scenario.

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21 See, R C Nagpal, "Religion of a Judge and Personal Laws" 16 *Jr of the Ind L Inst* 123 (1974).

22 For example, see Rajiv Dhavan and Alice Jacob, *Selection and Appointment of Supreme Court Judges-A Case Study* (N M Tripathi, 1978).

23 Every judge has his own distinct philosophy, stream of tendency, and approach of viewing legal problems, which, consciously or unconsciously, in isolation or combination, play role in his *decision-making*. The tendencies of judges are as varied as the colours of an artist. See M. Hidayatullah, *A Judge's Miscellany* (N M Tripathi, 1972) 67. Rajiv Dhavan has attempted to show how the philosophy of Judges (particularly the judges who decided *Kesavananda Bharati* v. *Union of India*, AIR 1973 SC 1461) reflected in their previous opinions and utterances gets reflected in, rather furnishes a premise of, their judicial opinions. See Rajiv Dhavan, *The Supreme Court and the Parliamentary Sovereignty* 113-41(Sterling, New Delhi, 1976).

24 For example, see Rajiv Dhavan, *The Supreme Court of India- A Socio-Legal Critique of its Juristic Techniques* (N M Tripathi, 1977), wherein the author has offered some explanation and interpretation of some aspects of the attitudes, beliefs, and motivations *etc.* of the Indian Judges and their influence in their decision-making.

25 See, Upendra Baxi, *Courage, Craft and Contention: the Indian Supreme Court in the Eighties* (N M Tripathi, Bombay, 1985).

26 See, Benjamin N Cardozo, *The Nature of the Judicial Process* (Oxford, London, 1946).

27 See, Upendra Baxi, *The Indian Supreme Court and Politics* (Eastern Book Co, Lucknow, 1980).

28 See, Glendon A Schubert (ed), *Judicial Decision-Making*, (Free Press, New York, 1963). Also see, Veena Das, *Sociology of Law: A Survey of Research in Sociology and Social Anthropology* (Indian Council for Social Science Research (ICSSR), New Delhi, 1974).

Law, particularly social legislation, invariably intents to bring certain social transformation and/or change/mould behavioural and attitudinal patterns of the individuals, in particular, and social outlook, in general. Success/failure of the law/legal institution obviously depends upon the *response* thereto of the *legislative target*s, in particular, and society, in general. The socio-cultural-attitudinal setting in which the individuals/social groups, which are dealt under the law, are placed, plays a significant role in making the legal norm/institution successful or failure. The *social setting* (along with intervening social factors/situations, and cultural norms/mores) may facilitate/impede the law's mission or make it neutral. Behavioural study of the legislative targets and/or public, therefore, becomes significant in *understanding* law/legal institution and taking corrective measures. Law intending to bring social transformation and attitudinal changes may evoke sharp acrimonious responses making the law a total failure or dysfunctional[29] or converting it a tool of revenge.[30] Such a behavioural study, depicting apathy or empathy of law/legal institution, in fact, offers effective in-put/feedback for assessing efficacy of the legislative norm in effecting the planned transformation or change as it, to a great extent, catches *pulse* of the law and of the persons benefited as well as affected by the law.

Further, success or failure of *law*, to a great extent, depends on the sincerity with which it is administered by the administration/law-enforcers. Translating a legal ideal of social transformation, moulding behavioural patterns of people, or changing their attitude/belief into a social reality largely depends upon the rigour, sincerity and commitment with which the administrators/enforcers supplement/implement the law/legal norm. A well-intended law, with a perfect theoretical as well as operational base, can be reduced to a mere symbolic or cosmetic piece of legislation, if it is not implemented by the administration with the same zeal and quest, with which it is enacted/interpreted. Failure on its part, for any reason whatsoever, fails the law with no uncertainty. Hence, a study of behaviour of the administration/enforcers of law also becomes equally significant.

Study of institutional behavior of legal actors, for obvious reasons, helps us in understanding dynamics and social performance of law. Legal research that ignores or undermines the institutional behavioural studies is, with almost certainty, likely to be mere speculative and inadequate to *understand* law and its mission.

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29 For example, the Protection of Civil Rights Act, 1955, enacted to give effect to the spirit of art. 17 of the Constitution, and supplemented with a couple of other laws/schemes loaded with the ideal social equality and egalitarian social order, purportedly led to rampant atrocities on the Scheduled Castes and Tribes by the vested interests. As a consequence, the Parliament felt it necessary to enact, as a corrective measure, the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 to combat the atrocities.

30 See, Law Commission of India, "Two Hundred and Forty-Third Report: Section 498A, Indian Penal Code" (Government of India, 2012). The Law Commission has highlighted misuse of the provision by its beneficiaries for settling their personal score.

Law: An agent of social transformation

Law, it is argued, cannot be *understood*, in real sense of the term, by merely knowing its sources, contents, and attributes. No study of law by itself hardly reveals either its social utility, value or impact on social ethos. For better *understanding* of *law* and its *mission*, one needs to also undertake systematic inquiry into its *operation* and *performance* in terms of its *success* or *failure* in its *mission*. Here focus of attention of legal researcher is on the social process underlying the operation of law and its social effects. He shifts his focus from *law-as-rule* to *law-as-process*.

The perception got momentum by the emergence of sociological school of jurisprudence and its underlying philosophy. It, in essence, perceives law as an *instrument* or *catalyst* of social change/transformation and assigns *law* the task of social engineering, and in turn, of establishing an egalitarian social order, and of balancing competing interests[31] of *haves* and *haves-not*, with least friction.[32]

This perception of *law* obviously warrants an inquiry that goes beyond mere ascertainment of legal rules and peeps seriously into its social role. It contemplates a focused inquiry into *performance* or *impact* of law, rather than on its *contents*, and the factors that boost or impede the desired planned transformation.[33] It expects a systematic inquiry not '*in* law', but '*about* law' that *highlights* and *measures* the gap between the *legal idealism* (law-in-the statute book) and *social reality* (law-in-action) as well as suggests *strategy* to bridge it. It reveals the extent to which a given law is assimilated in,

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31 Roscoe Pound perceived social engineering by balancing through law three competing interests-individual interests, public interests, and social interests. He employed the *jural* postulates of rights and the concept of legal person as a means to secure interests. He asserted that each interest is to be weighed in the same plane. See, Roscoe Pound, (1-3) *Jurisprudence*, *supra* note 3. Also see, M D A Freeman, *Lloyd's Introduction to Jurisprudence*, *supra* note 4; R W M Dias, *Jurisprudence* 433 (Aditya Books, New Delhi, 1994).

32 Almost every modern welfare state perceives *law* as an active instrument of socio-economic transformation, and thereby an effective vehicle of social engineering. The Constitution of India, for example, assures social, economic and political Justice to all the Indian citizens in matters of equality of status and of opportunity with assurance to dignity of the individual. In its quest for the perceived socio-politico-economic transformation, the Constitution, *inter alia*, desires every State to strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which social, economic and political justice prevails in all the institutions of the national life. It also directs States to strive to minimize inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. See, Preamble and arts. 37, 38, 39(a)-(c) and (f) and 46 of the Constitution of India.

33 See, Ronald Dworkin, Legal Research, 102(2) *Search for Knowledge* (Spring, 1973) 53; J N Adams and R Brownsword, *Understanding Law* (1992) 116, and Timothy J Berard, the Relevance of the Social Sciences for Legal Education 19(1) *Leg Edu Rev* 189 (2009).

or accepted by, the legislative targets as well as the society. It, in essence, examines social relevancy, utility and efficacy of *law*.[34]

A researcher, with his perception of law as an agent/catalyst of transformation/change, may undertake a systematic inquiry of postulates that directly or indirectly revolve around or assess impact of law or social response thereto. He may, for example, address to: How does law/legal institution *work* in practice? Are beneficiaries (of law) *using* the given law/legal institution? Has law been *effective* in benefitting its targets and/or changing/moulding their attitude, belief or behavioural patterns and/or in bringing the planned change or transformation? What has been its *effect* or *impact* on the individual/social behaviour? Has it effected the *desired* transformation? If not, what are the *obstacles* (and their effects) in realization of the expected change? Has the law/legal institution attained its *intended mission*? If not, what factors have been responsible for creating a *gap* between *legal ideals* and *social reality* and thereby making law/legal institution dysfunctional or mere symbolic? What *corrective measures* need to employ to make the law/legal institution more effective and successful as an agent of change? Inquiry into these and the queries incidental thereto, or emerging therefrom, in fact, leads to a sort of post-legislative social audit, supported with social facts. It assesses *external effectiveness* or impact of law as a catalyst for change. It exposes the bottle-necks and obstructive social tendencies that have been thwarting the intended change through law/legal institution. It enables the policy-makers to forge the most apt strategies to remove the identified bottle-necks and obstructive tendencies, or to, at least, make them less effective.

In the same vein, systematic inquiry into impact/implications of judicial decisions or reflections of the highest court of the land,[35] which is invariably vested with wide judicial powers, including the power to adjudge constitutional *vires* of legislative enactment; to *declare law* that binds all the courts (and tribunals with judicial power)

34 *Supra* note 7 Hazel Genn, Martin Partington and Sally Wheeler, *Law in the Real World: Improving our Understanding of How Law Works: the Nuffield Inquiry on Empirical Legal Research* (the Nuffield Foundation, 2006); Terry Hutchinson and Nigel Duncan, Defining and Describing What We Do: Doctrinal Legal Research, *supra* note 13.

35 See generally, Upendra Baxi, "Who Bothers about the Supreme Court? The Problem of Impact of Judicial Decisions" 24(4) *Jr of the Ind L Inst* 842 (1982); Upendra Baxi, Dimensions of Impact Analysis, in Manoj Kumar Sinha and Deepa Kharab (eds), *Legal Research Methodology* 181(LexisNexis/Indian Law Institute, 2017).

subordinate thereto, and to *issue* appropriate orders to do *complete justice*[36] on crucial socio-politico-religious-legal issues,[37] becomes significant not only for evaluating its contribution in the March of Law, but also in bringing the desired changes. Even effects of varied juristic techniques used[38] or invented,[39] judicial reasoning offered, and *directions* or *guidelines* issued by the highest court merit systematic inquiry and evaluation for appreciating their propriety and possible contribution from the social perspective.

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36 For example, see arts. 13, 141 and 142 of the Constitution of India. In addition, it empowers the Supreme Court to issue apt directions, orders or writs for enforcing fundamental rights guaranteed thereunder (art. 32) and to ensure that *governance* is premised on *rule of law* and constitutional ethos. In exercise of its judicial powers, the Supreme Court in the past has formulated a set of *guidelines* to fill the *legislative vacuum* and made them operative till a suitable legislation is put in place. For example, see, *Supreme Court Advocates- on- Record Association* v. *Union of India* (1993) 4 SCC 441; *D K Basu* v. *State of West Bengal* (1997) 1 SCC 416; *Vishaka* v. *State of Rajasthan* (1997) 6 SCC 241; *Union of India* v. *State of Maharashtra* (2019) 13 SCALE 280, and *Ashwani Kumar* v. *Union of India* (2019) 12 SCALE 125. These *guidelines* have, though arguably, acquired the status of (legislative) policy formulations, the domain, at least theoretically, exclusively belongs to the Legislature.

It has also evolved and conceptualized certain flexible concepts/ doctrines such as, reasonable classification [*K Thimmappa* v. *Chairman, Central Board of Directors SBI* 2000(8) SCALE 269]; the basic structure doctrine [*Kesavananda Bharati* v. *State of Kerala* (1973) 4 SCC 225; *Minerva Mills Ltd* v. *Union of India* (1980) 3 SCC 625; *L Chandra* v. *Union of India* (1997) 3 SCC 261; *Supreme Court Advocates- on- Record Association* v. *Union of India* (2016) 5 SCC1]; constitutional morality [*Navtej Singh Johar* v. *Union of India* (2018) 10 SCC 1]. These concepts/doctrines have immensely impacted the governance and the privacy jurisprudence.

37 For example, implications of the judicial pronouncements of the Supreme Court in *Navtej Singh Johar* v. *Union of India* (2019) 3 SCC 39; *Joseph Shine* v. *Union of India* (2019) 3 SCC 39; *Shayara Bano* v. *Union of India* (2017) 9 SCC 1; *Indian Young Lawyers Association* v. *State of Kerala* (13) SCALE 75; *M Siddiq (D) thr L Rs* v. *Mahant Suresh Das* (2019) 15 SCALE 1, are worth probing.

38 See, Rajiv Dhavan, *The Supreme Court of India- A Socio-Legal Critique of its Juristic Techniques*, *supra* note 24, wherein the author has examined some of the juristic techniques used by the Supreme Court of India with respect to the handling of the doctrine of precedent, statutory interpretation. And analysis of the Constitution. Also see, K I Vibhute, "Law Declared by the Supreme Court-Some Reflections on It's Meaning and Scope" 9 *Jr of the Bar Council of India* 52 (1982); A Lakshminath, *Precedent in Indian Law: Judicial Process* (Eastern Book Co, Lucknow, 3rd edn, 2009).

39 Like, Public Interest Litigation (PIL) or Social Action Litigation (SAL), which has been evolved and brought under purview of art. 32 of the Constitution. For appraisal see, S K Agrawala, *Public Interest in India: A Critique* (N M Tripathi, 1985); Upendra Baxi, "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India" (4) *Third World Legal Studies* 107 (1985); S P Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (Oxford, New Delhi, 2002); Anuj Bhuwania, Courting the People: the Rise of Public Interest Litigation in Post-Emergency India, 34 *Comparative Studies of South Asia, Africa and the Middle East* 314 (2014); Upendra Baxi, Law, Politics, and Constitutional Hegemony: The Supreme Court, Jurisprudence, and Demosprudence, in Sujit Choudhry, Madhav Khosla, and Pratap Bhanu Mehta (eds), *The Oxford Handbook of the Indian Constitution* (Oxford, 2016) ch. 6.

Mere enacting law, howsoever laudable its objectives are, does hardly serve any social purpose or yield the desired changes, unless it, with the equal enthusiasm, commitment and sincerity, is enforced.

It, however, needs no stress that every impact study (of law or judicial opinion), which is seemingly undertaken with a zeal to assess *impact*, *effect,* or *operation* of the given legal norm/institution, requires to set, in advance, *parameter* for *measuring* impact, success, or effectiveness (with reference to the intent/consequence) and the *impact target* or *constituency* (*i.e.* beneficiaries and/or their adversaries or social alienation/assimilation/repulsion/dejection/frustration). The inquirer obviously needs to *conceptualize*, in the most articulated manner, the parameter set, the impact constituency identified, and to meticulously spell out the *indices/methods* of measurement (of the *effectiveness* or *impact* not only in terms of *compliance* and/or *enforcement* of the norm, but in terms of its *impact* upon the legislative targets, people & their attitudinal/behavioural patterns). For assessing *effectiveness*, in terms of changes in behavioural patterns and/or beliefs, however, the inquirer has to devise some measures of knowing the pre-norm as well as the post-norm changes in behaviour and/or consciousness of the persons affected (for weal or woe) by the legal fact put to inquiry.[40] But meeting these *prerequisites*, in a precise way, is a promising task, though outcome/success of the research at hand is closely linked therewith. Further, grading the *success* or *impact* of law/legal institution and the consequential labelling it as *symbolic*, *instrumental*, or *dysfunctional* is equally a difficult task, if not impossible. Success, failure or effectiveness of a legal norm/institution, put under inquiry, can hardly be accurately *measured* as a host of other social forces or factors, visible or invisible, operate along with the legal norm/institution. Divorcing these intervening forces/factors from the formal ones, other than *compliance* or *enforcement* of the legal norm/institution, and assessing their *contribution*, positive or negative, in bringing the *intended/unintended change* requires advanced research skills and sophisticated methodological strategies. Well-defined *variables* and their *associational patterns*, causal or casual, may make his task easier and enable him to *measure* the *impact*.[41] Nevertheless, one needs to realize that socio-legal impact studies cannot ideally be carried out with the help of controlled and uncontrolled *variables*. *Impact* needs to be measured through *observable* parameters/indicators in a relative manner in the given *social context* and *settings*. But this does not mean that he should not make any effort, within his reach, to develop a cause and effect paradigm. Time-series analysis, warranting study of trends (of impact/effect) over a period of time, becomes a worth-trying exercise for drawing cause-effect model.

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40 Upendra Baxi, Dimensions of Impact Analysis, in Manoj Kumar Sinha and Deepa Kharab (eds), *Legal Research Methodology*, *supra* note 35.

41 For certain clues and tips, see Colin S Gibson, Legal Impact Analysis: "The Legal Ideal and the Practicable" in S K Verma and M Afzal Wani (eds), *Legal Research and Methodology*, *supra* note 6, 489.

Systematic revelation of *effectiveness* of *law/legal institution* makes us to appreciate *dynamics* of *law*, of its *performance* and the bottle-necks or factors that impeded or stalled the law/legal institution from attaining its intended/anticipated goal. Such an understanding equips the Legislature to devise strategies, legal or administrative, to overcome them or minimize their negative implications so that *legal ideal* swiftly gets translated into *social reality*. In the absence of adequate information about *performance* of *law* and of the factors, internal or external, that make it a failure as well as of the strategies to overcome the identified impediments/bottlenecks or negate or reduce their ill-effects, no law can be made an effective instrument of, or catalyst for, intended social change or transformation.

III Conclusions

Different aspects of *law* falling in varied phases of the law-making, ranging from *concretization* to *consequences*, may, with a purpose, be put to systematic inquiry. An inquirer may focus merely on the *motives* and *interests* of different players in identifying and concretizing a *norm* and transforming it, with certain legislative intent, to a legal norm. He may concentrate on *contents* of *law* with the intent to *understand* its tuning with the legislative intent, theoretical premise, promise and *internal consistency*. His quest is to merely *understand* law as it exists in the statute-book. He, with his reasoning power, undertakes analysis of statute/statutory provisions and judicial interpretation thereof to *understand law* and/or its normative character. A researcher, who believes that *law*, in ultimate analysis, is an outcome of preferred *choices* made by the Legislators, Judges, and Administrators in the course of their respective institutional interactions & roles, and that their *principled stand/perception* on *purpose* and *outcome* of law determine paradigm, contents and intent of the law, attempts to *understand* law through *attitudinal* and *behavioural interactions* of these legal actors. And a researcher, who believes that no *law* or its *contents* can be adequately understood without *understanding* its *performance*, ventures to *measure* its *impact*, *social acceptance*, and *accomplishment*. What becomes important for him is to, in the backdrop of legislative intent, ascertain *success* or *failure* of law, in terms of its performance and achievements. While doing so, he highlights impeding or intervening factors, if any, and suggest strategies to prevent them or combat their effects. His quest is to examine social dimension of *law* and its *external consequences*, rather than *internal consistency*.

A researcher, thus, may perceive *law* in three dimensions, *namely*, a system of crystalized norms, a system of behavioural patterns of different players in the domain of law, and an instrument of, or catalyst for, social transformation or change. Each one of these perceptions, obviously, entertains a host of queries that are different from the other and exhibits different facets of legal research. Nevertheless, any holistic legal research requires a fine balanced approach to all the three dimensions, though the second and the third ones require advanced trans-disciplinary multi-method research skills, to *understand* law and measure its *impact*, and thereby give a worthy feedback to the policy-makers.