IDEA AND METHODS OF LEGAL RESEARCH. By P. Ishwar Bhat, (Oxford University Press, New Delhi (2019) ISBN 978-0-19-949309-8, Pp xxviii+660, Price Rs. 1,795/-.

IN THE modern world, *law* is perceived as a multi-dimensional and multi-disciplinary subject as it touches almost every other discipline known to us. It has also been endowed with multiple tasks, with wide tentacles spread over almost all facets of human life. In a democratic polity, social values and ethos may get reflected in law.[1] Sometimes, law, on certain higher ideals, endeavours to change, mould, or substitute certain prevalent social values, attitudes, and/or behavioural patterns.[2] Legal ideals/values and socio-cultural values, though sometimes lag behind or ahead of each other, keep on influencing each other.[3] The continuous interaction between the two, in the backdrop of the assigned and/or expected/accepted role of *law* (in bringing changes in attitude, values, beliefs, and behavioural patterns) warrants frequent systematic inquiry *in* and/or *about* law or legal institutions. Such a serious meticulous inquiry is required to appreciate *raison d'etre*, paradigm, and performance of *law*/legal institution and its achievement (or failure along with the factors/reasons responsible therefor). Inquiry, to put it in other words, ranges from *concretization* to *consequence* or *idea* to *implications* of *law*/legal institution.

Legal research, like research in any other discipline, requires techniques and methods (of its own or borrowed or cloned) to *understand* law/legal institute and assess its *performance*.

However, until a few decades back, no serious efforts are made in India to make legal research and writing a part of formal legal education system,[4] to motivate,

1 See generally, Niklas Luhmann, *A Sociological Theory of Law* (Routledge, 2013); Celso Fernandes Campilongo, Lucas Fucci Amato and Marco Antonio Loschiavo Leme de Barros (eds), *Luhmann and Socio-legal Research* (Routledge, 2021); Larry Barnet, *Legal Construct, Social Concept: A Macro-sociological Perspective on Law* (Routledge, 2017).

2 Constitution of India, for example, on the ideals of *Justice, Liberty,* and *Equality*, reflected in its Preamble and further elaborated in its Parts III and IV, envisages massive socio-economic transformation through *law* and (re)construct a new social order.

3 Sheryl J Grana, Jane C Ollenburger and Mark Nicholas, *the Social Context of Law* (Prentice Hall, 2nd edn, 2001).

4 Only during the eighties, the the University Grants Commission (UGC), established under the University Grants Commission Act, 1956, gave some impetus to legal research in the Indian Universities. In 1976, it introduced a four-semester full-time LL.M Course, wherein, seemingly with a view to imparting techniques of legal research to the post-graduate students, a course on legal research methods was made mandatory.

In the nineties, the move for committed legal education, blended with legal research, took a leap. National Law School of India University (NLUSI), set up in Bengaluru, initiated the tradition of legal education with greater emphasis on, and opportunities for, legal research by students of law as a part of their curricula. It has established dedicated centers/cells for imparting legal education and conducting/coordinating legal research in the specified area(s). The NLSUI pattern, in due of course of time, is emulated by almost all the National Law Universities/Schools in India.

cultivate and strengthen *legal research culture*[5] amongst the masters' students and research Scholars, and to equip them with the requisite sound skills to pursue legal research, and thereby contribute to the development of, and reforms in, *law* and the legal system.

The efforts to educate and arm young researchers with necessary research skills, through publishing quality research papers and books on legal research/methodology, are also on. The book under review,[6] which delves into, and dilates upon, '*idea'* and '*methods'* of 'legal research', is one of such latest laudable efforts.

Idea and *methods* of legal research are discussed in five thematic segments. The first part of the book, as captioned, deals with 'general' matters such as the meaning, purposes, importance and scope of legal research; legal methods and methodology; reflective thinking, and scientific method; objectivity, value-neutrality, ethics in legal research, and constructing legal research theme. The second segment is devoted to doctrinal legal research, while the third part delves into non-doctrinal legal research. The fourth part ponders on integrated methods of legal research; methods of policy research in law; role and methods of action research in law; and methodology in feminist legal research. And the last part offers reflections on the major steps involved in writing a research-based report, such as a thesis, research paper, case-comment, and book review.

In the first part, the author seemingly constructs premise for building theme of his book. In this part, he broadly highlights the prime thematic pointers that are extensively discussed in the parts following thereto.

Any research undertaking, obviously, starts with a research *idea*. Ordinarily, a fine *idea* does not just 'come' as a 'spark'.[7] Invariably, it results from a 'proposition' emanating from 'reflective thinking'. Intuition with intensive inquiry yields an *idea*, an end-product

---

5 In 1956, the Indian Law Institute (ILI) was established in New Delhi to, *inter alia*, promote and develop research in law, cultivate, encourage and conduct legal research in law and related fields. In 1982, ILI has brought out a special issue of its prestigious *Journal of the Indian Law Institute* on 'Legal Research and Methodology', which was subsequently, by commissioning a few more essays, published it in a book form with the same caption. See, S N Jain, J K Mittal, *et al,* (eds), *Legal Research and Methodology* (N M Tripathi, Bombay, 1983). Almost two decades thereafter, in 2001, a revised version of the anthology was brought out. See, S K Verma and M Afzal Wani (eds), *Legal Research and Methodology* (Indian Law Institute, New Delhi, 2nd edn, 2001). Recently, in 2017, ILI has published another anthology on Legal Research Methodology. See, Manoj Kumar Sinha and Deepa Kharab (eds), *Legal Research Methodology* (ILI/LexisNexis, 2017).

6 P. Ishwara Bhat, *Idea and Methods of Legal Research* (Oxford University Press, New Delhi, 2019).

7 E P Ellinger and K J Keith, Legal Research: Techniques and Ideas, in S K Verma and M Afzal Wani (eds), *Legal Research and Methodology* (Indian Law Institute, New Delhi, 2nd edn, 2001) 219.

of thought-process. Proven ideas cumulatively advance knowledge. In this sense, in opinion of the reviewer, one needs to seriously look into, rather review/examine, the manner in which '*idea'* and '*methods'* of legal research are explained, and their *interface* is highlighted. Value-neutrality,[8] objectivity, and academic integrity and honesty[9] of the inquirer enhance creditability of his contribution to the knowledge.[10] But identifying and formulating a precise research proposition for legal research is not an easy task because of peculiar multi-dimensional, multi-disciplinary nature, and multi-operational facets of *law* and the *problems* emanating therefrom, or associating therewith. Turf indeed is very wide and multi-directional. Intensity of interest, curiosity and ability of researcher to 'locate' a 'problem' (and to decide its 'aptness' and 'relevancy'), obviously, play crucial role in articulating research problem. The last chapter in the first segment[11] offers significant tips on all the major steps-starting from selection of research problem to analysis of data-of research.

Following in line with anthologies/books on legal research methodology, author of the book under review offers considerable space to *doctrinal legal research* (DLR)[12] and *non-doctrinal legal research* (NDLR).[13]

Expounding DLR, the author refers to numerous definitional propositions articulated by different scholars[14] that prominently convey that DLR, in essence, involves synthesis of legal rules, principles, concepts, or doctrines and explains consistency and coherence in law, legal concept, doctrine, or institution. It highlights 'in-built' gaps, ambiguities or weaknesses of law/concept/doctrine. It brings internal coherence and conceptual clarity required for better understanding of the law/legal system. It employs the inductive method of reasoning for evolving certain propositions and building a theory on facts and law. It accommodates in it a new shade of opinion, rejection of an unsuitable opinion, and an innovation of a new viewpoint.

However, DLR, according to the author, is 'not identical to analytical legal research (ALR)', which exclusively focuses on analysing and finding meaning and implication

8 However, the author, referring to the supreme values embodied in the Constitution, argues that perfect value- neutrality is not visible in legal research. He also feels that insistence on absolute freedom from ideology in legal research is difficult. (at 64)

9 For UGC's latest Notification see, Ishwara Bhat, *Idea and Methods of Legal Research*, *supra* note 6 at 89-98.

10 See, ch. 3: Objectivity, Value Neutrality, Originality and Ethics in Legal Research, *supra* note 6.

11 Ch. 4: Choosing, Designing, and Building the Legal Research Theme, *ibid.*

12 Part II: Doctrinal Legal Research Methods at 143-300. Out of the 5 ch. clustered under the Part, four chapters are prior publications of the author. They are 'slightly different from' the 'originally published' papers.

13 Part III: Non-doctrinal Legal Research Methods at 303-465. Out of the four chapters placed in this Part, two are pre-book publications, and are 'slightly different from' the 'originally published' pieces.

14 *Supra* note 6 at 144-48.

of law. DLR, according to him, is distinct from ALR in three aspects: (i) DLR has wider objective such as evolution, exploration, evaluation, reform and theorizing of the social base of law, whereas ALR has an exclusive focus on analysing and finding the implication of law by addressing the aspects of meaning, silence, and relations; (ii) DLR employs the inductive method of reasoning and resorts to synthesizing facts, values, and law, whereas ALR primarily uses deductive logic, and (iii) DLR uses the interdisciplinary approach and traverses into the related fields, whereas ALR is mono-disciplinary in its approach and exclusively relies on legal materials.[15] Nevertheless, ALR operates as a pre-requisite for DLR.[16]

DLR, which, for obvious reasons, has occupied a dominant position in academic legal scholarship and profession, and has immensely contributed to refining and crystalising legal concepts/doctrines/principles, allows researchers to be methodologically flexible and mould methods that suit research objectives and questions. This leeway has, however, created a sort of methodological paradigm with lesser imperatives, which may be perceived as a strength as well as a weakness of DLR. This flexibility, in fact, justifies the inclusion and use of, with ease, the historical and comparative legal research methods in DLR. The former is used when a legal researcher intends to appreciate the conditions/circumstances in which an idea/institution, a concept/doctrine, or a system has originated, flourished, or demised. It helps him to trace and expose social dimensions/roles of the idea/institution/concept/doctrine, to critically evaluate it, in the backdrop of its positive and negative attributes, various contexts and situations, to assess its suitability in the given scenario, and to move further to mould, strengthen, or discard it, in the light of past (un)worthy decisions or (in)actions and lessons that can be drawn therefrom, and to (re)position it in the contemporary legal framework and (re)assign it certain roles in forward journey of reforms in law/legal institutions/system.[17] While the latter, wherein a legal researcher undertakes evaluation of a legal fact, doctrine, principle, or an idea/institution in the backdrop and context of the identical ones prevalent in other jurisdictions with similar/identical socio-politico-legal 'culture' and 'tradition', helps him not only to gain deeper insight into the legal fact and thereby perceive/appreciate it on a wider canvas, but also to get acquainted with the traps encountered by others and the strategies employed by them to succeed.[18] The book under review indeed offers a very comprehensive account of both the methods-historical and comparative-of legal research, and highlights their utility in legal research. Equally important chapter

15 *Id.* at 150-51.

16 See, ch. 6: Analytical Legal Research for Expounding the Legal Wor(l)d.

17 See, ch. 7: Historical Legal Research: Implications and Applications.

18 See, ch. 9: Comparative Method of Legal Research: Nature, Process and Potentiality.

placed in this segment of the book is philosophical research in law,[19] which supplements historical as well as comparative methods of legal research. It plays pivotal role in unravelling intricacies as well as hidden contours of certain complex legal concepts and doctrines, and thereby offering theoretical and jurisprudential foundation therefor. It revolves around, and results in, interpretation of legal rules and principles, and juristic construction of dynamic legal system. The chapter lists eleven reasons, with convincing illustrations, for engaging in philosophical research [20] and stresses the fact that philosophical research is an 'indispensable instrument' in research 'toolbox'.

In the third part, the author offers his penetrating reflections on empirical legal research (ELR) or non-doctrinal legal research (NDLR);[21] tools and methods thereof,[22] and its nexus, thematic as well as pragmatic, with qualitative legal research.[23] In ELR, a legal researcher is primarily interested in unravelling socio-eco-politico consequences of 'legal fact(s)' and 'social realities' thereof. He believes that law can only be understood by seriously peeping into its social dimensions and appreciating its operation and performance. He endeavours to exhibit 'gap' between 'intent' and 'effect' of the legal fact put to inquiry and to, with evidence,[24] evaluate its efficacy and adequacy. While doing so, he may highlight the bottlenecks, structural and/or operational, that thwart *law*/legal institution and its mission. However, ELR, though it has proved itself worthy in a couple of areas of law,[25] and has great potentials in unfolding social reality of

19 Ch. 8: Philosophical Research in Law: The Possibilities.

20 *Supra* note 6 at 240-51.

21 Ch. 10: Empirical Legal Research: Nature, Features, and Expanding Horizons, and ch. 13: Quantitative Legal Research.

22 Ch. 11: Tools of Data Collection in Empirical or Non-doctrinal Legal Research.

23 Ch. 12: Qualitative Legal Research: A Methodological Discourse. Though quantitative and qualitative methods are different from each other in their objectives, theoretical underpinnings, tools of data collection, and interpretation of data, they are 'two indispensable wheels of the chariot of ELR' [at 359].

24 However, law has not evolved its own methods for collecting data. Legal researcher relies upon a set of unique tools, in isolation or combination, known to social scientists for collecting data and analysing them. Prime tools and methods are: Observation, Interview, Questionnaire, Case Study and Content Analysis. The author has dealt with these tools and methods in ch.11: Tools of Data Collection in Empirical or Non-doctrinal Legal Research. However, he, for undisclosed reasons, has neither offered comprehensive account nor discussed utility, with limitations, of case study, survey, and content analysis in legal research.

25 See, ch. 10: Empirical Legal Research: Nature, Features, and Expanding Horizon, and chap 13: Quantitative Legal Research. Also see, Peter Cane and Herbert M Kritzer (eds), *Oxford Handbook of Empirical Legal Research* (Oxford, 2010).

law, has unfortunately not yet occupied a dominant position, which it deserved, in the arena of legal research.[26]

In the fourth part, the author delves deep into integrated methods of legal research[27] and offers penetrating peep into different contours, including the methodological, of policy research,[28] action research[29] and feminist legal research.[30]

Recalling multi-dimensional/disciplinary contextual and operational facets of law, the author approves of, and delves into, with illustrations, multi-method legal research (MMLR),[31] its nature, potentials, and broad procedure. He, for the indicated reasons,[32] also asserts that MMLR has come to stay as an acceptable strategy. But recalling its increasing recognition and growing application in the domain of policy research, law reform research, socio-legal research, and biographic, behavioural, developmental, and feminist studies, and noting scanty studies completed with the use of MMLR in India,[33] he feels that the extent of its growth and application in India is

---

26 Traditional legal research culture is dominated by doctrinal legal research and researchers are not enthusiastic and are unwilling to adapt themselves to techniques of ELR because of their hitherto training, and presence of certain stumbling institutional, structural, and financial blocks in the modern higher legal education and its reluctance, by default or design, to initiate and nurture socio-legal research culture. See, S N Jain, Doctrinal and Non-doctrinal Legal Research, in S K Verma and M Afzal Wani (eds), *Legal Research and Methodology* 68 (ILI, 2nd edn, 2001) and Rajkumari Agrawala, Indian Legal research: An Evolutionary and Perspective Analysis, in S K Verma and M Afzal Wani (eds), *Legal Research and Methodology*, *ibid*, 138.

27 Ch. 14: Multi-method Legal Research: Nature, Need, Procedure, and Potentiality.

28 Ch. 15: Canons, Contours, and Contributions of Policy Research in Law: A Need on Methodological Discourse.

29 Ch. 16: Action Research in Law: Role and Methods.

30 Ch. 17: Methodology of Feminist Legal Research.

31 In MMLR, researcher in a single study makes use of more than one research method, technique, or strategy for inquiring into legal fact(s) and issue(s)/contour(s) closely related thereto or associated therewith. MMLR integrates various methods, techniques, strategies or devices in a research. Explaining the method, the author has observed that legal research combines DLR and NDLR. And inquiry therein envisages integration of doctrinal, qualitative, and quantitative methods. 'Within the doctrinal method', he maintains, 'use of historical, analytical, philosophical, and comparative method of legal research may be combined or used sequentially with adequate integration'. Further, 'the doctrinal method may be supplemented by the non-doctrinal method, which might also use multiple devices or tools for collection of data'. And depending on the nature of data required and their *situs*, 'tools such as observation, survey, case study, questionnaire, ethnography, and interviews, which are the main techniques of qualitative research, may be employed in suitable combination'. 'MMLR', thus, 'arises by transcending the imaginary borders of various methods or devices and by integrating them in conducting research'. (471).

32 *Supra* note 6 at 474-80.

33 *Id.* at 488-96.

'unsatisfactory'.[34] However, he has neither highlighted the reasons therefor nor offered any measures to boost the use of MMLR in India.

Delving into 'canons, contours, and contributions of policy research in law'; highlighting the intimate inter-related blend between 'law' and 'policy', and stressing the utility of policy research in law (PRL), the author offers a very illuminating 'methodological discourse' of PRL. By placing his reliance on the research design of PRL drawn by Kuldeep Mathur[35] and Eugene Bardach and Eric Patashnik,[36] the author beautifully explains the 'seven-fold steps' path of, and roadmap for, designing policy research. However, recalling great potentials of PRL to contribute to legal development, governance, and the cause of social reform, he highlights some 'underside of policy research' and underscores the 'fears' of Carol Weiss[37] of 'manipulations and abuse'[38] by the governments commission policy research. He also reminds policy researchers to follow the strong advice tendered to them by Baldwin and David[39] of maintaining independence from governmental interferences.

Action research in law (ARL), which does not merely end with explanation of findings and analysis of situation but shows inclination to people's participation in securing a remedy and thereby strives to rectify the deficiencies in the existing system and empower targets, carries significance in the domain of law as 'law' is 'action-oriented' and 'impact-driven'. ARL, in the pursuit of understanding issues, offering solutions thereto, and making improvements thereon, brings together action and reflection, and theory and practice. It, like PRL and unlike a traditional research, does not move in a linear sequential research process. It is an interdisciplinary and participative research, with a multi-disciplinary approach. Its planning/designing primarily involves integration of collective experience (of the participating individuals); shared morality, foresight of status (*quo* or change), perusal of alternative courses of actions, choice

34 *Id.* at 496.

35 Kuldeep Mathur, *Public Policy and Politics in India: How Institutions Matter* (Oxford, 2013) ix.

36 Eugene Bardach and Eric M Patashnik, *A Practical Guide for Policy Analysis: The Eightfold Path to More Effective Problem Solving* 1(Sage, 2016).

37 Carl H Weiss, *Using Social Research in Public Policy Making* (Teakfield, New York, 1978).

38 He apprehends that governments commission manipulate and abuse policy research to: delay action; avoid taking responsibility for a decision; win kudos for successful innovations; discredit a disliked policy, and maintain the prestige of a government department by supporting well regarded researchers.

39 John Baldwin and Gwynn Davis, Empirical Research in Law, in Mark Tushnet and Peter Cane (eds), *the Oxford Handbook of Legal Studies* (Oxford, 2003) 880.

of the appropriate one, and its effective implementation.[40] Plausibly with a view to highlighting significance of ARL, the author discusses, to somewhat greater length, role of ARL in protection of human rights in India.[41]

Feminist legal research (FLR), which is prominently premised on the belief, rather fact, that hitherto legal system and institutions, driven by underpinnings of patriarchy, have neither treated women with dignity and gender parity, nor addressed to their oppressive socio-eco-politico-cultural afflictions, is one of the recently evolved integrated methods of research. It focuses on problems that women face in their relationship with 'law' and 'legal institutions'. It subjects law and legal institutions that impede women's development, promote gender disparity/injustice, and hardly relieve them from their suffering or rescue them from violence/exploitation/oppression to critical evaluation. It perceives and evaluates law from 'women's perspective'.

However, feminists, in the absence of *the* feminist method of research, recalling the prevalent varied theories of feminism, like liberal, radical, and cultural, have forged research methods that, in their opinion, suit the issue(s) put to inquiry and the purpose(s) thereof. Feminist legal research, therefore, has gone through multiple forms and methods. In 'methodology of feminist legal research'[42] the author deliberates on attributes of prominent methods and approaches used by eminent feminist scholars, and draws broader inferences therefrom that, in his opinion, can be employed in handling women's issues in the 21st Century. He, with fine articulation, shows how feminist theories and theoretical values of feminism have hitherto crafted research themes, motivated feminist scholars to inquire them, and to forge, with justification, legal research methods. He offers a comprehensive and critical evaluation of these forms and methods. He also shows how DLR as well as NDLR, along with their categories and sub-categories, and MMLR as well as PRL and ARL, have helped

40 According to Greenwood and Levin the six key elements that constitute the essence of designing/planning for ARL are: (i) creating a shared history, (ii) creating a shared vision, (iii) foreseeing a probable future in case of inaction, (iv) identifying action plan for problem-solving, (v) collective prioritization amidst alternative action plans, and (vi) initiating concrete change activity, structuring the follow-up process and share the experience. See, Davydd J Greenwood and Morten Levin, *Introduction to Action Research: Social Research for Social Change* 162 (Sage, 1998). For succinct discussion of these elements see the book under review (at 540-42).

It appears to be a spiral of individual and collective self-reflective cycles of: planning a change; acting and observing the process and consequences of the change; reflecting on these processes and consequences, and then, re-planning, acting, observing, and reflecting. See, Robin McTaggart, Rhonda Nixon, and Stephen Kemmis, Critical Participatory Action Research, in Lonnie L Rowell, Catherine D Bruce, Joseph, *et al.* (eds), *the Palgrave International Handbook of Action Research* (Macmillan/Springer, 2017) ch 2.

41 *Supra* note 6 at 544-54.

42 Ch. 17: Methodology of Feminist Legal Research.

feminists to perceive law and policies from the feminist perception, construct concrete theories and theoretical values/ideals for asserting welfare of women and championing their cause of justice and parity. Flexibility, dynamism, and social involvement, he feels, have made feminist research strong and have added greatly to the competence of feminist legal research.[43]

In the last part of the book, comprising only one chapter,[44] the author offers a set of useful tips for effective legal writing, particularly critical legal writing.[45]

It needs no stress to mention that *understanding* and *unravelling* dynamics of *law* and legal research, in terms of *idea, techniques*, and *methods*, obviously owing to multi-disciplinary nature of *law* and its multi-dimensional roles, is always not an easy task. But *Ideas and Methods of Legal Research*, the book under review authored by P Ishwara Bhat, an erudite researcher, makes the task easy. It, with narration as well as illustrations, not only smoothly traverses its readers through each of the major steps-starting from forming research *idea* to building it into a conceptual *theme* to devising *method(s)/technique(s)* for subjecting it to systematic critical examination and translating inferences drawn/emerged therefrom to coherent *report*-in the research process, but also offers intellectual reflections on the multi-dimensional/multi-disciplinary facets of *law* and *legal research*. It is indeed a valuable addition to the scanty scholarly writings on legal research methodology. Rich discourse on methodological issues in policy research, action research, and feminist legal research further enhances its value. It is a *must* for every scholar of law, budding as well as established, who is interested in pursuing research *in* law and/or research *about* law.

K I Vibhute[*]

43 *Supra* note 6 at 597.

44 Ch. 18: Legal Writing Based on Research.

45 He has classified 'legal writing' into three categories: (i) instrumental legal writing, (ii) norm creating/implementing legal writing, and (iii) critical legal writing. He has placed theses, dissertations, research articles, books, case comments, and book reviews in the last category.

* Professor of Law and Director, Amity Law School, Amity University Maharashtra, Mumbai, and Professor Emeritus, National Law University, Jodhpur.