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# **ANALYSIS OF THE SIGNIFICANCE OF LEGAL RESEARCH**

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## **ABSTRACT**

The process of discovering an answer to a legal question or checking for legal precedent that can be mentioned in a brief or at trial is known as legal research. Legal research can sometimes assist in determining if a legal problem is an unregulated case of first impression that lacks legal precedence. Legal research is required in almost every litigation, criminal or civil case, appeal, and legal process in general. Anyone who needs legal knowledge, such as lawyers, law librarians, and paralegals, does legal research.

## Introduction

Legal research, basing on the meaning of 'research' may be defined as systematic investigation towards increasing the sum of knowledge of law.<sup>1</sup> Research may be regarded as systematic fact-finding that is, to find what the law is on a particular point and development of the science of law. In a strict sense, legal research is understood as bounded to those works which contribute to the advancement of legal science that is excluding such materials as text-books and case books, etc. To develop the science of law, it is necessary for a researcher to go into the underlying principles or reasons of the law.<sup>2</sup>

Thus, the term legal research encompasses a systematic finding or ascertaining law on the identified topic or in the given area as well as an inquiry into law with a view to making advancement in the science of law. Finding law on a particular subject, is not an easy task. There may be a number of statutes as well as statutory provisions scattered in different statutes with frequent amendments on the subject under inquiry. In addition, these statutes and statutory provisions may be supplemented from time to time by a bulk of rules, regulations, orders, directives and government resolutions. Similarly, in order to determine the real meaning and scope of the legal provisions, one must look for pouring judicial statements from higher judicial authorities interpreting these provisions especially in common law jurisdictions. A legal researcher's desire for improvement in the science of law necessitates a methodical investigation of the fundamental principles of, and reasons for, law. As a result, legal research has a broad scope because, in the end, it entails an investigation into one or more dimensions or aspects of law.

As a result, legal research is the process of locating and collecting information that will aid in legal decision-making. It covers every phase of a process that starts with an examination of the facts of a problem and ends with the application and sharing of the investigation's findings.

A legal researcher can obviously be anyone who is curious to know something about a certain law and/or its operational features and is ready to put in the effort to know or unearth it. He could be a sociologist, historian, political scientist, social anthropologist, or economist, to name a few professions.

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<sup>1</sup> Prof (Dr) Khushal Vibhute & Filipos Aynalem, Legal Research Methods Teaching Material (2009) Pg. 22.

<sup>2</sup> *Ibid.*

But as an occupational exercise, legal research needs to be undertaken by Legislators, Judges, Lawyers, and Legal Academia (law teachers and students).<sup>3</sup> In fact, the nature of professional commitment forces these persons to get themselves indulged into legal research, though for a living, besides improvement of their profession and achieving the purpose of legal research.

It becomes important to methodologically scrutinize the materials they employ in their decision-making process, as well as the theoretical, sociological, and philosophical principles on which they rely. In an ideal world, judicial decision-making would include three categories of research inputs: conceptual or ideological, doctrinal, and empirical. A study like this would help to de-mystify the judicial process, giving it more credibility and increasing people's respect for the courts as institutions of justice. Legal research becomes unavoidable if a social audit of judicial performance is desired.

Legal research, therefore, takes into its ambit:

1. Doctrinal research- It is the study of legal rules, ideas, concepts, and doctrines. It entails a methodical exposition, analysis, and critical evaluation of legal laws, principles, or doctrines, as well as their interrelationships. It organizes the current legal system and establishes thematic parameters for that organization. It also involves a critical examination of legislation, decision-making processes, and the policies that underpin them.
2. Theoretical research- It entails looking into the intellectual underpinnings of legal rules, principles, or doctrines. It gives intellectual and financial support for empirical study as well as legal improvements through legislative, judicial, and administrative processes.
3. Empirical investigations- It evaluates the influence of the legislation and exposes the gap between legal idealism and social reality. Perceiving the idea of law as a social phenomenon, a researcher explores social, political, economic and cultural dimensions or implications of law.
4. Reform-oriented Research- It, based on empirical study and critical examination of law, recommends changes in law and legal institutions.<sup>4</sup>

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<sup>3</sup> Frederick C Hicks, *Materials and Methods of Legal Research* (1942, Reprint 1959) 23-31.

<sup>4</sup>Dennis Pearce, Enid Campbell, & Don Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (AGPS, 1987) and Harry Arthurs, *Law and Learning: Report to the Social Sciences and Humanities Research Council of Canada by the Consultative Group on Research and Education in Law* (1983).

## Significance of Legal Research

The law does not exist in a vacuum. It works in a complicated 'social environment.' It reflects the opinions and behaviors of the general public. It also aims to shape and control people's social views and behaviors so that they follow the predetermined path. Social values and attitudes, on the other hand, continue to evolve as expected. It allows the law to be dynamic and adapt to changing social attitudes. Furthermore, continual scientific and technical advancements exacerbate these complications by introducing new complicated human relationships that require regulation by law.<sup>5</sup> In such circumstances, legal research is required, among other things: (i) to determine the law on a certain topic or issue, (ii) to identify ambiguities and inherent flaws in the law, and (iii) to critically review legal provisions, principles, and precedents (iv) conduct a social audit of law in order to identify its pre-legislative forces and post-legislative impacts, and (v) give recommendations for law improvement and development.

### 1. Determination of Law

It goes without saying that in a dynamic society, laws can never be flawless or final. 'If our myriad laws were faultless, if social control were automatic, legal scholarship, like the Marxist State, could be left to wither away,' a scholar noted. 'However, our laws are not flawless and final, and cannot be so in a changing society: they are not usually even intelligible, and even if they are, they are not always wisely designed.'<sup>6</sup> As a result, determining or locating law on a certain subject/topic necessitates a methodical approach. He must not only discover and investigate relevant Parliamentary Acts, but also relevant secondary legislative instruments such as rules, regulations, orders, directions, notifications, and byelaws as well as judicial rulings on the subject. It is common knowledge that these legal instruments are dispersed and difficult to track down. More than one Act may be relevant to the subject at hand. As a result, he must be more cautious in his search for these laws. The majority of subsidiary legislative instruments are not published in the Official Gazette in a timely manner. They are usually publicized after they have become effective. The difficulty in determining the law is exacerbated by a multitude of legal statements from several higher judicial organisations, including the Supreme Court.

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<sup>5</sup> Prof (Dr) Khushal Vibhute & Filipos Aynalem, *Legal Research Methods Teaching Material* (2009) Pg. 30.

<sup>6</sup> B A Wortley, *Some Reflections on Legal Research After Thirty Years*, 7 *Jr of the Society of Public Teachers of Law* (New Series) 249-250 (1964-1965).

He'll have to track out, study, and absorb these court rulings. Finding law on a specific topic or issue is thus not as simple as it appears. It entails a thorough examination of legal documents and judicial decisions. Furthermore, in a modern welfare state, there is a steady stream of statutes (frequently amended), statutory rules, directives and decrees, and court opinions moving at rapid speed.

## **2. Highlighting inbuilt lacunae and ambiguities**

Legal words and phrases, no matter how cautious, visionary and expert, a draft man is, can take all future contingencies and situations forever within his authority. In some cases, in terms of its language or practical function, the provisions may not properly fit the general legislative intent of the law or may not match the provisions of another or other law. Legal researchers may be able to highlight these gaps and the weaknesses of the built-in law or its provisions through systematic analysis.

## **3. Determining consistency, coherence and stability of law**

Legal researchers use appropriate analysis and supporting reasoning to critically examine the legislation, rules, and teachings contained therein in the light of their interpretation and legislative policy of the legislation. Such analysis can, in some cases, help in the development of legislation or doctrine.

## **4. Social auditing of law**

Legal research is also needed to conduct pre-legislative social audit/review to help understand and assess the social forces that played an important role in the enactment of the law. This understanding gives us an idea of the social benefits that the law seeks to protect or amend and why. It helps to understand the foundation of a given law and its legislative objectives and strategies. Law-based social audits can help identify any gap between legal ideals and social reality and determine the causes or factors. Such investigations can help determine if a particular law is absorbed by society and serves the needs of society. It also reveals why a particular law is purely a token law, and why it failed to meet its intended legislative goals. The future of the law can also be predicted.

## **5. Suggesting reforms in law**

A legal researcher can offer suggestions, or proposals for reform or improvement in the law,

based on the underlying legislative policy of the statute and the highlighted innate deficiencies or inconsistencies. He can articulate his reform recommendations in exact terms by conducting analytical, historical, and comparative research. As previously stated, analytical research is concerned with the discovery of law. It is focused on the now. Historical research, on the other hand, is concerned with the past and entails an investigation of legal precedents and evolution. The past frequently and most clearly describes the present. It illustrates numerous alternative legislative measures considered at the time the law was being drafted, in addition to the present ones. It explains why the law was being made or is in the making. It explains why they were rejected and why the current ones were adopted. Historical research frequently reveals that a particular existing legal provision, rule, or doctrine, which was fully justified at the time of its introduction or adaptation, is no longer so justified because the reasons or circumstances that justified the provision, rule, or doctrine's original inclusion are no longer valid or exist. Comparative study, on the other hand, seeks out parallels in other jurisdictions. Thus, analytical that is finding the existing law; historical that is finding out the previous law in order to understand the reasons behind the existing law and the course of evolution, and comparative which can be understood as finding out what the law is in other countries, and considering whether it can be adapted, with or without modifications lead to law reforms or development of law.<sup>7</sup>

Legal research, to be summarized, needs to be carried out for the following reasons:

1. To ascertain and learn laws on a given topic or subject.
2. To identify gaps and ambiguities in law.
3. To fundamentally analyze consistency, cognizance and dependability of regulation and lawful suggestions.
4. To embrace social reviewing of regulation that is evaluating pre-Legislative powers and post-Legislative effects of regulation.
5. To suggest reforms/developments in law by undertakings endeavor research intended:
  - i. To investigate gap between the legal ideals and actual practice.

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<sup>7</sup> P M Bakshi, Legal Research and Law Reform, in S K Verma & M Afzal Wani (eds), Legal Research and Methodology (Indian Law Institute, New Delhi, 2nd edn, 2001) Pg 111.

- ii. To understand effectiveness or impact of law in a given social set-up at a given time.
- iii. To find out as to whether law is serving the needs of the society and has a social value.
- iv. To make suggestions for improvements in the law on sustainable formulations and recommendations.
- v. To foresee future trends of law.

### **Conclusion**

Legal research, importance and benefits in the legal industry are well known. Legal research services are very important tool for individual lawyers and law firms irrespective of their practice areas. It involves basic search for land mark case governing the issues in question. Legal research, though sounds simple is a not an easy job. It can be said that legal research is never done as law keeps changing and evolving. It is dynamic in nature. Therefore, the skill to conduct legal research is indispensable for persons related to legal fraternity. Indeed, the nature of their professional dedication leads these individuals to become immersed in legal research, even if it is for a living, in order to develop their profession and achieve the goal of legal research.