Synopsis
Legal Research Methodology

Indian Case Laws

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OBJECTIVES OF LEGAL RESEARCH

1. To locate relevant "authority" that will help in finding a solution to a legal problem or issue;

2. To analyse the law by reducing, breaking and separating the law into separate elements: It can be as simple as examining and explaining new statutes and statutory schemes or as complex as explaining, interpreting and criticising specific cases or statutes.

3. To blend the distinct elements of cases and statutes together into coherent or useful legal standards or general rules: The product of this research is legal standard that is consistent with, explains, or justifies a group of specific legal decisions.

4. To look at doctrinal or theoretical issues: The research finding is applied in advising courts or clients about the application of legal doctrine to specific cases, transactions, or other legal events. It may also criticise judicial opinions and in case of conflicts between the decisions of different court, suggests the resolution to those conflicts.

5. To provide teaching materials for students: The end products include books and modules. This is to understand the legal doctrine and the law as it is.

6. To acquire an understanding of the legal subject while arguing for a better way of doing things: A researcher who performs this type of research critics and comments legal doctrine and practices from the perspective of different sciences likes economics, politics and sociology.

TYPES OF LEGAL RESEARCH

Legal research may be divided into two streams-

1. Doctrinal
2. Non-doctrinal

Non-doctrinal research can be qualitative or quantitative while doctrinal is qualitative since it does not involve statistical analysis of the data. A researcher involved in doctrinal research must study the law in details. Also, both types of research may overlap to form a third category which may be a combination of both.
RESEARCH DESIGN

Research in legal and non-legal fields differ because in non-legal fields the researcher has to demonstrate the relationship between his research and the prior research while in the legal field they only have to show what they are saying is something new.

Research in legal field may be descriptive, explanatory or exploratory depending on the research aims, objectives and many other factors.

- **Descriptive Design:** This kind of analysis of law sets forth the facts, the holdings, and the courts' analysis of a case, or of a series of cases in a given subject area, without attempting to offer an independent explanation of why the courts decided the cases as they did. It is the study of the law as it is.

- **Explanatory Design:** The question of why the law is like this or that is answered using the explanatory design as the finding can explain the reason for some occurrences and interpreting cause and effect.

- **Exploratory Design:** Exploratory research aims at gaining general information for the purpose of defining the research topic, operationalising or explaining variables or aspects of the topic, or generating hypotheses. Exploratory research is useful if the researcher intends to gather preliminary information to define problems and suggest hypotheses.

RESEARCH METHODOLOGY

**STEP 1: Background reading or reading ‘around’**

Background reading or Reading ‘around’ the topic, helps the researcher in identifying the key words and formulating the research questions which focus on the research task.

**STEP 2: Identifying keywords and noting relevant topics**

Once the background reading is over, one should begin by identifying the key words which define the scope of the research and then note the relevant topics.

**STEP 3: Formulating research questions**

Legal researchers should know how to ask the right questions. Here, the researcher can formulate the research questions which will focus the research task so that the information found meets the research objectives. The answers to the research questions may lead to more questions which must be answered before the research is complete.
**Step 4: Identifying the issues**

Asking the right question often involves the ability to identify a particular problem or a set of facts which give rise to a legal problem of a certain type. Only the knowledge of the fundamental principles of the law can help you ask the right questions.

**Step 5: Finding Resources and Screening**

One must plan an efficient process of research by knowing what resources are available and how to use them. Here, you light have to prepare a list of books and other resources that can be relevant. You must make a full and accurate record of the source of the notes you are writing eg. the name of the author, publisher, date and place of publication, page numbers etc.

Also, it is very important at this stage to screen the data in order to differentiate the most authoritative from the least authoritative based on either the quality or relevancy of the data to the research issue. You also have to be able to determine which of the many statements of the law are the most authoritative. A researcher also needs to develop the capacity to decide which ones are likely to be accepted by the contemporary courts.

**Step 6: Analysis**

**6.1 Fact Analysis in a case:** The SCARP method of fact analysis is most commonly used technique to analyse facts. Here, the researcher analyses the facts under the following headings:

- **S - Subject matter:** Identify subject areas which appear likely to provide the solution to the problem. The purpose of identifying the subject matter is to find legal materials related to the subject matter of the problem.

- **CA - Cause of Action (or defence to the action):** It is analysing the facts in order to identify the legal categories to which the facts belong. The researcher needs to know the relevant areas of law to search for. In order to carry out legal research, legal categories must be learned in order to enable you to identify the problem as of a particular type. The researcher also needs to know if there is a defence to this type of action.

- **R - Remedy or relief sought:** The researcher should look at the topics ‘remedies’, ‘damages’ and ‘amount of damages’ when consulting indexes.

- **P - Persons involved:** Sometimes the persons involved may also have a legal relevance.

**6.2 Case Analysis:** To analyse a case law, a researcher must ask the following questions, namely:

1. Was the Court's decision appropriate?
2. Does this decision change/conform with existing law? Was the reasoning consistent with previous reasoning in similar cases? Is it likely that the decision will significantly influence existing law?
3. Did the court adequately justify its reasoning? Was its interpretation of the law appropriate? Was the reasoning logical /consistent? Did the court consider all/omit some issues and arguments? And, if there was omission, does this weaken the merit of the decision?

4. What are the policy implications of the decision? Are there alternative approaches which could lead to more appropriate public policy in this area?

Here, one needs to be careful as to understand the similarities and differences of the facts of different cases. More importantly, one should be able to understand and appreciate the impact of the distinctive facts of the cases on the principle(s) applied by the courts in arriving at particular decisions. You can’t say that because some of the facts appear to be similar so the cases should be decided in the same way. The facts do not have to be exactly the same for the case to be useful. The facts in the reported cases can have similar characteristics to the facts in the case study.

6.3 Comparative Analysis: This facilitates better understanding of the functions of the rules and principles of laws and involves the exploration of detailed knowledge of law of other countries to understand them, to preserve them, or to trace their evolution. Accordingly, comparative legal research is beneficial in a legal development process where modification, amendment, and changes to the law are required. The most common comparative legal scholarship is cross jurisdictions comparison of laws of different legal systems. It is typical for researchers who undertake this research to examine the law as it is while at the same time provide ideas and views for future legal development.

6.4 Analysis of Statutes: To analyse a statute, the method applied in legal research must rely upon specific interpretative tools methods namely the mischief rule, literal rule and golden rules.

OUTCOME OF LEGAL RESEARCH

Articles:

An article should provide a comprehensive analysis of a particular issue on a particular subject area. It should review the existing literature extensively and also highlight the specific contemporary developments in the issue being discussed.

The primary aim of writing a law article is to convey information to the readers in a systematic and precise manner. The writer of the article should be well aware of his audience, and understand the reader’s expectations who would be reading his article.

- Components of a law article:
  - Headline or Article Title
  - Introduction
Case Comments/Notes:

Case comments/notes are technical pieces of legal writing which delve deep into several layers of the case. You are required to peel these layers off to bring out the issues and analyse the significance of the case in the light of those issues. You can do this by following four simple steps –

1. Re-reading the case keeping in the mind the issues that you are going to discuss;
2. Comprehending complex situations and identifying the legal problems or lacunae in the case;
3. Sieving out relevant details and indicators from the case that support your analysis;
4. Reaching the conclusion by adopting a particular approach.

Legislative Briefs

Legislative briefs should be extensively analysed, helping readers grasp the background, objectives and main provisions of a particular legislation. Preparing a brief requires synthesizing complex data, facts and statistics and they should be clear and concise and credibly sourced, mostly from the government surveys, commission reports, international organisations and civil society. Use of graphs and tables, along with a one-page summary, is advisable. Briefs must be objective in reporting facts and provisions, but a short section at the end should list down possible problems or inconsistencies to propel further debate.

Book Reviews

Book reviews should offer a unique perspective on any issue affecting the subject area of the research and its legal implications. It is advisable that a researcher should choose a book which is a recent publication (within the last two years) in keeping with the objective for which you are writing the review.

Notes

Such pieces of legal research are most suited for writings on specific themes and submissions dealing with contemporary issues. A note should provide a concise overview of a specific issue.
**Legal Essays**

The main purpose of an essay is to initiate debate and discussion of a new subject matter. Here, a researcher should try to present new ideas and perspectives on the subject matter of the research.

**Thesis**

Unlike other pieces of legal writing, a thesis should be very specific and focused. A strong thesis proves a point without discussing “everything about ...”.

A thesis must have a thesis statement typically located at the end of your opening paragraph. The thesis statement is that sentence or two in your text that contains the focus of your essay and tells your reader what the essay is going to be about, what you believe and what you intend to prove. It is advisable that one should keep the thesis statement flexible until the paper is actually finished. Please note that while writing a thesis, you must be careful to avoid the first person. ("I believe," "In my opinion", etc.)

**Sources of Legal Research**

1. **Primary Sources:**
   - Primary authorities are the rules of law that are binding upon the courts, government, and individuals. Examples: constitutions, statutes, regulations, treaties, court orders, administrative regulations, policy material

2. **Persuasive Primary Authority:**
   - Commentaries on the law that do not have binding effect but aid in explaining what the law is or should be. Examples: primary authority, which is not binding on the courts, viz. opinions of the judges, attorney General, law minister, ministry of parliamentary affairs, primary authorities from foreign jurisdiction.

3. **Secondary Sources:**
   - Commentaries, law journals or periodicals, articles, textbooks, legal encyclopaedia, legal dictionary, annotations, legal opinions, surveys, legislative history
   - Secondary sources are important in legal research because they point the researcher to primary sources of the law.

Research in legal and non-legal fields differ because in non-legal fields the researcher has to demonstrate the relationship between his research and the prior research while in the legal field they only have to show what they are saying is something new (Rubin, 1988). Secondary sources also reveal current development in the respective area of law.
**IMPORTANT TERMS**

**Case Digests:** It enables a researcher to look up a particular area of the law and find a list of case decisions that are "reported" in relevant case reporters.

**Case Reporters:** It contains the decisions in cases that have been deemed important enough to publish.

**Citation:** The method of referencing or referring to the source of a particular statement.

**Plagiarism:** Using the work of others without proper acknowledgment and thereby attempting to represent it as one's own; a form of cheating.

**Referencing:** It means identifying the source of information and ideas using a recognised format.

**Restatements:** It provide detailed summaries of what the law generally is or what the restatement writers believe the law should be.