Book Review On 'Research Methods In Law' -Edited By Dawn Watkins And Mandy Burton

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Introduction

Research is the act of searching into a matter closely and conducting an inquiry to discover the truth. The legal scholars are nowadays carrying out extensive research and moving beyond the black-letter law. The primary goal of legal researchers is to understand this 'normative science' i.e. law in a specific situation. Legal research commences with a conceptualization of theory. To begin with legal research, it is pertinent to understand its two prominently yet interchangeably used terms i.e. method and methodology. While a method is a special form of procedure or characteristic employed in a field as a mode of investigation and inquiry or of teaching and exposition. It is a method by which you conduct research into a subject or topic. Regarding legal research, it implies a means of seeking answers to research questions. A research method helps a researcher to plan, develop and pursue legal research. Whereas the methodology is related to the field of enquiry. It explains the methods by which a researcher will systematically solve a research problem.

This book titled, "Research Methods in Law" is edited by Dawn Watkins and Mandy Burton. It was published in the year 2013 by Routledge Taylor & Swift Group of Publishers. It targets the researchers both at master's and doctoral level. This book is primarily a collection of essays written by specialists in the field of research. It discusses different methodological approaches suitable for legal research. From a methodological perspective, authors of each essay explain how an issue should be approached by using a method suitable for a topic. They have tried highlighting different methods and their inter- relationship with each other. Each chapter has taken the common example of 'lay decision - makers in the legal system' in order to explain the different research methodologies to the readers. The book challenges the researchers to think out of the box, to provide a justification for doing research. It aims to encourage a researcher to plan research in both formal and informal setup. The book is divided into seven book chapters namely, 'Doctrinal

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Research', 'Socio-legal studies', 'Doing Empirical Research', 'Legal Research in the humanities', 'Legal History', 'Comparative law and its methodology' and 'Critical method as attitude'.

Doctrinal Research

The foundation of legal research often begins with a doctrinal method, a traditional yet evolving approach that focusses on the analysis of legal rules, principles and authoritative texts. The first book chapter is written by Terry Hutchinson on 'Doctrinal Research'. His writing is greatly inspired by Oliver Wendell Holmes Jr. who believed that to train a lawyer means to train them about logic. This chapter examines the doctrinal methodology and considers it as an intuitive aspect of legal work. The chapter examines key questions such as, what is doctrinal research, who uses it and for what purpose. This type of research motivates researchers to target for legal coherence in their research output. In this research, legislation & case laws are critically examined, and then different elements are synthesized.

A doctrinal work is that the arguments are derived from authoritative sources, such as existing rules, principles, precedents and scholarly publications. Research based on theory stimulates the author to develop a conceptual basis of legal principles, rules and regulation with respect to a specific subject matter. On the other hand, reform-oriented research is often undertaken in a doctrinal study that examines the adequacy of existing law and suggests amendments.

Traditionally legal education particularly focuses under doctrinal study the interpretation of the 'black letter' law. The researchers should now go beyond 'how to use' by focusing on the legal research process. A simple problem based doctrinal methodology has a seven-step process – gathering relating facts & information, pinpointing the issues in law, scrutinizing these identified issues with the purpose to determine the applicable laws, accessing and reviewing the background information, examining the primary sources, integrating all issues within the subject matter and developing a tentative conclusion.

The literature review in doctrinal research is undertaken by the researcher to understand 'what is known and not known' about the research in question. The researcher first needs to locate the sources of the law. Post this step, writes the essence of his analysis based on the meaning and pattern of the existing sources. Researchers often examine statutory interpretation by undertaking law reform study and comparative perspectives. The major challenges faced while undertaking

doctrinal research is that the quality of such research is very uncertain. Additionally, absence of organized research and indexing on the internet poses a sufficient threat to the research undertaken by the researchers.

Legal jurists often opine that application of doctrinal method to law research could be troublesome as law should not be studied in isolation rather it should study the impact on and impact of society. The author also exposed the weakness of the doctrinal method by stating while undertaking this research, the scholar often tends to divert their attention away from the contextual problems which were initially aimed to be resolved. Terry, therefore emphasized that a doctrinal study should have a research and writing 'plan'. This plan can be into levels i.e. 'idea plan' and 'research plan'. In the first level of 'idea plan', a researcher develops a topic and its hypothesis and arguments. The second level of 'research plan', he determines the research methodology depending upon the first plan. These plans can be aided by a brainstorming method for refining the research topic and exploring the unknown scope of the topic.

The author suggested using Edward de Bon's "Thinking Hats" method of undertaking brainstorming. The idea generators such as well known 'who, how, what, when, where and why' can prove to be effective. Such brainstorming can be done by mind mapping in the form of a diagram relating to the topic. This can be helpful in increasing the ability to identify possible theories and solutions. Such representation can be made by using a quadrant by categorizing critique, policy reform and doctrinal study. This method is dominantly used by legal research scholars despite its limitations.

While doctrinal research remains a vital tool in the legal scholar's repertoire, it is increasingly enriched when complemented by perspectives that situate law within its broader societal context, a transition we now explore through the socio-legal and empirical lens.

Socio-Legal and Empirical Research

Building upon doctrinal framework, socio-legal and empirical methods introduce a dynamic interplay between law and society, urging researchers to engage with realities and multidisciplinary context. The second chapter is written by Fiona Cownie and Anthony Bradney on "Socio-legal studies: A challenge to the doctrinal approach". Socio-legal research encompasses

a diverse array of works that explore the research questions and methods by employing various methodologies. It is generally carried within the domains of feminist work and critical legal studies. It implies that there exists an interface of law with sociological, historical, economic, geographical and other contexts. Thus, socio-legal research is conducted within the realm of "sociology of law". The criticism of this research is that firstly many times there are poorly theorized and ignores relevant questions. Most of the researchers are not aware as to "*how to do socio-legal work of high quality which will have a lasting interest and value*". Secondly, "*it is methodologically unsophisticated resulting in the production of poor-quality data*". Therefore, it is important to choose an appropriate theoretical approach and a method of investigation for socio-legal research.

The research questions in this research are based on methods such as focus group discussion, face to face interviews, observation, statistical modeling, telephonic interview etc. However, doctrinal study in the case of such socio-legal study cannot be ignored. Cownie and Bradney, also opined that a doctrinal study conducted alongside would aid to determine the research questions in the empirical study. It will also be required to sharpen analysis and redefine understanding of the concept. Hence, it can be inferred that socio-legal research relies on empirical research along with literature to analyze a topic. This analysis enables a researcher to generate a policy-oriented conclusion. However, all socio-legal studies are not empirical in nature; rather this research encompasses within itself Arts & Humanities, extending beyond the confines of the social sciences.

The third chapter, "Doing Empirical Research: Exploring the Decision-Making of Magistrates and Juries" is written by Mandy Burton. She opened by defining empirical research as inclusive of law and legal processes. It uses social research methods such as interviews, observations and questionnaires. However, the biggest challenge of empirical research is that a lot of time, money and hard work is involved in data collection. There are challenges to both large scale and small-scale empirical projects. While large scale might often create the question on reliability of the researcher. There are reported instances wherein researchers also tend to fabricate replies given by the respondents.

The starting point of empirical research is formulation of research questions. The researcher should ascertain whether these questions can be collected and analyzed through primary data or not. If it

cannot be, then the researcher should be concerned in the first place to address the theoretical, methodological and practical issues in collection of the original data. This will further help a researcher to devise a research method. Empirical researchers also lay emphasis on the hypotheses or foreshadowed problems. It is a myth that hypothesis and theories cannot be revised. As per the 'Grounded Theory Model', the process of data collection is a continuous process which is carried out even during generation of theory generation and analysis of data. This study interacts with individuals who are vest with certain legal rights and interests.

Therefore, a researcher undertaking empirical research has ethical have ethical and legal responsibilities to the respondents who are subject of their research. The researchers should avoid or minimize harm and follow the principle of informed consent. Such harm not just implies physical harm but also psychological and social harm which might cause emotional distress to respondents. Mandy suggested that the researchers should negotiate with the respondents regarding acceptability of the research and other ethical considerations for data collection. The researcher should take particular care in cases where the research subjects are vulnerable and the issue in question is related to a sensitive topic. Given the limitation of time, usually researchers to not undertake large scale empirical research. Empirical research is not linear in nature therefore a researcher is free to modify the plans while planning and processing of the project. Thus, it can be concluded that Ms. Burton in her chapter underpinned the theory that helps a researcher in choosing the kind of research.

Interdisciplinary Approaches

The evolution of legal research has been expanding the embrace of interdisciplinary methods, drawing from the humanities, historical analysis, comparative models and critical theory to deepen legal understanding and challenge conventional boundaries. The next chapter on "Legal research in Humanities" is written by Steven Cammiss and Dawn Watkins. Law and humanities are inclusive terms referring to nuanced interdisciplinary approaches to legal research. Humanities is a branch of learning relating to culture and its interface with other academic disciples including law. This research has the potential to influence rule-making, advocates and law-makers, who will further strive towards a more humane law. It is this cultivation of humanity that has been a central figure in the field of law and humanities. Law as a humanities discipline, but it is also concerned

with the culture. However, this approach does not intend to severe the linkage between legal research and social sciences. Even though there is no definite area of the core law and humanities, but usually philosophical, historical, etc. methods have been applied to the legal process. Law & humanities not only involves interpretation of texts but also the choice of texts for its interpretation.

The law and literature movement in this segment developed two approaches i.e. 'law in literature' and 'law as literature'. 'Law in literature' identifies and analyses law within literary texts. However, the scope of law is a reflection of wider culture and provides a valuable insight both 'in' and 'out' of law and legal process. 'Law as literature' is a literary approach to legal writing that aims to interpret the legal text. Thus, this method contributes to the existing corpus of knowledge and provides insights on contemporary politico- legal and other social issues.

The fifth chapter written by Philip Handler is titled 'Legal History'. In legal history, various factors interact within the legal system to explain changing legal developments. Studying a historical perspective has the benefit of charting the shifts in legal perspectives and offering explanations for the same. Such systematic charting can also involve meticulous analysis of various cases which have also contributed towards legal development. It is opined by the authors that the majority of legal history has deliberately avoided theories and generally favoured a closer study of the primary materials. The histories of law and processes are vital portion of "social, political, economic and cultural histories". Production of contextualized accounts of law in past societies serves as an important function. A legal historian has the twin role of employing a historian's art of using historical methodologies and reflecting a lawyer's sensitivity and understanding of the legal process.

Therefore, Handler has suggested that those intending to undertake legal historical study will always look towards diversification of legal historical scholarship. He will move beyond the subject matters and consider new avenues for inquiry over the topic. There must be a balance between both history and law. A Legal researcher should not be insensitive towards social and political contexts and sometimes should not delve into history so much that they divert their research objectives.

The next interesting chapter is written by Geoffrey Samuel on 'Comparative Law and its Methodology'. The author, throughout the chapter, has beautifully explained that a comparative

law as a method to perceive law from researcher's own viewpoint. A comparative legal study has commitment towards both theory and the interdisciplinary approach. This enables a researcher to present a new and even different perspective law. While deciding to undertake comparative research, the researcher should always ask himself as to why he is comparing different jurisdictions. Whether the researcher will be able to add on to the existing knowledge by undertaking such comparison? A researcher also should develop an understanding of the legal setup of different jurisdictions. A researcher should understand the 'legal mentality' in an institutional setup of a country.

Comparison enables understating of a particular law. The legal texts should not be treated as objects but rather a thing capable of being transplanted from one jurisdiction to another. The researcher while considering to transplant these laws should also, understand different causative events which have led to development of a law. While studying this event, they should also explore the response of performance and non-performance of state's obligation.

Therefore, merely glancing at the 'black letter' framework should not be the approach of a researcher. Comparative law itself is rooted within the differences. A comparatist should rather study the underpinning question located at a social science level. He should omit to draw differentiation merely on the basis of facts and objective of law while comparing. The researcher should rather extend the research to a universal perspective while comparing different laws than studying only what appears similar. His research will be considered authentic and reliable after referring to all relevant material he has drawn a certain conclusion. Such a conclusion has been arrived at after examining both similarities and dissimilarities between the jurisdiction.

The researchers should move beyond 'what is the difference' but 'why is there a difference'. This will help them to be analytical in understanding the questions and make suggestions for transplantation. However, there are many methodological and epistemological challenges in transplantation of laws. What is the feasibility of transplants? Would transplantation ensure that the essential characteristics of the host country will be maintained? Or once transplanted, does it become something different?

The major challenge of this study is that at times researchers undertake fails to undertake an appropriate analysis to gain the actual understanding of the subject in issue. The current trend

amongst the researchers is that they utilize this comparative method to further a domestic agenda. Therefore, it is important that the researcher must be clear about his research questions. This will enable him to determine which models and programmes are to be adopted to further a research study. These models would enable a researcher to schematically represent different dimensions of the world by putting it into relation.

Therefore, a scholar needs to organize research problems within the specific legal setup. This will create sensitivity and awareness towards the linkage that exists between the methods applied and the knowledge obtained. The author has suggested that a researcher in the introduction to thesis articulate the "programmes, models and schemes of research". This methodology will ensure that the examiner gets the clear idea of what study a researcher intends to undertake.

The last chapter titled, Critical Legal 'method' as attitude is written by Panu Minkkinen. The objective of the authors was to address the question as to what is meant to be critical when talking of critical legal methods. A researcher at the doctoral level should be critical in the sense that he employs 'critical judgment'. This critical judgment is a generic intellectual skill applied in relation to the object of their research. Being critical is similar to self-reflection and concerned with emancipatory knowledge.

The word critical should not be equated with criticism rather it is a critique. A 'critical legal method' reflects what contemporary critiquing is all about. Panu claims that every type of method has the tendency to impose limitations on the results generated by the researcher. The researcher is expected to filter their subjective views to produce a work of objective reservoir of knowledge. Minkkinen opined that law-based research should be inspired by the "Pure Theory of Law" by Kelsen. This theory presents a 'normological' tradition of legal research wherein a researcher should strive to understand the norms relating to their subject of research. The author's emphasis upon following methodological rules in order to identify the regulatory functions of the basic norm. Therefore, critical legal research has potential to alter law by contributing in its tradition.

These interdisciplinary approaches reaffirm that legal research is not merely about the law as it is, but as it ought to be which enables scholars to connect legal norms with human experience, historical development, comparative insights and critical reflection.

Conclusion

In current legal trend, there is thrust for all the researchers to contribute to the existing knowledge which goes beyond the black letter law. The researchers undertake extensive legal research aimed to understand the 'norms' of both law and society. This intellectual voyage by researchers proves to be meaningful when the researcher delves deeper into legal issues in the light of modern-day challenges. This book will be helpful for all the research scholars in undertaking legal research. This book, edited by Watkins and Burton, offers a comprehensive overview of various research methods and methodologies in the field of law. Ranging from doctrinal to critical legal methods, each chapter is unique as it underlines the theory of the methods, thereby explaining the practical application of the same.

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