UNIT 1

INTRODUCTION

All progress is born of inquiry. Doubt is often better than overconfidence, for it leads to inquiry, and inquiry leads to invention.
Hudson

Research is the systematic indulgence of one's curiosity - - - and when systematically pursued for the elucidation of events, we call it science.
Felix Frankfurter

There is no short-cut to the truth; no way to gain knowledge of the universe except through the gateway of scientific method.
Karl Pearson

STRUCTURE

1.1 Introduction

1.2 Law and Society: Mutual Relationship & Interaction

1.3 Legal System: A System of Norms and Social System?

1.4 Role of Law in A Planned Socio-Economic Development

OBJECTIVES

After going through the Unit, you will be able to:

- To familiarize students with the mutual relation and interaction between 'law' and 'society'
- To explain the social dimension of law
- To stress the need for legal research
- To highlight role of law in the socio-economic transformation

1.1 INTRODUCTION

'Research', in simple terms, can be defined as 'systematic investigation towards increasing the sum of human knowledge' and as a 'process' of identifying and investigating a 'fact' or a 'problem' with a view to acquiring an insight into it or finding an apt solution therefor. An approach becomes systematic when a researcher follows certain scientific methods.

In this context, legal research may be defined as 'systematic' finding law on a particular point and making advancement in the science of law. However, the finding law is not so easy. It involves a systematic search of legal materials, statutory, subsidiary and judicial pronouncements. For making advancement in the science of law, one needs to go into the 'underlying principles or reasons of the law'. These activities warrant a systematic approach. An approach becomes systematic when a researcher follows scientific method.

Generally, law is influenced by the prevailing social values and ethos. Most of the times, law also attempts to mould or change the existing social values and attitudes. Such a complex nature of law and its operation require systematic approach to the 'understanding' of 'law' and its 'operational facets'. A systematic investigation into these aspects of law helps in knowing the existing and emerging legislative policies, laws, their social relevance and efficacy, etc.

In this backdrop, the present course on Legal Research Methods intends to acquaint the students of law with scientific methods of inquiry into law. It also intends to make them familiar with nature, scope, and significance of legal research. In addition, it endeavors to make them aware of role of legal research in the development of law and legal institutions, in particular and socio-economic development of the country in general.

With these objectives, the course addresses to sources, categories and types of legal research. It focuses on legal research methods and tools. It highlights different dimensions and tools of doctrinal legal research as well as non-doctrinal legal

research or socio-legal research. In other words, the course strives to instill in the law students basic skill of identifying research problems, planning and executing legal research projects and of appreciating the problems associated therewith. It aims at instilling in them basic research skills so that they can plan and pursue legal and socio-legal research in future.

1.2 LAW AND SOCIETY: MUTUAL RELATIONSHIP & INTERACTION

Law does not operate in a vacuum. It has to reflect social values, attitudes and behavior. Societal values and norms, directly or indirectly, influence law. Law also endeavors to mould and control these values, attitudes and behavioral patterns so that they flow in a proper channel. It attempts either to support the social system or to change the prevalent social situation or relationship by its formal processes. Law also influences other parts of the social system. Law, therefore, can be perceived as symbolizing the public affirmation of social facts and norms as well as means of social control and an instrument of social change.[1] Commenting on the interrelationship between law and society, Luhman observed:

> All collective human life is directly or indirectly shaped by law. Law is, like knowledge, an essential and all pervasive fact of the social condition. No area of life-whether it is the family or the religious community, scientific research is the internal network of political parties-can find a lasting social order that is not based on law ---. A minimum amount of legal orientation is indispensable everywhere.[2]

Law is not, nor can any discipline be, an insular one. Each rule postulates a factual situation of life to which the rule is to be applied to produce a certain outcome.
Law, in essence, is a normative and prescriptive science. It lays down norms and standards for human behavior in a set of specified situation(s). It is a 'rule of conduct or action' prescribed or formally recognized as binding or enforced by a 'controlling

[1] See, Lawrence M Friedmann and Steward Macaulay, *Law and Behavioral Science* (Bobbs-Merrill Co, Inc, Indianapolis, 1969), Roscoe Pound, *Jurisprudence*, vol 2 (St Paul, Minn., West Publishing Co., USA), and Sir Carleton Kemp Allen, *Law in the Making* (Oxford, London, 7th edn, 1964) chap IV On Legislation.
[2] Luhman, *Sociological Theory of Law* (1972, English Translation, 1985) at 1, cited in, 50 MLR 686 (1987).

authority'. It operates in a formal fashion. It enforces these prescribed norms through state's coercive powers.

However, the societal values and patterns are dynamic and complex. These changing societal values and ethos obviously make the discipline of law dynamic and complex. Law, therefore, has to be dynamic.

Law has acquired a paramount significance in a modern welfare state as an effective instrumentality of socio-economic transformation. It indeed operates as a catalyst for such a transformation.

Such a complex nature of law and its operation require systematic approach to the 'understanding' of 'law' and its 'operational facets'. A systematic investigation into these aspects of law helps in knowing the existing and emerging legislative policies, laws, and their social relevance. It also enables to assess efficacy of law as an instrument of socio-economic changes and to identify bottlenecks, if any. Law, thus, has a social context. Law without its social context is simply a noteworthy mental exercise. 'Law without social content or significance is law without flesh, blood or bowels'.[3]

1.3 LEGAL SYSTEM: A SYSTEM OF NORMS AND SOCIAL SYSTEM?

In this background, a system of law can be conceptualized in three principal ways. *First*, a legal system can be conceived as an aggregate of legal norms. *Second*, it can be conceived as systems of social behavior, of roles, statutes, and institutions, as involving patterned interactions between the makers, interpreters, breakers, enforcers, and compliers of the norms of law. *Third*, legal system may be equated with social control systems, involving differential bases of social authority and power, different normative requirements and sanctions, and distinctive institutional complexes.

Thus, there are three dimensions or aspects of a legal system: (i) legal system as a normative system, (ii) legal system as a social system, and (iii) legal system as a combination of formal and non-formal norms of social control. Each one of these

[3] S P Simpson & Ruth Field, Law and the Social Sciences, 32 *Va L Rev* 862 (1946).

dimensions of 'legal system', however, raise different queries for investigation and set different orbits for inquiry.

Legal system, as an aggregate of legal norms, raises a set of typical questions. A prominent among them are: How is law generated? What forces in society influenced or created particular kinds of law? What makes a system of law out of a vast and heterogeneous mass of normative materials? By what concepts and criteria can we identify the existence of a legal system? While the second conception of legal system warrants a study of institutional behavioral patterns and roles of the lawmakers (Legislature), law interpreters (Judges), law-enforcers (the police), law-breakers (wrongdoers) and law-compliers (law-abiders) and their influence, individual or cumulative, in the legal system and legal processes. The third one addresses to the inter-relationship (supportive or otherwise) between the formal (legal) rules and (informal) non-legal rules (such as religious, indigenous, or customary norms) in shaping law as social control system.

Further, it is necessary to recall, in brief, some of the philosophical explanations of law as they have a significant bearing on the social dimension or context of law. These explanations look at law in its working and the myths about functioning of law and truth about its role.[4] The basic tenet of Marxian approach to law is that 'law', though social system structures it, is an instrument in the hands of the classes in power to use it to protect their own interests. The class in power uses law to exploit powerless classes. While Roscoe Pound insists that law is an instrument of social engineering. He asserts that law can be an effective tool for establishing an egalitarian social order.

Traditionally, the first dimension of legal system, *namely* law as a system of norms, is the domain of academic lawyers; the second one, i.e. law as a system of social behavior, is of sociologists, and the third one is of social anthropologists.[5] These three dimensions of a system of law, in ultimate analysis, broadly speak of normative character of law (or perceive law as system of norms) and of social context (or

[4] Adam Podgorecki, *Law and Society* (Routledge & Kegan Paul, London, 1974) 4.
[5] Upendra Baxi, *Socio-legal Research in India-A Programschrift* (Indian Council of Social Science Research (ICSSR), New Delhi, 1975). Reprinted in, S K Verma & M Afzal Wani (eds), *Legal Research and Methodology* (Indian Law Institute, New Delhi, 2nd edn, 2001), at pp 656-657.

sociology of law) of law. It treats law as a means to define an end. The traditional perception of law as a system of norms concerns with analytical-linguistic study of law while the sociology of law highlights the 'social context' of 'law'.

1.4 ROLE OF LAW IN A PLANNED SOCIO-ECONOMIC DEVELOPMENT

A contemporary modern state, which endeavors to bring socio-economic transformation envisaged in its Constitution, assigns a catalyst role to law. It strives to bring such a transformation through a cluster of social welfare legislations enacted in pursuance of its constitutional objectives, policies and perceptions.

For example, a careful look at the well-articulated 'economic objectives', 'social objectives', and 'environmental objectives' embodied in the FDRE Constitution[6] reveals laws' role in accomplishing them. The Government, *inter alia*, is duty bound to ensure that all Ethiopians get equal opportunity to improve their economic conditions and to promote equitable distribution of wealth among them and to deploy land and other natural resources for the common benefit of the People and development. It has also to make endeavor to protect and promote the health, welfare and living standards of the working population of the country. The Constitution also obligates the Government to provide special assistance to Nations, Nationalities, and Peoples least advantaged in economic and social development. The Constitution also envisages Ethiopians access to public health and other basic amenities. It assures them of a clean and healthy environment. All these constitutionally contemplated prescriptive obviously assign a greater role to 'law' in their accomplishment.

? Activity 1.1: What relationship is there between Ethiopian Laws (choose sample laws, such as Constitutional law, Family Law, Commercial law, Criminal law, etc) and the Ethiopian People, Nations and Nationalities? Discuss in groups, being from 2 to 3 students.

CHECK YOUR PROGRESS

[6] See, arts 89- 90 & 92, FDRE Constitution.

- What is the link between law and society?
- Does law influence society or society influence law?
- Describe social dimensions of law
- Is law normative in character or a part of social system?
- Comment upon roles of law in bringing socio-economic changes

FURTHER SUGGESTED READINGS

- Yehezkel Dror, Law and Social Change, 33 *Tul LR* 749 (1959)
- A V Dicey, *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century* (MacMillan, 1905), pp 1-42
- Vilhelm Aubert, Some Social Functions of Legislation, 10 *Acta Sociologica* 99 (1966)
- Julius Stone, *Social Dimensions of Law and Justice* (Stanford University, Stanford, 1966)
- W Friedmann, *Law in a Changing Society* (Stevens & Sons, London, 2nd edn, 1972), chap 1: the Interaction of Legal and Social Change

UNIT 2

LEGAL RESEARCH: AN INTRODUCTION

- - - [T]he scholars --- must announce that their needs for legal research
arise from a determination to do something new –
to look at the world with unbiased eyes,
to try to find out how and why the law ticks,
to see whether the law is in fact serving the needs of society today. - - -
The touchstone of researcher is the open, inquiring mind. - - -
Legal research will get somewhere only if legal scholars abandon any thought
that there is something sacred about the law as it is.
Even if we accept certain values in our society as sacred,
this does not make any particular legal proposition sacred.
George D Braden

There is no shortcut to the truth --- no way to gain knowledge
of the universe except through the gateway of scientific method.
Karl Pearson

STRUCTURE

LEGAL RESEARCH: AN INTRODUCTION

2.1 What is research?
- 2.1.1 Meaning of research
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- 2.1.3 Motivation in research
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2.2 Types of research
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2.7.4 By a Law Teacher and Student of Law
2.8 Legal research and methodology
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2.9.2 Secondary sources
2.9.3 Tertiary sources
2.10 Major stages in legal research
2.10.1 Identification and formulation of a research problem
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2.10.3 Formulation of a hypothesis
2.10.4 Research design
2.10.5 Collection of data
2.10.6 Analysis of data
2.10.7 Interpretation of data
2.10.8 Research report
2.11 Legal Research in Ethiopia: Perspectives and Problems

OBJECTIVES

After going through the Unit, you will be able to:

- Explain the research methodology and its constituents
- State the various types of research approaches
- Describe the various steps involved in the research process
- Describe the various types of research designs appropriate for different types of research
- Explain legal research methods and methodology
- Explain importance of legal research in a modern welfare state
- Explain nature, scope and limitation of legal research
- Explain major stages in carrying legal research

2.1 WHAT IS RESEARCH?

2.1.1 Meaning of Research

The term 'research' has received a number of varied meanings and explanations. In its ordinary sense, the term refers to a search for knowledge. The *Advanced Learner's Dictionary of Current English* spells out the meaning of 'research' as 'a careful investigation or inquiry specifically through search for new facts in any branch of knowledge'.[7] Redman and Mory, in a similar tone, define research as a 'systematized effort to gain new knowledge'.[8] According to the *Webster's International Dictionary*, 'research' is 'a careful, critical inquiry or explanation in seeking facts or principles; diligent investigation in order to ascertain something'. While *Webster Dictionary* explains the term 'research' to mean 'a systematic investigation towards increasing the sum of knowledge'. D Slesinger and M Stephenson perceived the term 'research' as 'the manipulation of things, concepts or symbols for the purpose of generalizing to extend, correct or verify knowledge, whether that knowledge aids in construction of

[7] *The Advanced Learner's Dictionary of Current English* (Oxford, 1952) 1069.
[8] L V Redman and A V H Mory, *The Romance of Research* (1923) 10.

theory or in the practice of an art'.[9] The 1911 Cambridge edition of the *Encyclopedia Britannica* defines research as:

> The act of searching into a matter closely and carefully, inquiry directed to the *discovery of truth* and in particular, *the trained scientific investigation* of the principles and facts of any subject, based on original *and first hand study of authorities* or experiment. Investigations of every kind which has been based on original sources of knowledge may be styled research and it may be said that without 'research' no authoritative works have been written, no scientific discoveries or inventions made, no theories of any value propounded –

A combined reading of all the above-mentioned 'explanations' of the term 'research' reveals that 'research' is the 'careful, diligent and exhaustive investigation of a specific subject matter' with a view to knowing the truth and making original contribution in the existing stock of knowledge. It is, in short, 'systematic search' in 'pursuit of knowledge' of the researcher. Mere aimless, unrecorded, unchecked search is not research which can never lead to valid conclusions. But diligent, intelligent, continued search for something is research. It refers to the process and means to acquire knowledge about any natural or human phenomenon. It involves a systematic inquiry into a phenomenon of interest. It is the process of discovering or uncovering new facts. It aims to contribute to the thitherto known information of the phenomenon.

Therefore, only systematic intensive investigation into, or inquiry of, fact qualifies to get the label of 'research'. And a 'search' becomes 'systematic' when a researcher, in his quest for knowledge and pursuit of truth, attempts to collect the required information from various sources and in a variety of ways systematically and exposes data to a severe and intensive scrutiny. Research, thus, involves systematic scientific investigation of facts (or their hidden or unknown facets) with a view to determining or ascertaining something, which may satisfy the curiosity of the investigator and carry forward (his) knowledge. Such research involves identification of a research problem, the ascertainment of facts, their logical ordering and classification, the use

[9] D Slesinger and M Stephenson, *The Encyclopedia of Social Sciences*, vol IX (MacMillan, 1930).

of (inductive and deductive) logic to interpret the collected and classified facts and the assertion of conclusions premised on, and supported by, the collected information. 'Research', therefore, means a scientific collection and inspection of facts with a view to determining (or searching) something, which may satisfy the curiosity of the investigator and carry forward his knowledge. It requires a sound design for investigation, the appropriate methods of data collection and a mode of analysis.

The prefix 're' in the word 'research', according to the *Concise Oxford Dictionary*, means 'repeated, frequent or intensive'. 'Research', therefore, implies a continued 'frequentative' 'intensive' 'search' for truth and/or an inquiry for the verification of a fresh theory or for supplementing a prevailing theory. Research is, thus, a continuum.

2.1.2 Objectives of Research

The purpose of research, thus, is to acquire knowledge or to know about 'something' in a scientific and systematic way. Its purpose may, however, be to find solution to the identified problem. The former is referred to as 'basic' or 'pure' or 'fundamental' research while the latter takes the label of 'applied' or 'action' research. Fundamental research is mainly concerned with generalizations and with formulation of a theory (or re-confirmation of the existing theory). Its main aim is to acquire knowledge for the sake of acquiring it. Applied research, on the other hand, aims at finding or discovering solutions or answers to the identified 'problem(s)' or 'question(s)'.

Obviously, every research study has its own goal(s) or objective(s). Nevertheless, 'research objective' of a given research study may fall under either of the following broad categories of 'research objectives':

1. To gain familiarity with a phenomenon or to achieve new insights into it.
2. To portray accurately the characteristics of a particular individual, situation or a group.
3. To determine the frequency with which something occurs or with which it is associated.
4. To test causal relationship between two or more than two facts or situations. [10]

[10] C R Kothari, *Research Methodology: Methods and Techniques* (New Age International Publishers, New Delhi, 2nd edn, 2004, Reprint 2007) 2.

5. To ‘know’ and ‘understand’ a phenomenon with a view to formulating the problem precisely.
6. To ‘describe’ accurately a given phenomenon and to test hypotheses about relationships among its different dimensions.

? ***Activity 2.1: Grouping yourself, from three to five students, discuss the practical significance of research in analysis of legal provisions and principles, and to study relationship between FDRE Constitution and Regional Constitutions?***

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2.1.3 Motivation in Research

An equally important question, *namely*, what makes a scholar to undertake research, deserves our attention. A general response to the question, probably, would be that a person, who is curious to know *something more* about *something*, undertakes a systematic study of that *something* to kill his curiosity. His quest for knowing about, or acquiring knowledge of, ‘*something*’, plausibly motivates him to undertake research of that ‘*something*’. However, there could be a couple of other ‘motivations’ for him to get indulged into research. They are:

1. Desire to earn a research degree along with its consequential benefits.
2. His ‘concern’ for thitherto ‘unsolved’ or ‘unexplored’ ‘problem’ and his keen desire to seek solution therefor, and be a proud recipient of that contribution.
3. Desire to acquire reputation and acclaim from his fellow men.
4. Desire to get intellectual joy of doing some ‘creative’ work.
5. Desire to render some service to society. [11]

However, when it concerns with legal research, a scholar of law, in addition, needs to convince himself that his desire for legal research arises from his determination to do something new-to look at the world with unbiased eyes, to try with open and inquiring mind to find out how and why the law tricks, to see whether the law is in fact serving the needs of today. Sometimes he, particularly when he is interested in finding out

[11] *Ibid.*

social utility of law, may have to come out of bookish introspection and to venture into empirical study. He may also require joining hands with other social scientists.[12]

2.1.4 Research and Scientific Method

Research, as stated earlier, is a systematic inquiry into a 'fact'. It involves the collection of facts, analysis of the collected facts, and logical inferences drawn from the analyzed facts. A method of inquiry becomes systematic only when the researcher resorts to a systematic approach to, and follows a scientific method of inquiry into, the fact under investigation. Research, simply put, is an endeavor to arrive at certain conclusions through the application of scientific methods. 'There is no shortcut to the truth --- no way to gain knowledge of the universe except through the gateway of scientific method.'[13] Scientific method is loaded with logical considerations. It is the pursuit of truth as determined by logical considerations. The ideal of science is to achieve a systematic inter-relation of facts. Scientific method attempts to achieve 'this ideal by experimentation, observation, logical arguments from accepted postulates and a combination of these three in varying proportions'.[14] In scientific method, logic aids in formulating propositions explicitly and accurately so that their possible alternatives become clear. Further, logic develops the consequences of such alternatives, and when these are compared with observable phenomenon, it becomes possible for the researcher or the scientist to state which alternative is most in harmony with the observed facts. All this is done through experimentation and survey investigations, which constitute the integral parts of scientific method. 'The scientific method', according to Karl Pearson, 'is one and the same in all branches (of science) and that method is the method of all logical trained minds --- the unity of all sciences consists alone in its methods, not its material; the man who classifies facts of any kind whatever, who sees their mutual relation and describes their sequences, is applying the Scientific Method and he is a man of science'.[15]

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[12] George D Braden, Legal Research: A Variation on an Old Lament, 5 *Jr of Legal Edu* 39 (1952-53).
[13] Karl Pearson, *The Grammar of Science* (Meridian Books, Inc., New York, 1957) 10.
[14] Bernard Ostle & Richard W Mensing, *Statistics in Research* (the Iowa State University Press, Ames Iowa, 3rd edn, 1975) 2.
[15] Karl Pearson, *The Grammar of Science*, *supra* n 7, pp 10-12.

The scientific method is, thus, a method used by the science. Science rests on reason (rationality) and facts. Science is logical, empirical and operational. Scientific method is, therefore, based on certain postulates and has certain characteristics. They are: (i) it is logical, i.e. it is basically concerned with proof based on reason, (ii) it is empirical, i.e. theories are rooted in facts that are verifiable, (iii) it is operational, i.e. it utilizes relevant terms/concepts that help in quantification and conclusion, (iv) it is committed to only objective considerations, (v) it pre-supposes ethical neutrality, i.e. it aims at nothing but making only adequate and correct statements about population objects, (vi) it is propositional, i.e. it results into probabilistic predictions that can be proved or disproved, (vii) its methodology is public, i.e. it is made known to all concerned for critical scrutiny, testing/retesting of propositions, (viii) it tends to be systematic, i.e. indicates inter-relationship and organization between the facts and propositions, and (ix) it aims at theorizing, i.e. formulating most general axioms or scientific theories.[16]

Scientific method implies an objective, logical and systematic method, i.e. a method free from personal bias or prejudice, a method to ascertain demonstrable qualities of a phenomenon capable of being verified, a method wherein the researcher is guided by the rules of logical reasoning, a method wherein the investigation proceeds in an orderly manner and a method that implies internal consistency.[17]

2.2 TYPES OF RESEARCH

According to C R Kothari, the basic types of research are: (i) Descriptive and Analytical Research, (ii) Applied and Fundamental Research, (iii) Quantitative and Qualitative Research, and (iv) Conceptual and Empirical Research.[18] Each one of these is briefly discussed here below:

2.2.1 Descriptive vs. Analytical Research

[16] See, C R Kothari, *Research Methodology: Methods and Techniques*, *supra* n 4, pp 9-10, T S Wilkinson & P L Bhandarkar, *Methodology and Techniques of Social Research* (Himalaya Publishing House, Mumbai, 16th edn, Reprint 2005), chap 1, J T Doby (ed), *An Introduction to Social Research* (Stackpole, 1967) 16 *et. seq.*, Morris R Cohen & Ernest Nigel, *An Introduction to Logic and Scientific Method* (HarCourt, Brace, New York, 1934), William J Goode & Paul K Hatt, *Methods in Social Research* (McGraw-Hill, 1952).
[17] C R Kothari, *Research Methodology: Methods and Techniques supra* n 4, 10.
[18] *Ibid*., pp 2-5.

Descriptive research, as its name suggests, describes the state of affairs as it exists at present. It merely describes the phenomenon or situation under study and its characteristics. It reports only what has happened or what is happening. It therefore does not go into the causes of the phenomenon or situation. The methods commonly used in descriptive research are survey methods of all kinds, including comparative and co-relational methods, and fact-finding enquiries of different kinds. Thus, descriptive research cannot be used for creating causal relationship between variables. While in analytical research, the researcher uses his facts or information already available and makes their analysis to make a critical evaluation of the material.

2.2.2 Applied vs. Fundamental Research

Applied research or action research aims at finding a solution for an immediate problem. Here the researcher sees his research in a practical context. While in fundamental research or pure research or basic research, the researcher is mainly concerned with generalization and with the formulation of a theory. He undertakes research only to derive some increased knowledge in a field of his inquiry. He is least bothered about its practical context or utility. Research studies concerning human behavior carried on with a view to making generalizations about human behavior fall in the category of fundamental or pure research. But if the research (about human behavior) is carried out with a view to solving a problem (related to human behavior), it falls in the domain of applied or action research.

The central aim of applied research is to discover a solution for some pressing practical problem, while that of fundamental research is to find additional information about a phenomenon and thereby to add to the existing body of scientific knowledge. The ‘applied’ scientist is thus works within a set of certain values and norms to which he feels committed. A sociologist, for example, when works with a social problem to find solution therefor and proposes, through a systematic inquiry, a solution or suggests some measures to ameliorate the problem, his research takes the label of ‘applied’ or ‘action’ research. But when he undertakes a study just to find out the ‘what’, ‘how’ of the social problem, his inquiry takes the nomenclature of ‘pure’ or ‘fundamental’ research.

However, the above-mentioned ‘distinguishing factor’ between the ‘applied’ and ‘fundamental’ research need not be conceived as a ‘line’ putting the two ‘across’ the ‘line’ forever or an ‘either-or’ dichotomy. In fact, they are not mutually exclusive. There is a constant interplay between the two, each contributing to the other in many ways.

2.2.3. Quantitative vs. Qualitative Research

Quantitative research is based on the measurement of quantity or amount. It is applicable to a phenomenon that can be expressed in terms of quantity. It is systematic scientific investigation of quantitative properties of a phenomenon and their inter-relation. The objective of quantitative research is to develop and employ mathematical models, theories and hypotheses pertaining to the phenomenon under inquiry. The process of measurement, thus, is central to quantitative research because it provides fundamental connection between empirical observation and mathematical expression of quantitative relationship.

Qualitative research, on the other hand, is concerned with qualitative phenomenon, i.e. phenomenon relating to or involving quality or kind. For example, when a researcher is interested in investigating the reasons for, or motives behind, certain human behavior, say why people think or do certain things, or in investing their attitudes towards, or opinions about, a particular subject or institution, say adultery or judiciary, his research becomes qualitative research. Unlike quantitative research, qualitative research relies on reason behind various aspects of behavior.

2.2.4. Conceptual vs. Empirical Research

Conceptual research is related to some abstract idea(s) or theory. It is generally used by philosophers and thinkers to develop new concepts or to re-interpret the existing ones. On the other hand, empirical research relies on experience or observation alone, often without due regard for system or theory. It is data-based research, coming up

with conclusions that are capable of being verified by observation or experiment. It is therefore also known as experimental research. In empirical research, it is necessary to get facts firsthand, at their source. In such a research, the researcher must first provide himself with a working hypothesis or guess as to the probable results. He then works to gets enough facts (i.e. data) to prove or disprove his hypothesis.

? ***Activity 2.2: Classify the following published research products, using their titles, into one or more category of the above types of research? Discuss at least two of them with the help of your instructor (If possible read them).***

i. The Right against Torture: Institutional and Normative Framework, published on the Ethiopian Journal of Legal Education, Vol.1.No.1, July 2008, and written by professor Khushal Vibhute.

ii. Abortion Law in Ethiopia, published on Mizan Law Review,Vol.2 No. 1, January 2008,written by Assistant professor Tsehai Wada.

iii. Proof of Marriage by Possession of Status: the law and practice, published on Higawint under Ministry of Justice,vol.3,No.1,August 2005,written in Amharic language by Filipos Aynalem.

iv. The Child and the Law in Ethiopia: The case of the UN Convention on the Rights of the Child, published on Journal of Ethiopian Law,vol.18, August 1997,Written by Associate Professor Tilahun Teshome.

v. Legal Pluralism: Its Promises and Pitfalls for Ethiopia, published on Jimma University Journal of Law,vol.1 No.1,October 2007,written by Alemayehu Fentaw.

2.3 RESEARCH METHODS AND RESEARCH METHODOLOGY

The term ‘research methods’ refers to all those methods and techniques that are used by a researcher in conducting his research. The term, thus, refers to the methods, techniques or tools employed by a researcher for collecting and processing of data, establishing the relationship between the data and unknown facts, and evaluating the accuracy of the results obtained. Sometimes, it is used to designate the concepts and procedures employed in the analysis of data, howsoever collected, to arrive at conclusion. In other words, ‘research methods’ are the ‘tools and techniques’ in a

‘tool box’ that can be used for collection of data (or for gathering evidence) and analysis thereof. ‘Research methods’ therefore, can be put into the following three groups:

1. The methods which are concerned with the collection of data [when the data already available are not sufficient to arrive at the required solution].
2. The statistical techniques [which are used for establishing relationships between the data and the unknowns].
3. The methods which are used to evaluate the accuracy of the results obtained.

The term ‘research methodology’, on the other hand, refers to a ‘way to systematically solve’ the research problem. It may be understood as a ‘science of studying how research is done scientifically’. It involves a study of various steps and methods that a researcher needs generally to adopt in his investigation of a research problem along with the logic behind them. It is a study of not only of methods but also of explanation and justification for using certain research methods and of the methods themselves. It includes in it the philosophy and practice of the whole research process. In other words, research methodology is a set of rules of procedures about the way of conducting research. It includes in it not just a compilation of various research methods but also the rules for their application (in a given situation) and validity (for the research problem at hand).

A researcher, therefore, is required to know not only the research methods or techniques but also the methodology, as he needs to decide as well as to understand the relevancy and efficacy of the research methods in pursuing the research problem at hand. He may be confronted with equally relevant and efficacious alternative research methods and techniques at each stage of his research study. He, therefore, has to consciously resort to the research methods and techniques that are most appropriate to carry his investigation in a more systematic manner. This becomes possible only when he is acquainted with the underlying assumptions and utility of various research methods or techniques available to him. A study of research methodology equips him with this kind of knowledge and skill. C R Kothari, bringing out the correlation between research methods and research methodology, observed:

> --- [R]esearch methodology has many dimensions and research methods do constitute a part of the research methodology. The scope of research methodology is wider than that of research methods. Thus, when we talk of research methodology we not only talk of the research methods but also consider the logic behind the methods we use in the context of our research study and explain why we are using a particular method or technique and why we are not using others so that research results are capable of being evaluated either by the researcher himself or by others. Why a research study has been undertaken, how the research problem has been identified, in what way and why the hypothesis has been formulated, what data have been collected and what particular method has been adopted, why particular technique of analyzing data has been used and a host of similar other questions are usually answered when we talk of research methodology concerning a research problem or study.[19]

A study of research methodology has the following advantages:

1. It inculcates in a researcher the ability to formulate his research problem in an intelligent manner.
2. It inculcates in him objectivity in perceiving his research problem and seeking solutions therefor.
3. It equips him to carry out his research undertaking in an efficient manner and in a better way.
4. It enables him to take rational decisions at every step of his research.
5. It enables him to design appropriate research technique(s) and to use it (them) in an intelligent and efficient manner.
6. It enhances his ability to analyze and interpret data with reasonable objectivity and confidence.
7. It enhances ability of the researcher and/or others to evaluate research findings objectively and use the research results in a confident way.
8. It entails a good research.
9. It enables him to find a satisfactory way of acquiring new knowledge.

[19] *Ibid*, 8.

Importance of knowing 'research methodology' or 'the way of doing research' is well articulated by C R Kothari as follows:

> In fact, importance of knowing the methodology of research or how research is done stems from the following considerations:
>
> (i) --- The knowledge of methodology provides good training specially to the new research worker and enables him to do better research. It helps him to develop disciplined thinking or 'bent of mind' to observe the field objectively. ---
>
> (ii) Knowledge of how to do research will inculcate the ability to evaluate and use research results with reasonable confidence. ---
>
> (iii) When one knows how research is done, then one may have the satisfaction of acquiring a new intellectual tool which can become a way of looking at the world and of judging every day experience. Accordingly, it enables us to make intelligent decisions concerning problems facing us in practical life at different points of time. Thus, the knowledge of research methodology provides tools to look at things objectively.
>
> (iv) --- The knowledge of methodology helps the consumer of research results to evaluate them and enables him to take rational decisions.[20]

2.4 WHAT IS LEGAL RESEARCH?

'Legal research', taking clue from the meaning of 'research' as outlined in the preceding pages, may be defined as 'systematic investigation towards increasing the sum of knowledge of law'. However, a scholar has commented that this definition is 'too broad' and 'lacks articulation' and proposed a different definition. He observed:

[20] *Ibid*, 10.

> Research may be defined as systematic fact-finding (that is, to find what the law is on a particular point) and advancement of the science of law. In a strict sense, legal research is understood as limited to those works which contribute to the advancement of legal science (that is excluding such materials as text-books and case books, etc.) This is a too narrow a view of research and we need not adopt such a restricted definition of legal research. Even the fact-finding is not so easy as it may seem. First, a researcher has to go into the different statutory provisions and the rules made thereunder. Secondly, he may have to examine the mass of case-law which may have accumulated on the point in issue, and it is not an easy matter to derive a clear-cut legal proposition from the tangled mass of case-law.
>
> To advance the science of law, it is necessary for a researcher to go into the underlying principles or reasons of the law. The enquiries will have to be: Why a particular rule? What led to its adoption? What are its effects? Whether it is suited to the present conditions? How can it be improved? Whether it needs to be replaced entirely by a new rule?[21]

Thus, the term 'legal research' take into its ambit '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, as stated earlier, 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, one (particularly in the common law jurisdictions) requires to look for pouring judicial pronouncements of the higher judicial institutions interpreting these provisions for finding 'true' meaning and ambit of the legal provisions. A quest for making advancement in the science of law requires a legal researcher to systematically probe into underlying 'principles' of, and 'reasons' for, 'law'. Thus, legal research has a

[21] S N Jain, Legal Research and Methodology, 14 *Jr of Ind L Inst* 487 (1972), at 490.

very wide scope as it, in ultimate analysis, involves an inquiry into one or the other dimension or aspect of 'law'.

Legal research is, thus, the process of identifying and retrieving information necessary to support legal decision-making. It includes in it each step of a course of action that begins with an analysis of the facts of a problem and concludes with the application and communication of the results of the investigation.

? Activity 2.3.First, list and then discuss the elements constituting the meaning of legal research?

2.5 SCOPE AND RELEVANCE OF LEGAL RESEARCH

2.5.1 Nature and Scope of Legal Research

A Welfare and Democratic State envisages socio-economic transformation for the development of a 'just social order' based on 'equality and socio-economic justice'. Constitution of such a country invariably contemplates extensive use of law for bringing about the desired socio-economic transformation of the social order. It allows, rather expects, the state to use its legislative power to bring about such a change. Any serious step by the state towards social amelioration and economic progress requires legislation and legal authority. Law, therefore, acts as a catalytic agent for such socio-economic transformation.

However, in a democratic political set-up, the legislative processes have to be informed by public opinion. At the same time, public opinion is required to be changed through legislative process and concretization.[22]

A good Legislator ought to know the coercion-potential of the laws and how much social resistance they can withstand. He must, among other things, to know the social

[22] See, Albert Venn Dicey, *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century* (MacMillan & Co, London, 1924), Lectures I, II & III; Morris Ginsberg, *Law and Opinion in England in the Twentieth Century*, (1959)**,** and Julius Stone, *Social Dimensions of Law and Justice* (Stanford University, Stanford, 1966)**.**

mores, habits, and culture. Similarly, he must be able to take a realistic estimate of the effect of law by taking into account its inherent strengths and weaknesses. Jeremy Bentham talked of legislation as a science and wanted all the laws to be restructured on the touchstone of utility. Roscoe Pound conceived law as an instrument of social engineering. Both, therefore, visualized legislation on rational, humanistic and pragmatic basis. Such legislation requires an ongoing research into the facts and also of the interaction between the law and social & human behavior. If we find that most of the social welfare legislations have failed to bring the desired changes or transformation, it may be because they were not planned systematically and no cost-benefit analysis was done at their formulation stage. Law has to be preceded by a serious study of the dynamics of law and social changes. In the absence of such a study, law is bound to be ineffective and an utter failure in its mission. It would reduce merely to a legislative décor and symbolic.

A set of questions, therefore, warrants a careful and critical investigation. Prominent among them are: Why is a legislation made? What are the forces, lobbies or pressure groups that activated the legislation, and for what reasons or objectives? What are the forces or pressure groups that opposed the legislation and on what grounds? What led to its adoption? What are its contemplated effects? How much is the success percentage of it as a social legislation? Why did the law become dysfunctional? Why it remained un-operationalized or less-operatinalized? What corrective measures need to take to make it more effective? Does it merely need some modifications or replacement by a new statute?

In a modern democratic polity the major state-governance is through administrative processes. Administrative processes range from making of laws to adjudication. It involves delegated or secondary legislation (in the form of rules, regulations, orders, notifications, bye-laws and directives); administrative adjudication (in the form of tribunals and quasi-judicial conciliatory bodies). It also regulates trade, business; secures essential commodities for people; involves in export and import of goods; undertakes and manages public-sector enterprises, and exercises a number of discretionary powers in a variety of ways and situations. A continuous careful inquiry into: the need for the delegated legislation and the legislative policy reflected therein; structural and operational ambits of the body created thereunder; inbuilt-mechanism

for ensuring smooth execution of the policy; (ab)use of discretionary powers; working of different administrative bodies, for example, becomes imperative. A continuous research into the policies and administrative processes and the way in which discretionary powers are exercised is necessary to bring permissible uniformity in the administrative processes and procedures and to prevent abuse of discretionary powers by the administrative authorities. Such an inquiry is also necessary to make administration efficient and purposeful.

Judicial process can also be an area of research. Courts, at least in Common Law Jurisdictions, do not only interpret law but also create law through their judicial pronouncements. Judges, as adjudicators, also invariably highlight inbuilt weaknesses and shortcomings of law in their judicial deliberations. However, it is conceded that judicial pronouncements, howsoever they are claimed to be objective, in ultimate analysis, contain an element of subjectivity. Invariably, a judgment reflects personality and judicial background and philosophy of the judge. It therefore becomes necessary to carry out research into some of the pertinent questions that associate with judicial process. Some of them are: Do courts make law?; Should they make law?; how should they make law?; What are the limits within which they are expected to make law?; What is their family, educational and social background?, and What kind of personal, social and judicial philosophy they hold and preach?

Lawyers play a pivotal role in the decision-making process. Lawyers appearing in a case in fact feed the judge with relevant authorities and policy-oriented arguments. Therefore, a study of social and educational background of lawyers and of their training carries significance in understanding the decision-making process and judicial process.

Behavioral studies of lawyers and judges, therefore, become necessary to appreciate the realities of judicial process. Similarly, it becomes necessary to methodologically scrutinize the materials used by them in the decision-making process and the theoretical, social and philosophical premises used therefor. Ideally, judicial decision requires three types of research inputs, the conceptual or ideological, the doctrinal, and the empirical. Such a study would demystify the judicial process and thereby would built up greater legitimacy of the judicial processes and strengthen peoples'

respect for the courts' as *justice institutions*. If social audit of judicial performance is desirable, legal research becomes unavoidable.

Legal research, therefore, takes into its ambit:

1. *Doctrinal Research*- It is a research into legal rules, principles, concepts or doctrines. It involves a rigorous systematic exposition, analysis and critical evaluation of legal rules, principles or doctrines and their inter-relationship. It arranges the existing law in order and provides thematic parameters for such an order. It also concerns with critical review of legislations and of decisional processes and their underlying policy.
2. *Research in theory*- It involves an inquiry into conceptual bases of legal rules, principles or doctrines. It provides stimulus and intellectual infrastructure for empirical research as well as for advancements in law through legislative, judicial and administrative process.
3. *Empirical investigations*- It assesses impact of law and reveals 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.[23]

These broad categories of legal research, which can be conveniently re-grouped into doctrinal legal research and non-doctrinal legal research, obviously are not mutually exclusive. They overlap each other.

2.5.2 Scope of Legal Research in the Common Law System and the Civil Law System

At this juncture, it is necessary to have some broad, but pertinent, observations about the nature and scope of legal research in the common law and civil law systems.

[23] See generally, 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).

In the common law system, Legislature enacts substantive law. Executive wing of a State, drawing authorization from a substantive law, supplements the substantive law in the form of rules, regulations, statutory orders, notifications and byelaws. While courts, as and when called upon, interpret the 'law' and gives finality to it through their judicial pronouncements. Courts, particularly higher ones, however, do not only 'apply' law to the 'facts' and 'issues' brought and agitated before them but also, through their judicial pronouncements, 'make' law.[24] They are, generally, bestowed with wide judicial discretion. They are empowered to determine 'legality' as well as adjudicate 'finality' of 'law' or 'legal provision'. The lower courts are bound by 'precedent'. In the common law system, therefore, the basic assumption is that if there is a judicial decision in the past having facts and legal issues similar to those in the case currently before the court, the outcome of the past case should control the outcome of the present case. Therefore, in the common law system Legislature, Executive as well as Judiciary do constitute 'source' of law. A legal researcher, with a view to understanding 'law' on a particular topic or subject, therefore has to 'locate', 'appreciate' and analyze apt Acts of Parliament, subsidiary legislative instruments, if any, and judicial pronouncements. He has to focus his attention on the primary source materials, like the Constitution and Statutes (along with statutory instruments), and leading judicial pronouncements (the precedents).

By contrast, in the civil law system, Acts of Parliament, supplemented by appropriate Regulations and Directives, if any, do constitute 'primary' sources of 'law'. Courts are required only to 'apply' them. In no way, they are expected to 'make' law through their judicial pronouncements. Hence, the law of precedent, unlike in common law jurisdictions, is irrelevant. Nevertheless, a judicial statement of a higher court may have an inspirational or persuasive value in terms of its reasoning. In civil law system, a legal researcher, with a view understanding law on a topic, therefore, has to merely concentrate on the primary sources of law

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However, there is hardly any material difference in the nature and scope of legal research in these two legal systems- the common law and the civil law system. In both the systems, broad strategy and utility of legal research is alike. They only differ in

[24] See, Benjamin Cardozo, *the Nature of Judicial Process* (Yale University Press, 1921). Also reprinted in, Margaret E Hall (ed), *Selected Writings of Benjamin Nathan Cardozo* (Fallon Publications, New York, 1947) 107 *et. seq*.

their emphasis on the material required/used for carrying out legal research. A legal researcher from the common law jurisdiction relies heavily upon, and gives importance to, apt statutory materials (the Constitution, statutes and other statutory instruments) and case reports (including case comments and case digests) for 'ascertaining', 'understanding' and 'appreciating' law on the topic or area of his inquiry. A legal researcher from a civil law system, on the other hand, focuses and prominently relies on the statutory materials for 'ascertaining', 'understanding', and 'appreciating' law. Under both the legal systems, a researcher has to resort to identical methods of data collection and of analysis when he is interested in highlighting 'social dimension of law' or 'gap' between the legal idealism and social reality or assessing 'impact of law' on the social behavioral pattern. In other words, the strategy and paradigm of socio-legal research in both the systems are similar. Ethiopia is a civil law country. Nevertheless, the Ethiopian legal system exhibits some common law elements.

In fact, foreign Commissions, headed by the persons having influence of continental civil and English common law, drafted the following six basic Codes, which constitute the real body of law of Ethiopia. They are: (i) the Penal Code of 1957 (drafted by the Commission headed by Professor Jean Graven of Switzerland); (ii) the Civil Code of 1960 (drafted by the Commission headed by Professor R David of France); (iii) the Maritime Code of 1960 (drafted by the Commission headed by Professor J Escarra of France); (iv) the Commercial Code of 1960 (drafted by the Commission headed by Professor J. Escarra of France and A. Jauffret of France); (v) the Criminal Procedure Code of 1961 (drafted by the Commission headed by Sir Charles Matthews of England), and (vi) the Civil Procedure Code of 1965 (drafted by the Commission headed by Ato Nirayo Esayas, Assistant Minister of Codification of the Ethiopian Ministry of Justice). Though some of these Codes are subsequently modified and revised, their basic framework remained intact.

Further, though the common law doctrine of *stare decisis* is not applicable in Ethiopia, it would be of interest to note that the recently enacted Proclamation No.

454/2005[25] inserted sub-Article (4) in Article 10 of the Proclamation No. 25/1996[26] to explicitly make decisions of the cassation division of the Federal Supreme Court binding on federal and regional council at all levels. It also, in a way, statutorily recognized the power of the cassation division to overrule its earlier decisions. The newly inserted sub-Article (4) runs as under:

> Interpretation of a low (*sic*) by the Federal Supreme Court rendered by the cassation division with not less than five judges shall be binding on federal as well as regional council at all levels. The cassation division may however render a different legal interpretation some other time.[27]

It would be of further interest to note here that the Proclamation of 454/2005 also inserted Sub-Article (5) in Article 10 of the Proclamation 95/1996 to mandate the Federal Supreme Court to publish and distribute decisions of the Cassation Division having such binding character. It says:

> The Federal Supreme Court shall publish and distribute decisions of the cassation division that contain binding interpretation of laws to all levels of courts and other relevant bodies.[28]

Thus, the Ethiopian legal system has, thus, some common law elements too.

2.6 IMPORTANCE (PURPOSE) OF LEGAL RESEARCH[29]

Law, as mentioned earlier, does not operate in a vacuum. It operates in a complex 'social setting'. It reflects social attitudes and behavior. It also seeks to mould and control social attitudes and behavior of people to ensure that they flow the expected channel. However, social values and attitudes, existing as well as expected, keep on

[25] Federal Courts Proclamation Reamendment Proclamation No. 454/2005, *Federal Negarit Gazeta*, 11th Year No. 42, 14th June, 2005, p 3121.
[26] Federal Courts Proclamation No. 25/1996', *Federal Negarit Gazeta*, 2nd Year No. 13, 15th February, 1996, p 129.
[27] See, Article 2(1).
[28] *Id*. The *Journal of Ethiopian Law* of the Faculty of Law of the Addis Ababa University has also started publishing (selective) decisions of Cassation Division from its issue of 2006. Since 1964, the Faculty of Law of the Haile Sellassie I University (now Addis Ababa University) began to collect and publish in its *Ethiopian Law Journal* a few select judgments of the appellate courts on irregular basis. See, its various issues.
[29] Also see, 'Unit 3: Doctrinal and Non-doctrinal Legal Research', *infra*.

changing. It makes the law to be dynamic and cope with the changing social ethos. Further, ongoing scientific and technological developments add to these complexities by creating new complex human relationship that needs law to regulate.[30]

In such situations, legal research, *inter alia*, becomes necessary: (i) for ascertainment of law on a given topic or subject, (ii) to highlight ambiguities and inbuilt weaknesses of law, (iii) to critically examine legal provisions, principles or doctrines with a view to see consistency, coherence and stability of law and its underlying policy, (iv) to undertake social audit of law with a view to highlighting its pre-legislative 'forces' and post-legislative 'impacts', and (v) to make suggestions for improvements in, and development of, law.

2.6.1 Ascertainment of law

It is needless to mention that laws can never be perfect and final in a dynamic society. 'If our numerous laws', a scholar observed, 'were perfect, if social control were automatic, legal scholarship, like the State of the Marxists, could be left to wither away'. 'But our laws', according to him, 'are not perfect and final, and cannot be so in a dynamic society: they are not always even intelligible, and if intelligible, not always intelligently made.'[31] Therefore, a systematic effort is required to ascertain or find law on a given subject/topic. He requires not only to locate and to look into relevant Act(s) of Parliament but also to locate relevant secondary legislative instruments in the form of rules, regulations, orders, directions, notifications, and byelaws and judicial pronouncements thereon. It is a matter of common experience that these legislative instruments are scattered and are not easily traceable. More than one Acts may have bearing on the topic under study. He, therefore, needs to be more careful in locating these laws. Most of the subsidiary legislative instruments are not published on time in Official Gazette. Most of the times they are published after they have come into force. A plethora of judicial pronouncements of different higher judicial institutions including of the apex court adds to the difficulty in ascertainment of law. He needs to locate, analyze and digest these judicial pronouncements. Finding law on

[30] For example, recent developments in science, such as 'test-tube baby' and 'human cloning', have compelled law to address to parent-hood and property rights.
[31] 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).

a particular topic or subject, thus, is not a simple task, as it seems to be. It involves intensive analysis of legal instruments and judicial pronouncements. Further, there is a constant stream of statutes (with often amendments), statutory rules, directives and orders, and judicial decisions flowing at a tremendous speed in a modern welfare State.

2.6.2 Highlighting inbuilt 'gaps' and 'ambiguities'

No legal language or phrase, howsoever a legal drafter may be vigilant, visionary and skilled craftsman, can be perfect and be capable to take forever into its ambit all the future contingencies and circumstances. Sometimes, a provision may not, in terms of its phraseology or pragmatic operation, aptly fit into overall legislative intent of the Act or match with its other provisions or provisions of other Acts.

A legal researcher, through systematic analysis, may be able to highlight these 'gaps' and inbuilt weaknesses of the Act or its provisions.

2.6.3 Determining consistency, coherence and stability of law

A legal researcher, through critical examination of legal propositions, rules and doctrines embodied therein, in the light of interpretations thereof and legislative policy of the statute, can, with apt analysis and supporting reasoning, exhibit consistency and coherence or otherwise of a given law. Such an analysis helps in the development of law, legal provision or doctrine, as the case may be.

2.6.4 Social auditing of law

Legal research is also necessary for taking pre-legislative social audit of law as it helps to understand and appreciate the social forces that played significant role in the making of given law in its present form. Such an understanding enables us to know the social stakes that law intends to protect or change and reasons therefor. It helps to appreciate underpinning of the given law and its legislative target and strategy. While post-legislation social auditing helps us to identify 'gap(s)', if any, between the 'legal ideal' and the 'social reality' and to know reasons or factors responsible therefor. Such an audit helps us to find out as to whether a given law is assimilated in the

society and is (or is not) serving the needs of the society. It also unravels the reasons or factors that are responsible for making a given law a mere symbolic or a failure in attaining its intended legislative goal(s). It also enables us to predict future of the law.

2.6.5 Suggesting reforms in law

In the light of underlying legislative policy of a Statute and the highlighted inbuilt weaknesses or inconsistencies thereof, a legal researcher can easily offer concrete suggestions or proposals for reform or improvement in the given law. By undertaking analytical, historical and comparative research, he can also formulate his proposals for reform in precise terms. Analytical research, as stated above, is concerned with the ascertainment of law. It deals with the present. Historical research, on the other hand, deals with the past and it involves an inquiry into historical antecedents and evolution of law. The past often explains the present, most vividly. It reveals different alternative legislative measures, other than the current ones, thought of when the law was in the making. It discloses the reasons for their rejection and for adoption of the present ones. Historical research often shows that a particular existing legal provision, rule or doctrine, fully justifiable at the time when it was introduced or adapted, is no longer so justifiable because the reasons or circumstances that justified the original inclusion of that provision, rule or doctrine are no longer valid or exist. While comparative research aims at finding parallels from other jurisdictions. Thus, analytical [i.e., finding the existing law]; historical [i.e., finding out the previous law in order to understand the reasons behind the existing law and the course of evolution], and comparative [i.e., 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.[32]

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

1. To ascertain laws on a given topic or subject.
2. To identify ‘gaps’ and ‘ambiguities’ in law.
3. To critically examine consistency, coherence and stability of law and legal propositions.

[32] For further details, see 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) 111.

4. To undertake ‘social auditing of law’ [i.e. auditing pre-Legislative ‘forces’ and post-Legislative ‘impacts’ of law].
5. To suggest reforms/developments in law by undertakings research intended:
    i. To investigate ‘gap’ between the ‘legal ideals’ and ‘actual practice’.
    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 concrete formulations and proposals.
    v. To predict future trends of law.
    vi.

? Activity 2.4: 1.What will be the potential importance of each of the research conducted in the papers mentioned above under activity 2.2? Discuss in groups.

2. Discuss the significances of conducting relevant research to :(a) the legislative process in the Federal House of People’s Representatives and Regional Councils or law makers in Ethiopia ; (b)Federal and Regional Courts in the process of rendering effective, efficient and predictable judgments. It is to be discussed in class in the form of examples for importance of legal research in the Ethiopian justice system.

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2.7 WHO DOES LEGAL RESEARCH?

Obviously, anyone, who is curious to ‘know’ something about a particular ‘law’ and/or its operational facets and is willing to work hard to ‘know’ or ‘unearth’ it, can be a legal researcher. He may be a sociologist, an historian, a political scientist, a social anthropologist, an economist, or a legal philosopher.

But as an occupational exercise, legal research needs to be undertaken by Legislators, Judges, Lawyers, and Legal Academia (law teachers and students).[33] 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.

2.7.1 By a Legislator

Law is not *sui generis*. Legislators do not legislate at random. They also do not legislate simply because they are authorized or obligated to enact laws. Under normal circumstances, the exercise of legislative power by them is neither *ex tempore* nor by accident. They enact 'law' deliberately to meet one of the prevalent 'needs' of the society. A legislative enactment, therefore, has some 'social purpose' behind it.

Legislators have to decide the areas that are susceptible to legislative treatment. They have also to decide as to whether the proposed legislative measure improves the state of things or the existing social practice. Formulation of a legislative measure, generally, precedes a deliberate 'finding' of a 'problem' requiring legislative response. Then it follows by 'finding' apt possible alternative courses of action to be followed or measures to be taken and a careful comparative assessment of efficacy of each one of the identified alternatives for bringing about the 'intended' results through law. Legislators opt for the legislative measure, when, in their wisdom, none of the identified and available alternative measures are either adequate or apt to bring the desired results. Theoretically, then (and only then), the Lawmakers are expected to opt, as an alternative to the identified non-legal measures, for the legal measure as a last resort.

Lawmakers, therefore, are expected, as a part of their professional commitment, to make a systematic search for the possible alternatives to the proposed legislative measure and to make a serious and meticulous comparative assessment of efficacy and viability of each one of the identified alternatives for handling the problem. They are also expected to make a cautious assessment of probable 'social response' and

[33] See, Frederick C Hicks, *Materials and Methods of Legal Research* (1942, Reprint 1959) 23-31.

'social consequences'- positive as well as negative- of the proposed legislative measure.

Lawmakers may also have to 'look' at the 'identical law' and its '*raison d'etre*', if any, prevailing in other countries while designing legislative framework of the proposed law. They may have also to seriously look at the 'failure' and/or 'success' of such 'foreign law' and to identify the factors responsible therefor, if any, so that they can do way with the factors while drafting the law at their hand. This obviously requires them to have, at least, working skill of 'locating' and 'assessing' of the law from foreign jurisdiction. Such a search will enable them to identify the basic principles, doctrines and legislative strategy adopted in the identical overseas law and thereby to perceive the feasibility of adopting, with necessary modifications, them in the proposed legislation. Similar is the case when they want to amend either the existing legislation or a statutory provision or to repeal it.

The collection, collation and weighing of 'alternatives' and of 'information' about a legal issue or proposed law or amendment, obviously, is a research-exercise. To what extent legislators actually and fruitfully engage themselves in the research-exercise is a different matter.

The Legislators' selection of a particular legal alternative may be influenced, rather dictated, by various considerations. A prominent among them would be their: socio-politico-cultural background; perception of the 'social problem' and 'public policy' involved therein, and attached thereto; attitude and sensitivity to the perceived problem; political or personal vested interests, political strategy; and ideology and commitment to the political party they belong to.[34]

Nevertheless, our experience tells that Legislators, in most of the jurisdictions, hardly make any serious efforts to 'articulate' either legislative policy or legal framework of the proposed law or of amendments to the existing ones. Majority of the laws are passed on the floor of the House with no or less debate.

[34] See, John C Wahlke and Heinz Eulau (eds), *Legislative Behavior-A Reader in Theory and Research* (Free Press of Glencoe, Illinois, 1959).

However, probably keeping in view the pressure on their time and energy as well as their less or no aptitude and skill for undertaking research, a practice of carrying such an inquiry, on behalf of the Legislators, by a (Law) Commission and/or (Ad-hoc) Committee is developed in almost all the modern democratic states.

2.7.2 By a Judge

Traditionally, a Judge, who essentially acts as an arbiter, has to find the most relevant rules and principles of law from statutes and statutory instruments argued by the contesting parties, and to apply them to the controversy or *lis* brought before him. He is expected to 'find' propositions and principles of 'law' and to decide their 'propriety' and 'applicability' to the 'dispute' at hand. Such an exercise obviously requires him to make a 'search' for applicable 'rule' and 'legal principle'. He has also to give 'reasons' for picking up a 'rule' as an 'appropriate' one and logic behind it. An appellate judge, while upholding or reversing a judgment of a court subordinate to him, is also expected to make a search for 'true' interpretation of the 'rule' applied therein and to change, if necessary, the 'previous misconstrued rule' or 'misinterpretation' thereof.

However, the nature and extent of 'research' by a judge depend upon 'issues' involved before him and his inclination, aptitude, and training. Similarly, the hierarchical status of the court he sits on, nature of the matter or *lis* involved, and his workload determine the intensity of the required research. The hierarchical structure of the judicial institutions provides little or no scope for research to a Judge of a trial court or of a court of first instance as the matter brought before him is comparatively trivial in nature and stake of the parties involved therein is not that serious. The research output of an appellate court judge and of a judge of the higher court or an apex court or a constitutional court or Cassation Court is high as the issues brought before him are of legally as well as politically significant. Judges of the higher judicial institutions also have the required aptitude, skill, time, and ability for making such a 'search' as well as for supplementing the existing rules and legal principles with their innovative analogy and logical reasoning. A Judge, it is said, injects 'life' into 'law' through his logical deduction and legal reasoning. Most of the times, as evident from our experience, such reasoning and logical deductions have not only

boosted further development of legal rules and principles but have also culminated into some pertinent theories and legal doctrines. A student of law has umpteen number judicial opinions in his memory that not only exhibit high scholarship of the judges but also have led to theories and legal doctrines of far reaching consequences.

However, it is significant to recall that a Judge cannot on his own either ascertain law or legal principles or apply them unless someone calls upon him to do so by invoking his jurisdiction. In this sense, he is merely a 'passive' legal researcher.

2.7.3 By a Lawyer

A practicing lawyer, as profession, has to advise his clients and to plead cases on their behalf in the court of law. He, sometimes, is also required to give legal opinion on the matter referred to him by his client. A legal practitioner, who is called upon to give his legal opinion, is also required, as a part of his profession, to undertake a systematic search for 'finding' law and thereby to form his 'opinion' based thereon. In order to discharge these professional commitments, a lawyer has obviously to engage himself in searching law, propositions of law, and precedent (if required).

However, at times, finding law on a particular topic or issue is not an easy task. A number of statutes and/or statutory provisions on the given topic; frequent amendments thereto; enormous subsidiary legislation in the form of rules, regulations, orders, notifications, or byelaws supplementing the substantive law make the task of finding law more difficult. Pouring judicial pronouncements create further difficulties for the lawyer in his efforts to know law. Further, most of the times, Legislature, advertently or inadvertently, draft law in an imperfect language or couch a legal provision with phraseology that can be subjected to equally convincing more than one interpretation. A lawyer, therefore, has to go into the legislative policy and intent of law for 'knowing' the law accurately and identifying and appreciating the underlying legal principles so that he can argue favorably for his client. His client expects him not only to give right advice but also to impress upon the judge and convince him that his legal propositions are sounder than that of his opponent and hence correct.

For making his arguments more effective and convincing, he has obviously to explore and expound aims, objects, policy goals, scope and pragmatic aspects of the applicable legal provision(s). He, therefore, needs to scan statutory and judicial material and also materials comprising the history of the legal provision(s).

A Practicing Counsel who advises his client to go in appeal against an unfavorable decision of the lower court, in reality, believes that the reasoning given by the lower court was less or no-convincing and was not in tune with the thitherto prevalent legislative policy and judicial interpretation. Therefore, he trusts that his reasoning is better than that of the court below.

A scholar, reflecting on the nature of legal research to be carried out by a lawyer as a part of his profession, observed:

> It is a misconception to think that legal research is only for theoretician or academician and not for lawyer. --- As the attributes of research are fact-finding (that is, what the law is on a particular subject), fact-ordering, fact-systematizing and studying and predicting legal trends, the lawyers are constantly engaged in research. Further, a lawyer has to do research to find as to how the law should be interpreted, since the law is, at times, expressed in ambiguous language and leaves gaps to be filled in, during the process of its application, from case to case, and is not easily knowable. Perhaps in the days gone by when the economic life was simple, laws were not too many, and the life of the individual was not so much regulated by the state, all this resulting in the ascendancy of private law controversies (as contrasted with public law controversies), a lawyer could manage by the knowledge of a few professional tools, (which he was ordinarily expected to know) and did not need much research to win a case for his client. But all this has changed now. *Firstly*, there are too many statutes on a particular subject with frequent amendments thereto. --- *Secondly*, apart from the statutes, rules and statutory orders are much more in bulk and quantity. The latter are equally, and sometimes more, important than the relevant statute itself. --- *Thirdly*, the case law is also becoming prolific ---.

> *Fourthly*, in many areas of government regulation of private enterprises and in constitutional and administrative law questions, where our law is still in the developing stages, a lawyer is required to do research in comparative law to comprehend the meaning of the words and to interpret them. *Fifthly*, many questions in the present complex of socio-economic life, ---, raise difficult policy questions and a lawyer is required to traverse beyond legal doctrines and propositions.[35]

However, unfortunately most of the practicing lawyers lack the ability, aptitude and inclination for such a painstaking legal research. Probably, the nature of cases they handle are of routine nature and do not warrant such a serious legal research.

Nevertheless, role of a lawyer as a researcher, compared with an academician, in legal research is limited. He undertakes legal research only when a client approaches to him. His research is also coloured by the need to win the case at hand. He, therefore, lacks a wider perspective, objectivity and ability to draw a line on the graph depicting the development of the law and to make predictions about law in his professional career. Nevertheless, his well-matched intellectual acumen, policy-orientation, and social awareness may, undoubtedly, result (an often results) in articulating and advancing superb arguments. It certainly leads to the development of law.

2.7.4 By a Law Teacher and Student of Law

Legal research is indispensable for legal academia (law teachers and students). They are required to undertake legal research as a part of their professional commitment. There is a close connection between teaching law and legal research.[36] Legal research by a teacher equips him to develop and design a course he is required to administer to his students. He has to have an over-all idea of the subject as well as detailed

[35] S N Jain, Legal Research and Methodology, *supra* n 15, at pp 487-488.
[36] See, J C Thomas, A Modest Programme for the Improvement of Law Teaching, 9 *Victoria Uni Wellington L Rev* 405 (1978), E P Ellinger & K J Keith, Legal Research: Techniques and Ideas, 10 *Victoria Uni Wellington L Rev* 1 (1979-1980), and Hurst, Research Responsibilities of University Law Schools, 10 *Jr of Legal Edu* 147 (1957).

knowledge of the topics included in the course-outline before he designs his course. Such knowledge, which obviously comes from research, makes him capable of formulating his ideas in a systematic and comprehensible manner in the course outline.

Further, a law teacher has to keep a vigilant track of 'developments' in the 'law' for making his lectures and deliberations in the class-room contextually and contemporarily relevant. He has also to make himself familiar with the 'legislative intent and policy' of the 'black-letter rules' [i.e. rules-in-the law book(s)] and their '*raison d'etre*' so that he can help his students to appreciate the 'rule(s)' in a systematic and comprehensive manner. Such an intensive peep into the legislative intent and policy of a rule will also induce him and his students to have a critical assessment of the rule as well as of its desirability in the statute book. It will also help him and his students to 'think' and 'formulate' an alternative rule, if the existing one, in their opinion, is unwarranted, undesirable or ineffective. It may trigger off some 'new approaches' to the law or 'original ideas' about a specific rule or legal principle.
A law teacher is also expected to inculcate a degree of legal craftsmanship in his students and to help them realize the potential of law as a tool of social engineering, social change and an instrument of social control.

Research, thus, becomes inevitable for a law teacher to effectively perform his following roles:

1. To enhance his knowledge in the given subject and thereby to design a course assigned to him and to make his class-room delivery and deliberations in tune with the current and emerging trends, more informative, illuminating, effective, and contextually relevant and thereby to earn professional respectability as a good teacher.
2. To expose his students to a critical posture towards the role of law in the society.
3. To help them realize the role of law in social engineering.
4. To inculcate a high degree of 'legal craftsmanship' in his students.
5. To inspire his students to be engaged in legal research.
6. To help internalization of the notion of the rule of law.
7.

Most of the modern Law Schools and Law Universities, that have predominantly designed their curricula on the patterns of American and British Law Schools, require their students to undertake original research as one of the pre-requisites for obtaining their degree - LL.B., LL.B. (Honours) and/or LL.M. The students' research, as a mandatory component of a course/degree, may take either of the following forms:

1. A or two seminar papers, on a selected or pre-assigned topic, for each seminar subject [for LL.B. and/or LL.B. (Honors)].
2. A (senior) thesis on a selected or pre-assigned topic [for LL.B.].
3. A comprehensive piece of legal writing [for LL.B. (Hons)].
4. A group research assignment (in the form of a mini-thesis) on a current legal problem [for LL.B.].
5. A or two comprehensive legal essays on contemporary issues, selected or assigned, for each subject [for LL.M.].
6. A or a set of research papers of high quality or a dissertation in lieu of the examination in an LL.M. subject.
7. A thesis of high quality in lieu of the LL.M. examination [for LL.M. through Research].
8. A Masters' Thesis (or a dissertation) in the second year/fourth semester (of the course) [for LL.M.].

A law student aspiring for a degree (LL.B. /LL.M.) from a reputed Law School has, therefore, no alternative except to undertake and pursue the required research component to the satisfaction of his supervisor(s) and/or the Board of Examiners.
In fact, modern University Law Schools and Law Colleges, which are engaged in the making of future generation of legal professionals and practicing as well as academic lawyers (and in turn prosecutors and judges), are ideally required not only to be centers of legal education but also centers of legal scholarship and research. These institutions are required to inculcate in their students some habit of legal writing and research. The Canadian Committee on Legal Research, emphasizing the role of law schools/colleges in legal research, observed:

> A law school is not only a teaching institution. It is, or should be, a research center of its own. It should possess a corps of advanced students-Professors-who themselves are engaged in personal research,

> and from whom will come a stream of books, articles and studies to enrich our legal literature. --- 'A university law school has two purposes, (1) to train men for the legal profession; (2) to provide a center where scholars may contribute to an understanding of law and government and may participate creatively in their growth and improvement.[37]

However, as mentioned earlier, the role of a Legislator, a Lawyer and a Judge as a legal researcher is limited. Generally, they get themselves involved in legal research only to fulfill their professional responsibilities. Their research, therefore, ends when they accomplish their professional commitments. In other words, a Legislator deliberates on the proposed law (or an amendment thereto) when circumstances warrant him to stipulate a legislative measure to tackle the prevailing social problem. A Lawyer gets involved in legal research to sharpen his arguments and thereby to win a case at hand. He, therefore, ceases to be a legal researcher when his case is disposed off by a Court. Similarly, a Judge starts an inquiry into legal rules or doctrines that are apt to solve the issues involved in the case at hand. Similar is the case of an Appellate Judge when he is called upon a litigant to reconsider the unfavorable judicial dictum of the lower court. The moment he disposes off the case at hand, he hardly pursues his inquiry into the legal principles or rules involved therein.

Therefore, legal academia has comparatively better aptitude and reasons for undertaking legal research. In fact, it has been engaged in producing works, like commentaries and case digests that are designed for practitioners' reference.

However, it is important to note at this juncture that embarking on legal research by legal academia requires three basic conditions. *First*, it should have an access to a law library holding a good number of reference books (with latest editions) and legal periodicals published at home and abroad. Undoubtedly, library is the laboratory for a legal researcher to investigate the legal problem(s) at hand. *Secondly*, the academia has to have some aptitude and requisite skill to get involved in a meaningful legal research. *Thirdly*, it should also have some leisure time at its disposal for getting indulged into intensive legal research. In this context, it is worth to recall here the following observation of the Canadian Committee on Legal Research. It observed:

[37] Canadian Committee on Legal Research, 34 *Can Bar Rev* 1022-23 (1956).

> A good school is built round the course of full-time, well-trained teachers dedicated to work and sufficiently relieved from drudgery to be free to think and write, and to give individual attention to their students. This means that the teaching load must reasonably be low and the salary sufficiently high, to attract the best minds.[38]

A scholar of law, having the requisite aptitude and skill, interested in legal research, may do any of the following five things:[39]

1. Write a historical essay showing the development in a field of law or a particular doctrine.
2. Analyze a legal doctrine, rule, principle or concept to see whether it matches with the thitherto judicial statements and to suggest new set of statements or words if the existing ones, in his opinion, do not match. While doing so, he can highlight ambiguities in the doctrine or gaps prevalent therein and state, with rationale and reasons, what are the correct propositions of law that need to apply. For suggesting correct propositions, he may rely upon the underlying policy of the doctrine, rule, principle or concept.
3. Write a kind of *survey* on the recent developments in law summarizing the most important cases, analyzing how they have followed, or deviated from, the past cases, and make a guess as to what the courts would do in future.
4. Write about 'what I believe in'. This is usually a matter of deploring a trend, legislative or judicial.
5. Write about 'relationship' between the 'law' and the 'world' i.e. other behavioral sciences.
6.

For any of the first three, one needs only a (good) law library. For the fourth, one does not event need that. But the last requires not only a good law library but also a good deal of non-legal facts. Therefore, these five options available to a legal scholar can be divided into two broad categories of legal research, *namely*, doctrinal legal research and non-doctrinal regal research. Doctrinal legal research gives emphasis on analysis of legal rules, principles or doctrines while non-doctrinal legal research gives

[38] The report is published in, 34 *Can Bar Rev* 999 (1956). The quotation appears on pp 1022-1023.
[39] George D Braden, Legal Research: A Variation on an Old Lament, *supra* n 6.

prominence to relationship of law with people, social values and/or social institutions. It endeavors to see the relationship between law and other behavioral sciences and social facts. It involves empirical inquiry into the operation of law. Doctrinal legal research is, therefore, 'research *in* law' or 'research in black-letter of law' while, non-doctrinal legal research is 'research *about* law' or 'socio-legal research'.[40]

2.8 LEGAL RESEARCH AND METHODOLOGY

Law, as mentioned earlier, can be perceived as a normative science as it sets norms of human behavior. Most of the times, it also plays a role of catalyst for bringing socio-economic change. It is a *means* to an end. A systematic investigation of the first dimension of law (as a normative science), generally, falls in the domain of legal academia. A scholar of law, generally, undertakes a rigorous systematic analysis, exposition and critical evaluation of legal rule, legal principle, legal concept or doctrine (i.e. legal fact). Based on this analysis, he may highlight conceptual basis of the legal rule, principle or doctrine and may forward some proposals for reforms. He need not go beyond the discipline of law. While inquiry into social dimension of law or societal role of law, traditionally, falls in the domain of sociologists as it, invariably, involves a systematic look at, or discovery of, functional aspect of law and/or 'behavioral pattern' of an individual or a social group in response to 'law'. A sociologist intends to explain the way law functions and/or to evaluate its role in bringing out the desired changes. Undoubtedly, both the discoveries require 'systematic' study of, and approach to, 'fact', legal or social as the case may be, following a well-set 'methodology'.

Hitherto, however, in the Law Schools' orientation in research methodology has been aimed at familiarization of law students with researching of legal materials-Acts of Parliament/Statutes/Proclamations, decisions of (higher) Courts, (case) digests, writings of legal scholars, indexes, rules of interpretation of statutes, and the art of distinguishing and finding the *ratio decidendi* of a case (predominantly in common law jurisdictions). In other words, Law Schools, hitherto, has been giving emphasis on analytical legal research.

[40] For further details, see 'Unit 3: Doctrinal and Non-doctrinal Legal Research', *infra*.

Legal scholars, therefore, have not been able to evolve any specific methodology of their own for carrying out legal research. They do not have well-articulated research methods to employ and research methodology to follow in legal research.

Sociologists, on the other hand, have developed and inherited a comparatively well developed research methods and methodology for systematic investigation of social fact or behavior. They have been engaged in discovering, verifying or testing the old social facts or discovering new ones; analyzing sequence of these facts, finding their relationships and causal explanations, and developing new scientific concepts and theories about human behavior. For accomplishing these tasks, social scientists have developed research tools of various kinds (such as observational techniques, interviews and questionnaire, and case studies). They have a well-developed research methodology covering all major processes of research, *namely*, identification of a problem; formulation of a workable hypothesis (or hypotheses); preparing research design; collection of data (through interview, questionnaire, schedule or observation); processing, analyzing and interpretation of data, and writing research report. Some sociologists have successfully employed (and have been employing) these well-developed research methods and methodology to 'understand' social dimension or role of law, as 'law' has been perceived as 'means' (and not 'end') of social change, social control or social engineering.

Legal scholars, interested in having insight into policy of law its implementation or 'understanding' 'social dimension' or role of law, in the absence of their own well-developed legal research methodology, have to place their reliance on the social science techniques of data collection (such as interview, questionnaire, schedule or observation) and research methodology. Ultimately, this approach of legal researchers has led to the evolution of a sort of 'hybrid' legal research methodology having a blend of (traditional) analytical (legal) research and empirical (social) research.

A legal researcher, therefore, needs to identify and understand the distinct characteristics of his legal research for employing an 'appropriate' research methodology. He has to understand the extent to which his research problem shares the characteristics of social sciences, and the extent to which it is distinctive. If the

research problem is a part of, and on par with, social sciences, the legal researcher has obviously to use and apply the methodology known to social sciences. And if it has its own distinct characteristics, he has to use different methodology. In other words, if his 'discovery' involves rigorous analysis and creative synthesis of different legal doctrines, concepts or principles, and evaluation of legal doctrines or law, or extraction of some legal principles from given plethora of legal materials, he has to resort to a methodology dominant with analytical skills and blended with deduction and induction of such an analysis. If his 'discovery', on the other hand, involves the study of legal institutions or processes of the law, which ostensibly warrant empirical observation of human behavior, he has to use the methodology known to social sciences.

2.9 SOURCES OF INFORMATION

The various sources of information may be categorized into primary, secondary or tertiary.

2.9.1 Primary sources

The sources that contain original information and observations are known as primary sources of information. Such information can be collected directly from the persons having such information or can be found in research papers published in legal periodicals/ journals, reports, theses and conference papers.

Legal periodicals and journals are indispensable sources of information for a legal researcher. They contain wealth of the first hand and in-depth information on a particular point. Reports, published by Governmental or non-governmental agencies, also contain rich information on the subject of inquiry.

Doctoral dissertations (theses leading to Ph D Degree), which offer very systematic and in-depth analysis of the subject-matter/aspect delved therein and the conclusions/opinions/suggestions based on the analysis, constitute another primary source of information. Similar is the case of conference papers.

Primary sources in legal research, therefore, are the Constitution, National Gazette, which publish Acts/Proclamations passed by Parliament (and by State Legislature),[41] Rules, Regulations, Statutory Orders, and Directives of Administrative Agencies, and case reports that publish judicial pronouncements of different higher courts. All these sources contain rich original information/observations about the identified research problem. They are indeed indispensable for any legal researcher.

2.9.2 Secondary sources

Secondary sources of information furnish the information derived from primary sources. These sources organize the information in a systematic manner and in a planned way. These secondary sources include textbooks, treatises, commentaries on statutes, abstracts, bibliographies, dictionaries, encyclopedias, indexes, reviews, and thesauri.Textbooks, legal treatises, and commentaries on statutes constitute significant secondary sources of legal research. Textbooks and legal treatises offer a researcher proper idea of the subject and enable him to find several other useful sources of information on the topic of his research. They also help him in comprehending basic principles of, and judicial statements on, the topic under inquiry.

Abstracts are brief statements of the contents of research articles published in periodicals and/or anthologies, without appraisal. Abstracts provide a simplified key to find relevant studies from the vast literature on the subject.

Bibliographies list books and related materials on a particular subject. They contain the author's name, title, place of publication, publisher and the year of publication. An annotated bibliography provides a brief analysis of the contents.

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[41] Sometimes, a researcher may find subject-wise compilations of Statutes/Proclamations. Before he scans National Gazette, he should make an effort to find publications compiling Statutes/ Proclamations in his library. These publications save his time and energy in locating the required statutes. However, before he relies upon them, he has to check for legislative instruments amending/supplementing/repealing, if any, entered into force subsequent to the publication of the compilation.

The present author has found a few volumes of compilations of laws of Ethiopia published by the Faculty of Law of the Haile Sellassie 1 University (now Addis Ababa University). See, Faculty of Law, Haile Sellassie 1 University, *Consolidated Laws of Ethiopia* (Artistic Printers, Addis Ababa, 1972). The *laws* included in these volumes are most intelligently organized. However, the series is discontinued after bringing out five volumes.

Blackstone Publishers bring out subject-wise consolidation of British statutes.

Dictionary contains an alphabetical listing of words with their meaning, spelling, pronunciation, derivation and grammatical usage. However, with the growth of knowledge, it has not been possible for general language dictionaries to keep up with technical terms developed in the various fields. So the need for subject specific dictionaries arose. A legal researcher, therefore, can find a couple of legal dictionaries[42] of worth consulting. The most frequently referred to, and widely used, is *Black's Law Dictionary*.[43]

Encyclopedia is a book of information in the form of condensed articles on every subject. It furnishes greater details (of the subjects dealt thereunder) than a dictionary. It provides meaning and historical background of concepts, important theories, names and references of major works. *Encyclopedia* is thus the treasure house of knowledge on various subjects, including law. There are a number of encyclopedias that may be, depending upon his subject of inquiry, of great use to a legal researcher.[44]

Indexes are alphabetical listing of subjects and/or authors of the literature included therein. According to William A Katz, 'Index' is a detailed list of names, terms, subjects, places or other significant items in a complete work with exact page or other

[42] For example see, Bryan A Garner, *A Dictionary of Modern Legal Usage* (Oxford, New York, 2nd edn, 1995), Steven H Gifis, *Barron's Dictionary of Legal Terms* (Barroni Educational Service, Inc, New York, 3rd edn, 1998), James R Fox, *Dictionary of International and Comparative Law* (Oceana Publication, Inc, 3rd edn, 2003), and L B Curzon, *Dictionary of Law* (Pearson/Longman, UK, 6th edn, 2002).

[43] Henry Campbell Black, *Black's Law Dictionary* (St Paul, Minn. West Publishing Co., USA, 6th edn, 1990) and Bryan A Garner, *Black's Law Dictionary* (St Paul, Minn. West Publishing Co., USA, 7th edn, 1990).

[44] Widely used legal encyclopedia are *Halsbury's Statutes of England and Wales* (a multi-volume publication of Butterworths, London) and *Halsbury's Laws of England* (published by Butterworths, London, in a series of volumes), which give detailed and up-do-date account of statutes and of law on a particular subject. A legal researcher's task of locating these statutes and cases is further made easy by *Consolidated Table of Statutory Instruments 2006*, *Consolidated Table of Cases 2005*, and *Halsbury's Statutes Citor 2005*. Other useful encyclopedias are: '*An Encyclopedia of Definitions and Interpretations of Legally Significant Words and Phrases*' (published by St Paul, Minn. West Publishing Co, USA), *Words and Phrases* (a multi-volume series, which gives an judicial constructions, definitions of words and phrases by the State and Federal Courts from 1658 to date, is published by St Paul, Minn. West Publishing Co., USA), *International Encyclopedia of Laws* (a loose-leaf service edited by R Blanpain and published in 1999 by Kluwer Law International, The Hague, The Netherlands). Some specialized encyclopedias devoted to a particular area/subject are also available. For example, see *Encyclopedia of Human Rights* (edited by Edward Lawson and published in 1991 by Taylor and Francis, Inc, New York), *A Concise Encyclopedia of the United Nations* (published in 2002 by Kluwer Law International, The Hague, The Netherlands), *World Encyclopedia of Police Forces and Correctional Systems* (published in 2006 by Thomson, New York), and *Encyclopedia of Crime and Justice* (complied by Sanford H Kadish and published in 1983 by the Free Press, New York). There are also a few acclaimed general encyclopedias that are usable in legal research. They are: *Encyclopedia Britannica* (published by Encyclopedia Britannica Inc, London) and *Encyclopedia Americana* (published in 2006 by Scholastic Library Publishing, Inc, Danbury, Connecticut, USA).

reference to material included in the work.'[45] Harold Borko and Charles L Bernier have explained it more lucidly and comprehensively. According to them, the artificiality created by the indexing system is a mental process for quick retrieval of information. In their words, 'indexing is the process of analyzing the informational content of records of knowledge and expressing the informational content in language of the indexing system.'[46] *Index*, thus, helps to quickly recall or retrieve most relevant information and thereby to establish a contact between producer of idea or information (i.e. author) and consumer of information (i.e. reader) through organizer of information (i.e. indexer/librarian). It not only helps the reader to locate the required information immediately but also facilitates the identification or selection of the desired documents and provides comprehensive overview of the subject.[47]

A *review* is an integrated and organized discussion of the literature pertaining to a well-defined subject. It usually covers a limited period of time.

A *thesaurus* is a book of words grouped by ideas. Its purpose is to help identify synonymous and find the exact word. *Roget's Thesaurus*[48] accomplishes this task for the English language. With an ever-increasing list of technical words. Thesauri are also available for many disciplines, including law. These are compilations of the vocabulary used to identify concepts in the literature within a given area.

2.9.3 Tertiary sources

Tertiary sources include directories, subject guides and Union lists.

There are numerous scientific directories that provide list of journals, scientists, universities. They list their information quite like the telephone directory. These help the researcher to tap appropriate journals and expert advice on the topic of research.

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[45] William A Katz, *Introduction to Reference Work*, vol 1 (McGraw-Hill, New York, 1969) at 92.
[46] Harold Borko and Charles L Bernier, *Indexing Concept and Methods* (Academic Press, New York, 1978) 8.
[47] In the field of law, there are a good number of usable *indexes*. For details see, Unit 3: Doctrinal and Non-Doctrinal Legal Research, *infra*.
[48] Christopher Orlando Sylvester Mawson, *Roget's International Thesaurus* (Oxford, New Delhi, 1978). It is also available in a pocket size edition, see Christopher Orlando Sylvester Mawson, *Roget's Pocket Thesaurus* (Pocket Books, New York, 1946).

Union list is the list of all the journals that are available either in the given library (union list for the library) or all the libraries in the country (national union list). The union list for a particular library tells you the journals the library subscribes to, the issues of these journals that are available and the missing volumes. Union lists are invaluable in tracking down a journal. If a journal you need is not available in your local library the national union list will help you locate a library in the country that has a copy.

? Activity 2.5: ***Classify the following sources of research into primary, secondary and tertiary ones? People, court files, parliamentary minutes of discussion, published compilation of Federal Supreme Court Cassation Division Decisions, Black's Law Dictionary, Indexes, FDRE Constitution, Regulations, Unpublished Materials, Published Books, Wills, Lecture Notes, Letters and Speeches*****.**

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2.10 MAJOR STAGES IN LEGAL RESEARCH

Invariably every research begins with a question or a problem of some sort. The aim of research is to know '*something more*' about '*something*' or to discover answers to meaningful questions through the application of scientific procedures. Legal research is not an exception to this general precept of research. However, undertaking and executing legal research, as a systematic inquiry, is a complex process. It involves a three-stage process. Each one of them warrants skill. The processes are research planning, research implementation, and presenting of research findings.

Research planning requires the necessary sub-skills for: fact collection, legal analysis, legal knowledge, problem identification, legal analysis, fact analysis, further fact collection, identification of avenues of research, and generation of key (search) words. Research implementation, as the second-stage processes, involves the skills pertaining to: identification of problems for resolution, identification of relevant research source materials, location of the source materials, effective use of the source materials, analysis of research findings, application of findings to the identified problem(s), and

identification of further problem(s). While the third-stage process, i.e. presentation of research findings, requires the skills necessary for: identification of the (research) recipients' needs, selection of appropriate format or framework, use of clear and succinct language, and use of appropriate language-style (informatory, advisory, recommendatory, or demanding).[49]

A cumulative reading of these three-stage processes of legal research and of their components leads to the following major processes that, like any other research, involve in legal research. They may be presented in a flowchart as under:

Identification and Formulation
of a Research Problem
↓
Review of Literature
↓
Formulation of a Hypothesis
(where feasible)
↓
Research Design
↓
Collection of Data
↓
Analysis of Data
↓
Interpretation of Data
↓
Research Report

[49] For further details, see David Scott, *Legal Research* (Lawman, India, 2nd edn, 1999).

These stages are not mutually exclusive. They overlap continuously rather than following the prescribed sequence strictly. The order sketched above is meant to provide a procedural guideline for research.

A brief description of each one of the steps is necessary here to put the legal process in the right perspective and to highlight, in brief, their significance and role in legal research.

2.10.1 *Identification and formulation of a research problem*

Identification and formulation of a research problem constitutes the starting phase of research. It is the first and foremost step in any research undertaking. In fact, success of research depends upon the selection of an apt research problem and its proper formulation. An ill-identified and deficiently formulated research problem invariably makes the researcher subsequently to loose his 'interest' in the problem. It also lands him in a number of unanticipated difficulties at latter stages that may even compel him to abdicate his research half a way. A research is goal-directed. If the goal itself is unknown or ill-defined, the research will lead the researcher nowhere. Thus, it becomes necessary to have a well-defined and precise research problem for meaningful research. It is an old and wise saying that 'a problem well put is half solved'.

However, identification and formulation of a research problem is not an easy task. In most scientific works, the difficulty lies in framing problems rather than in finding their solutions. 'It is often more difficult to find and to formulate a problem', observed Merton, a renowned sociologist, 'than to solve it'.[50] A researcher, therefore, has to constantly remind himself that he needs to put his research problem or research question in a precise way and to phrase it in such a way that it becomes viable and allows discovery of new knowledge.

Before formulating a research problem, it is, however, necessary for the researcher, in sequence, to identify an area of his *general interest*, an area or subject-matter of his *special interest* from the area of his general interest, and an aspect from the subject-

[50] R K Merton, *et, al.* (eds), *Sociology Today* (Harper and Row, New York, 1965) XI.

matter of his special interest that he would like *inquire into*. Then he has to do a lot of reading on the *aspect* identified for further inquiry. For example, a scholar of law interested in undertaking research in public law that happens to be an area of his *general interest*. He has then to identify an area of his *special interest* from public law, say Constitution. There may be an umpteen number of *aspects* of the Constitution that are of worth probing. Let us assume that he is interested in the Chapter Three of the Constitution dealing with Fundamental Rights and Freedoms. This is not enough for him to formulate a research problem. He needs to select a Fundamental Right that interests him *more* and from this, he has to identify an *aspect* of the fundamental right that, according to him, deserves further probing. He has to read a lot on, and about, the *aspect* before he ventures into formulating a statement of problem for his further inquiry. After reading about the *aspect*, he is required to put in a lot of thinking and intellectual input in phrasing the *aspect* in an intelligent and precise propositional form so that he can get *something meaningful* out of it. It needs to put in such a way that it signifies the focus of inquiry as well as its direction.

2.10.2 Review of literature

Once the research problem is formulated, the researcher needs to undertake an extensive survey of literature connected with, related to, and/or having bearing on, his research problem. This is the process whereby the researcher locates and selects the references that are relevant for his inquiry.

A scholar of law, at this stage, is expected to carefully trace and lay his hands on standard textbooks, reference books dealing with or having bearing on the research problem, legal periodicals (to locate research articles written, or authoritative comments made, on the subject or its allied subjects), case reports (to get familiarize with the thitherto judicial exposition of the problem), conference/symposium/seminar proceedings, if any, (to acquaint with different dimensions highlighted in, delved into, or emerged from, the conference/symposium/seminars, Government or Committee Reports (to appreciate and understand perspectives of the experts in the field and of policy-makers), and general web pages (to know latest emerging perspectives and illustrative examples). The researcher has also to take special care to locate earlier studies done on the problem and to have a quick reading thereof.

However, in the recent past, the literature review process has changed dramatically with access to computers and specially World Wide Web (www) page.[51] Though we may rely upon almost completely on the Web and search engines, let us remind ourselves of two caveats. *First*, searching the www is, by itself, insufficient for literature review. Although many leading journals and other published information from recognized sources are now available on the Web, it does not have all the available literature. Using the Web can be the basis of literature review but it needs to be balanced with material-very new-published in journals and periodicals that are not put on the Web and the publications that might not have been caught by search engines. Further, local country's materials from marginalized groups may likely to be under-represented or un-represented on the Web. *Secondly*, it is not always evident that the information put on the Web is presented accurately.

Literature review makes the researcher conversant with the materials available on his research problem and their 'place', the thitherto explored (and unexplored) aspects/dimensions of the problem, theoretical bases of the problem, and relevant theories in the field.

Literature review, thus, helps the researcher to know and to have his preliminary impressions about:

1. The thitherto explored and unexplored aspects/dimensions of the problem and the explanations offered or issues raised without offering solutions therefor.
2. The gaps, if any, in the thitherto-offered explanations of the problem/its dimensions and their inter-relationship and adequacy in explaining the problem/its dimensions.
3. Theoretical and conceptual issues raised, with or without suggesting solutions therefor.
4. The operational framework and research techniques used in the previous research, and their propriety.

Literature review enables the researcher to know what kind of data has been used, what methods have been used to obtain the data, and what difficulties the earlier researchers in collecting and analyzing the data have faced. Main purposes of literature review, thus, are:

[51] For details see, Diana Botluk, *the Research on the Internet* (West Group, 2001).

1. To reveal what has been done and written on the topic in the past.
2. To ‘map’, with their limitations, the thitherto used research techniques,
3. To know the kind of material/data used and their sources.
4. To appreciate adequacy (or otherwise) of the data used for drawing the conclusions.
5. To know the central arguments advanced and the concepts revealed and discussed earlier.
6. To acquaint with the patterns of presentation of these arguments and the concepts and the relationship established (or attempted to establish) between these arguments and the concepts.
7. To, in the light of the earlier studies, findings, and the problems encountered, rephrase, with precision, his research problem/question, and to devise appropriate research techniques for smooth operation of his inquiry.

2.10.3 Formulation of a hypothesis

After extensive literature survey, researcher, in the light of the survey, has to re-phrase or reformulate his statement of problem, if necessary.A statement of problem, depending upon research goals and the nature of inquiry involved, may take form of either a mere statement or a proposition indicating possible relationship between two or more variables or concepts, the validity of which is unknown in the beginning. Such a proposition is known as hypothesis.

Hypothesis, thus, is merely a tentative assumption made in order to draw and test its logical or empirical consequences. It is a tentative, testable statement. A statement to be a hypothesis must be capable of being tested. If its validity cannot be put to empirical confirmation, a proposition, howsoever attractive or interesting may be ceases to be a hypothesis.

The manner in which a hypothesis is formulated is very important as it gives significant clues about the kind of data required, the type of methods to be used for collecting data, and the methods of analysis to be used. It guides the researcher by delimiting the area of research and keeps him on the right track throughout his investigation. It sharpens his thinking and focuses attention on the more important facets of the problem under inquiry. Therefore, a hypothesis, to be worked with, needs

to be precise, specific, and conceptually clear. It must have empirical referents. It must also be related to available research techniques.[52]

However, it is important to note that hypothesis is not required in all types of legal research. A researcher, for example, indulged in exploratory or descriptive legal research is not required to formulate hypothesis. Statement of problem in the form of hypothesis, invariably, is required in socio-legal research or empirical legal research, wherein the researcher is interested in finding 'link' between a 'legal fact' and a 'social fact' or is interested in assessing 'impact of law'.

2.10.4 Research design

After defining a research problem or formulating a hypothesis, as the case may be, the researcher has to work out a design for the study. Research design is the conceptual structure within which research is conducted. It is a logical systematic planning of research. The term research design refers to the entire process of planning and carrying out a research study. It is the process of visualization of the entire process of conducting empirical research before its commencement.[53]

Research design is a blue print of the proposed research. However, the blue print is tentative as the researcher may not be able to foresee all the contingencies before he starts his investigation. He is allowed to meet these contingencies when he encounters them in his research journey.

Research design helps the researcher to identify in advance the kind of data he requires, the means to collect them, the methods to be used for analysis and interpretation of the data, and presentation of his findings with more accuracy. Research design, thus, helps him in minimizing the uncertainties, confusion and practical hazards associated with the research problem. It helps in enhancing efficiency and reliability of his findings.

[52] For further details, see 'Unit 5: Hypothesis', *infra*.
[53] For further details, see 'Unit 6: Research Design', *infra*.

2.10.4 Collection of data

After formulating the research problem (or reformulating it in the light of literature review) and preparing a blue print of the research, the researcher has now to take a decision about the technique(s) to be employed to collect the requisite information. He has to, from a wide range of methods of data collection, ranging from interviews to observations to document analysis, opt for the most appropriate method(s) for collecting data.[54] However, it is not always easy to take the right decision. It is very crucial decision having far-reaching consequences on the outcome of research. The research method(s), which he chooses, will ultimately determine the quality and propriety of the data and in turn, of the consequential results. In a way, the selected methods of data collection determine the fate of his research. While selecting method(s) of data collection, the researcher has to take into account the objectives of his research and the nature and scope the inquiry.

Data can be primary or secondary. Data collected by the researcher, by using primary sources, is primary. The data already collected by some other agency and available in some published form is secondary. In either case, the researcher has to select an appropriate method.

2.10.5 Analysis of data

After the data have been collected, the researcher needs to turn to the task of analyzing them. Data, in any form, are raw and neutral. Their direction and trend is generally highlighted and reflected with the help of analysis and interpretation.[55] Analysis of data comes prior to interpretation. However, there is no clear-cut dividing line between analysis and interpretation. Analysis is not complete without interpretation and interpretation cannot proceed without analysis. They are inter-dependent. Analysis of data involves a number of closely related operations, such as classification or categorization, coding, and tabulation.

[54] For further details, see 'Unit 8: Basic Tools of Data Collection', *infra*.
[55] For further details, see 'Unit 9: Analysis and Interpretation of Data', *infra*.

Classification or categorization of data is the process of arranging data in groups or classes according to their resemblance or affinity. The researcher has to classify his data into required categories. The categorization has to be based on the problem under study or the hypothesis formulated. The category must be exhaustive and suitable for classifying all responses. They must be distinct, separate, and mutually exclusive. *Coding* involves the assigning of symbols or numerical to each of the category of responses so that raw data can be counted or tabulated. *Tabulation* is a means of recording classification in a compact form in such a way to facilitate comparisons and show the involved relations between two or more variables. It is a sort of arrangement of data in requisite rows and columns.

2.10.6 Interpretation of data

Interpretation is considered as one of the basic components of research. It refers to the task of drawing inference from the collected data. The inference may be deductive or inductive. The former involves inferences from generally abstracts propositions to particular ones. While the latter is inference from particular propositions to general propositions.

Through interpretation, the researcher attempts to search for broader meaning of research findings. He tries to establish link between the results of his inquiry with those of another and to establish some explanatory concepts. He, through his interpretation, endeavors to find and understand the abstract principle that works beneath his findings. Interpretation opens up new avenues for intellectual adventures and stimulates the quest for more knowledge. The process of interpretation may quite often trigger off new questions that in turn may lead to further researches. In fact, the usefulness and utility of a research lie in proper interpretation of the collected facts.
One should, however, remember that even if data are properly collected and analyzed, wrong interpretation would lead to inaccurate and misleading conclusions. Interpretation, therefore, must be impartial and objective. A researcher should explain why his findings are so, in objective terms. He should also try to bring out the principles involved behind his inferences. However, the task of interpretation is not an

easy task. It requires a great skill. It is an art that one learns through practice and experience.

2.10.7 Research report

The last phase of the journey of research is the writing of research report. It is a major component of research. Research remains incomplete until report is written. Through research report, the researcher communicates with his audience. It is an account of journey of the researcher. However, it is not a complete description of what has been done during his research. It contains only an account of the statement of problem investigated, the procedure adopted and the findings arrived at by the investigator. It contains the significant facts that are necessary to appreciate and understand the generalizations drawn by the investigator. A researcher is, thus, expected to, through his research report, share with his audience the research problem investigated, the methods used for the collection of data, their analysis and interpretation, and the results or findings of the study. The purpose of research report is to convey to the interested persons the whole result of the inquiry in sufficient details. Contents and style of the report therefore depend upon the kind of audience it intends to address. Therefore, there cannot be hard and fast rules pertaining to the contents and format of a research report. Nevertheless, research report need to be presented in such a manner that its readers grasp the context, methodology and findings easily. A research report generally needs to contain in it the requisite information about: (i) the problem undertaken for investigation and objectives thereof, (ii) methodology adopted in the inquiry, and (iii) analysis and inferences of investigation and their theoretical and practical implications, if any.

A general outlay of legal research report has three major components. They are: Preliminary Pages, the Main Text, and the End matter.[56] In the first part, a legal researcher has to put Acknowledgement, Preface, Table of Contents, Table of Cases, Table of Statutes, Abbreviations, and List of Tables. While in the second part of the research report, he has to have different segments of his research in the form of chapters, with appropriate captions, starting from 'Introduction' to 'Conclusions and recommendations'. Each chapter has to have necessary headings and sub-heading

[56] For further details, see 'Unit 10: Writing a Research Report', *infra*.

with proper documentation in the form of footnotes. Chapters should be written in concise and simple language. While at the end of the report, he has to place Bibliography, different texts, like statutory provisions refereed to in the main text, 'interview' or 'questionnaire', etc used by him for data collection, in the form of Annexures, and Index.

Originality and clarity are the two vital components of research report. It is the ultimate test of ones analytical ability and communication skills. It is an exercise involving the organization of ideas. Reporting the research, thus, requires skills somewhat different from those needed in the earlier phases of research.

? Activity 2.6: ***Selecting and Reading two of the above papers mentioned under activity 2.2(here, the instructor may provide you other research topics), as the case may be identify and/or formulate: research topics, research problems, hypothesis, literature reviews, research design, data/facts collected, interpretation/analysis and research report?***

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2.11 LEGAL RESEARCH IN ETHIOPIA: PERSPECTIVES AND PROBLEMS

The Justice and Legal System Research Institute Establishment Regulation of 1997[57] is probably the first legislative instrument that has realized and institutionalized legal research in Ethiopia. Through it the Government established the Justice and Legal System Research Institute (hereinafter the Institute), an autonomous institute accountable to the Prime Minister, and assigned it the task of undertaking 'studies and research activities with a view to strengthening and modernizing justice and legal system'. Charged with this motto, the Regulation mandates the Institute, *inter alia*, to: (i) review existing laws and design law revision programs, (ii) undertake studies and research with a view to initiating new legislations that are necessary for the full-fledged development of the national legal system, (iii) undertake studies to improve

[57] Council of Ministers Regulation No. 22/1997, *Federal Negarit Gazeta*, 4th Year No. 8, 25th November 1997, p 653.

the efficiency of different organs involved in the administration of justice, and (iv) publish and distribute research publications.[58]

Further, the Higher Education Proclamation No. 351/2003, [59] realizing the importance of legal research and role of the institutions of higher education in accomplishing it, *inter alia*, stresses the necessity of creating 'an appropriate legal framework' for 'research' in Higher Education for seeking solutions for national problems and ensuring proper utilization of potential resources of the country. It mentions that academic staff needs to undertake problem solving studies and research beneficial to the country.[60] It also intends to promote contribution of higher education institutions in expanding education and conducting research. Accordingly, it addresses to, and deals with a host of issues relating to research,[61] like curriculum, studies and research directions, organization necessary to pursue research, utilization of research funds, criteria for establishing University Colleges, and organization of public institutions.

However, legal research output of Law Schools, including the Faculty of Law of the Addis Ababa University, the oldest Law School of Ethiopia, is far from satisfaction.[62] Recently, the Technical Committee, composed of representatives from different Law Schools in Ethiopia, higher judiciary and Bar, in its Report on Reform of Legal Education and Training in Ethiopia,[63] has assessed the prospects of legal research in Ethiopia. It also identified and delved into multifarious factors and situations that have been responsible for poor, rather non-existent, legal research in the country's institutions of legal education. These problems are clustered in, and discussed under, the five major self-evident categories. They are: (1) cultural problems, (2) problems related to structure and procedure, (3) problems related to resources, (4) problems relate to competence, and (5) problems of lack of networking and forums. For getting a fair idea of prospects and problems of legal research in Ethiopia, an enumeration,

[58] Arts 4 & 5, *ibid*.
[59] Higher Education Proclamation No. 351/2003, *Federal Negarit Gazeta*, 9th Year No. 72. 3rd July 2003, p 2235.
[60] Art 28(3)(b), *ibid*.
[61] See, arts 13, 15-19 & 34, *ibid*.
[62] See, Research-Faculty Review, prepared by the AAU Law Faculty outlining its research activities and highlighting problems encountered. (Unpublished, 2006).
[63] Ministry of Capacity Building, Federal Democratic Republic of Ethiopia, *Technical Committee Report on the Reform of Legal Education and Training in Ethiopia* (Ministry of Capacity Building, FDRE, Ethiopia, Unpublished, 2006).

due to space constraints, of the problems, under respective categories,[64] becomes unavoidable. The problems highlighted in the Report are:

(1) *Cultural problems*: (i) lack of research, reading, and writing culture, (ii) lack of institutional commitment, (iii) lack of team spirit for research and publication, (iv) lack of innovation in diversification of publications, and problems regarding spheres of focus in research, (v) weak consumption of research products in the legal professional community, and poor state of constructive feedback, and (vi) inadequate attention to relevance research to the real life or actual problems of the society.
(2) *Problems related to structure and procedure*: (i) lack of faculty-based, department-based, or institution-based research organization, (ii) lack of transparent, efficient, accessible, and predictable research procedure, (iii) repetitive and useless assessment and approval proceedings in law schools, (iv) lack of guidelines in directing and monitoring relevance, expedience and problem solving effectiveness of research and publications, (v) lack of clear standard for publishability and vague policies that tend to be more prohibitive than facilitative, and (vi) no publishers specializing in publishing law books and heavy cost of publication.

(3) *Problems related to resources*: (i) lack of research fund allocated at national, state, university, faculty, department, or institution levels, (ii) lack of books, journals, internet access and network, database, libraries, book allowance, conference fees, etc, that create conducive research environment, and (iii) lack of incentives-financial and non-financial such as acknowledgment, and research leave.

(4) *Problems relate to competence*: (i) problem of research capacity which is manifested by: (a) most lawyers are ill-prepared for research, (b) poor research methodology training at the under-graduate level, and (c) lack of staff development schemes in the area of research and publications, (ii) lack of knowledge about writing and editing, (iii) language limitations-why should publishable research be in English only? Why not in Amharic, oromipha? or any of the local and working languages? (iii) most of the junior staff at the law faculties and/or departments lack [or feel that they lack] the capacity to formulate a research project, conduct it, and supervise it properly.

[64] For further details, see, '2.4 Research, Publication and Consultancy Services', *ibid*.

(5) *Problems of lack of networking and forums*: (i) lack of connections with potential stakeholders with each other (policy makers, legislature, judiciary, universities, fund generating agencies, etc.), (ii) lack of forums (such as public lecture, seminars, and symposia) and other mechanisms of publicizing research products, (iii) lack of link with private publishers or companies, (iv) lack of access to minutes of debates on bills, and projects of the legislature, and (v) lack of, or inadequate freedom of information from various institutions.

However, currently the Institute and almost every Law School in the country, with the lead role of the Addis Ababa University's Law Faculty, have reactivated their research endeavors and programs, including redesigning common *curricula* loaded with rigorous training in legal research and bringing out Law Journals, and pursuing them with vigor.

? **Activity 2.7**:***Think and discuss the reasons for such problems of legal research in the Ethiopian Legal System, and also discuss the potential solutions that can be used to solve(at least to reduce) these problems?***

What would be your short term and long term share?

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CHECK YOUR PROGRESS 1

- What do you understand by the term 'research'? Explain its significance in modern times.
- Describe different types of research and explain basic characteristics of each one of them.
- Comment upon the significance of review of literature in research.
- Briefly explain the difference between research methods and research methodology.
- What is the significance of knowing research methodology?
- Briefly describe the different steps involved in a research process.
- What are major motivations in undertaking research?

- What are the objectives of research?
- What is meant by scientific method? Explain its significance and utility in research.
- Describe and discuss pertinent attributes of a scientific method and evaluate their utility in a systematic investigation of a social fact.
- Do you agree with the view that research is much concerned with proper collection of facts, analysis and evaluation thereof? Explain
- Why to formulate a research problem?
- What are the major steps that need to follow before formulating a research problem?
- Discuss different sources of information and comment upon their utility in research.
- Discuss and discuss primary and secondary sources of information

CHECK YOUR PROGRESS 2

- What do you understand by the term legal research?
- Discuss scope and relevance of legal research.
- Comment upon the scope and relevance of legal research in Ethiopia.
- Describe major steps in legal research.
- Comment upon the utility of legal research.
- In what way and for what reasons lawmakers are supposed to get indulged in legal research? Discuss scope and limitations of such research.
- Comment upon the nature and scope of legal research by legal academia. Assess its possible contribution in the development of law and legal institutions.
- Are lawyers supposed to undertake legal research? For what reasons and extent?
- Describe analytical legal research and explain its significance?
- Write a brief note on perspectives and problems of legal research in Ethiopia.
- Discuss doctrinal legal research and evaluate its relative significance and potentials in the development of a law.
- What is meant by non-doctrinal legal research? In what way it contributes to the development of law and legal system.

FURTHER SUGGESTED READINGS

- C R Kothari, *Research Methodology: Methods and Techniques* (New Age International Publishers, New Delhi, 2nd edn, 2004, Reprint 2007), chap 1: Research Methodology: An Introduction
- T S Wilkinson & P L Bhandarkar, *Methodology and Techniques of Social Research* (Himalaya Publishing House, Mumbai, 16th edn, Reprint 2005), chap 1: Scientific Social Research, Chap 3: The Research Process
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- John W Creswell, *Research Design* (Sage, 2nd edn, 2003)
- Kenneth Redden, Legal Research and Law Reporting in Ethiopia, 2 (2) *Liberian Law Journal* 122-129 (1966).

❖ Ministry of Capacity Building, Federal Democratic Republic of Ethiopia, *Technical Committee Report on the Reform of Legal Education and Training in Ethiopia* (Ministry of Capacity Building, FDRE, Ethiopia, Unpublished, 2006)

PROCLAMATIONS

❖ Justice and Legal System Research Institute Establishment Council of Ministers Regulations No. 22/1997, *Federal Negarit Gazeta*, 4th Year No.8

❖ Higher Education Proclamation, 2003, Proc No 351/2003, *Federal Negarit Gazeta*, 9th Year No. 72, 3rd July 2003, p 2235.

❖ Federal Courts Proclamation Reamendment Proclamation No. 454/2005, *Federal Negarit Gazeta*, 11th Year No. 42, 14th June, 2005, p 3121.

❖ Federal Courts Proclamation No. 25/1996, *Federal Negarit Gazeta*, 2nd Year No. 13, 15th February, 1996, p 129.

UNIT 3

DOCTRINAL AND NON-DOCTRINAL LEGAL RESEARCH

For the purpose of understanding the law of today ---
I am content to think of law as a social institution to satisfy social wants-the claims and demands and expectations involved in the existence of civilized society-by giving effect to as much as we may with the least sacrifice, so far as such wants may be satisfied or such claims given effect by an ordering of human conduct through politically organized society.

Roscoe Pound

I do not see how anyone can possibly understand the law or know anything of it, except memoriter, without getting a clear idea of how it is in fact generated in society and adapted from age to age to its immediate needs and uses.

Woodrow Wilson

STRUCTURE

UNIT 3
DOCTRINAL AND NON-DOCTRINAL LEGAL RESEARCH

3.1. Introduction
3.2. Doctrinal Legal Research

3.2.1 Introduction
3.2.2 Aims and Basic Tools of Doctrinal Legal Research
3.2.2.1 Aims
3.2.2.2 Basic tools
(i) Statutory materials
(ii) Case reports
(iii) Legal periodicals
3.2.3 Advantages and Limitations of Doctrinal Legal Research
3.2.3.1 Advantages
3.2.3.2 Limitations
3.3. Non-Doctrinal Legal Research Or Socio-Legal Research
3.3.1 Introduction
3.3.2 Aims and Basic Tools of Non-Doctrinal Legal Research
3.3.2.1 Aims
3.3.2.2 Basic tools
3.3.3 Advantages and Limitations of Non-Doctrinal Legal Research
3.3.3.1 Advantages
3.3.3.2 Limitations
3.4. Inter-relation between Doctrinal and Non-doctrinal Legal Research

OBJECTIVES

After going through the Unit, you will be able to:

- Explain nature and scope of doctrinal and socio-legal research
- Appreciate aims and basic tools of doctrinal and non-doctrinal legal research
- Explain strengths and weaknesses of doctrinal and non-doctrinal legal research
- Explain mutual inter-play and inter-relation between doctrinal and non-doctrinal legal research

3.1 INTRODUCTION

As mentioned earlier, a scholar of law, interested in legal research, may adopt any of the following courses in doing his research:[65]

7. Write a historical essay showing the development in a field of law or a particular doctrine.
8. Analyze a legal doctrine, rule, principle or concept to see whether it matches with the thitherto judicial statements and to suggest new set of statements or principles if the existing ones, in his opinion, do not match. While doing so, he can highlight ambiguous in the doctrine or gaps prevalent therein and state, with rationale and reasons, what are the correct propositions of law that need to apply. For suggesting correct propositions, he may rely upon the underlying policy of the doctrine, rule, principle or concept.
9. Write a kind of *survey* on the recent developments in law summarizing the most important cases, analyzing how they have followed, or deviated from, the past cases, and make a guess as to what the courts would do in future.
10. Write about 'what I believe in'. This is usually a matter of deploring a legislative or judicial trend.
11. Write about 'relationship' between the 'law' and the 'world' i.e. other behavioral sciences.

These broad five options available to a legal scholar can be divided into two broad categories of legal research: (1) doctrinal legal research, and (2) non-doctrinal regal research. Doctrinal legal research is defined as research into legal doctrines through analysis of statutory provisions and cases by the application of power of reasoning. It gives emphasis on analysis of legal rules, principles or doctrines. While non-doctrinal legal research is defined as research into relationship of law with other behavioral sciences. It gives prominence to relationship of law with people, social values and social institutions. It endeavors to highlight the relationship between law and other behavioral sciences and social facts. It involves empirical inquiry into the operation of law. Here inquiry is directed to some manifestation of human behavior as law affects it or as it affects law. The researcher wants to know to what extent certain legal rules work or have worked.

[65] George D Braden, Legal Research: A Variation on an Old Lament, 5 *Jr of Legal Edu* 39 (1952-53).

Doctrinal legal research endeavors to develop theories, and non-doctrinal legal research endeavors to see as to whether the theories, the doctrines, that we have assumed are appropriate to apply in society at a given time, are still valid and relevant. Non-doctrinal legal research helps to test whether the theories assumed (in law) work in the way they should. Doctrinal legal research is, therefore, 'research *in* law' while non-doctrinal legal research is 'research *about* law'. It involves a systematic exposition, analysis and critical evaluation of legal rules, doctrines or concepts, their conceptual bases, and inter-relationship. To put it in a different way, a doctrinal legal researcher indulges into analysis of 'black-letter' of law. He therefore sticks pretty close to the primary source materials, to the Constitution (where legal system have one), to legislation (statutes, statutory instruments) and to the leading judicial decisions (the precedents). While a non-doctrinal legal researcher is interested in knowing 'law-in-action' through empiricism.

As the place and source of data, *namely*, substantive legal rules, doctrines, or concepts and judicial decisions thereon, required for doctrinal legal research is law library, doctrinal legal research is nicknamed as 'arm-chair research', or 'basic or fundamental research'. While, non-doctrinal legal research, which gets its data primarily from sources other than law [i.e. society] and focuses on 'social reality of law' rather than on 'law' itself, is also known as 'empirical research', 'socio-legal research', 'sociology of law' or 'non-library research'.

3.2 DOCTRINAL LEGAL RESEARCH

3.2.1 Introduction

Doctrinal legal research, as conceived in the legal research domain, is research 'about' what the prevailing state of legal doctrine, legal rule, or legal principle is. A legal scholar undertaking doctrinal legal research, therefore, takes one or more legal propositions, principles, rules or doctrines as a starting point and focus of his study. He 'locates' such a principle, rule or doctrine in statutory instrument(s), judicial opinions thereon, discussions thereof in legal treatises, commentaries, textbooks, encyclopedias, legal periodicals, and debates, if any, that took place at the formative

stage of such a rule, doctrine or proposition. Thereafter, he ‘reads’ them in a holistic manner and makes an ‘analysis’ of the material as well as of the rules, doctrines and formulates his ‘conclusions’ and writes up his study. For example, a legal researcher interested in criminal law might start with proposition dealing with right against self-incrimination. Research then takes place in the law library, where he will ‘locate’ the proposition (along with its different contours) and its discussions in treatises and textbooks on criminal law, criminal procedure, and constitutional law, encyclopedia and leading legal periodicals. He will also try to locate all relevant judicial pronouncements of the higher judicial institutions delved into the right against self-incrimination. He will then ‘read’ these materials and ‘analyze’ them by applying his power of reasoning and will, premised on analytical perspective and the material used, draw some conclusions about the proposition. He then will write up his study. He may, in his study advance a set of formulations, supportive or otherwise, with convincing ‘reasoning’ about the proposition-the right against self-incrimination. He, in his research report, may offer an alternative comprehensive paradigm of the doctrine. With a view to drawing parallels between the doctrine or rule under inquiry, he may also find a comparable doctrine or rule from other jurisdictions. He may, depending upon ‘objectives’ of his research, also propose a new formulation of the rule or doctrine, a model statute or a statutory provision. He may also highlight the purpose and policy of law that exist and may propose what it ought to be.

Doctrinal legal research, thus, involves: (i) systematic analysis of statutory provisions and of legal principles involved therein, or derived therefrom, and (ii) logical and rational ordering of the legal propositions and principles. The researcher gives emphasis on substantive law rules, doctrines, concepts and judicial pronouncements. He organizes his study around legal propositions and judicial pronouncements on the legal propositions of the appellate courts, and other conventional legal materials, such as parliamentary debates, revealing the legislative intent, policy and history of the rule or doctrine. Classic works of legal scholars on the law of torts and administrative law do furnish outstanding examples of doctrinal legal research.

Doctrinal legal research, in addition to analytical one, may be historical or comparative.[66] Historical legal research, unlike analytical one, deals with the past. It throws light on the past to understand the present. It explores the circumstances that led to the adoption of the existing law. It gives a clue to the reasons why a particular provision of law or law was framed in the form in which now it appears. It also often reveals that a particular existing provision/law, fully justifiable at the time when it was introduced, is no longer justifiable because the reasons/circumstances that justified the original inclusion of that provision/law are no longer valid. While comparative legal research, as evident from its title, involves comparative study of comparable laws or legal institutions from different jurisdictions. It exhibits the lessons that can be learnt from each other's failures and achievements.

3.2.2 Aims and Basic Tools of Doctrinal Legal Research

3.2.2.1 Aims

Doctrinal legal research, as stressed earlier, involves rigorous analysis of statutory provisions and judicial pronouncements thereon. The researcher organizes his study around legal provisions, principles, concepts or doctrines and judicial statements relating thereto, and/or reflecting thereon. He not only makes analysis of statutory provisions and of case law, but also logically and systematically arranges the statutory provisions and judicial pronouncements to deduce, on legal reasoning and rationale, some legal propositions. Doctrinal legal research, thus, (i) aims to study case law and statutory law, with a view to find law, (ii) aims at consistency and certainty of law, (iii) (to some extent) looks into the purpose and policy of law that exists, and (iv) aims to study legal institutions.

Therefore, doctrinal legal research should not be undermined merely because it revolves around statutes and judicial decisions. It immensely contributes to the continuity, consistency and certainty of law. It also initiates further development of legal principles and doctrines.

[66] For further details see, 'Unit 4: Models of Legal Research and Current Trends in Legal Research', *infra*.

Doctrinal legal research mandates the legal researcher to 'locate' the required apt statutory provisions and judicial reflections thereon that have bearing on the legal doctrine, concept or rule under inquiry. Such legislative provisions and judicial decisions constitute the basic data for a doctrinal legal researcher.

3.2.2.2 Basic tools

Where can a legal researcher find the required statutes and judicial decisions? He can 'locate' the requisite data in the apt statutory materials and case reports. The former refers to, and includes in it, the relevant Acts of Parliament (along with the amendments made thereto from time to time); secondary or subordinate legislations (in the form of rules, regulations, orders, notifications, byelaws, and statutory orders) made thereunder. While the latter, refers to case-reports that *verbatim* reproduce cases decided by courts. Statutory material and case reports constitute primary research tools for doctrinal legal research. However, in addition to these original sources of data, the researcher may have to look into secondary source materials such as research articles published in leading legal periodicals, text and reference books on the subject. He may have also to refer to parliamentary debates and other Government records and reports for getting further 'insight' into the legal principle, doctrine or concept under inquiry.

The basis tools of a doctrinal legal researcher, thus, are: (i) statutory materials, (ii) case reports, (iii) standard textbooks and reference books, (iv) legal periodicals, (v) Parliamentary Debates and Government Reports, and (vi) Micro films and CD-ROM. These tools, depending upon the nature of information they contain, may be re-categorized into primary and secondary sources of information. National Gazette and Case Reports fall in the first category, while the rest fall in the latter.

(i) Statutory materials

Legislative Acts constitute one of the basic tools of doctrinal legal research. However, a plethora of subsidiary or secondary legislation in the form of rules, regulations, byelaws, notifications, statutory orders or directives is found in the modern national legal system. In fact, in a contemporary legal system the quantum of executive legislative instruments overweighs the primary ones. Further, Acts of Legislature, with a view to coping up with the changed circumstances and/or social or political perceptions, undergo frequent changes through amendments. Sometimes, an Act of Parliament, when it, in the opinion of Legislature, becomes obsolete or redundant, is replaced by another one.

Acts of Legislature as well as amendments thereto are required to publish in (National) Gazette before they become operative. Instruments of executive legislation are also published in the Gazette. National Gazette, therefore, constitutes an authentic primary source of statutes and statutory provisions.

Sometimes, some law publishers publish, with short notes and requisite disclaimer, leading and frequently referred to statutes.[67] In some jurisdictions,[68] almost all the statutes, with comprehensive comments, are published in a series of volumes.

Reference to statutes and statutory provisions, invariably with analytical comments, can also be found in standard textbooks and reference books, including 'cases and materials',[69] on the subject. However, most of the times, these publications, for obvious reasons, do not include the latest amendments to the statutes and judicial statements thereon. Hence, the researcher has to look for subsequent legislative changes and latest cases on the matter under inquiry. The sole reliance on these books may lead to an incomplete and misleading research. Further, textbooks as well as

[67] For example, in India, Eastern Book Company and Universal Law Publishers are known for publishing bare text (with short notes) of Acts of Parliament. Similarly, Blackstone Publishers from the UK publishes Statutes enacted by the British Parliament.

[68] For example, in England, *Halsbury's Laws of England* and *Halsbury's Statutes*, and in India, *AIR Manual*, periodically publish text of statutes, with comments, in a series of volumes. These publications are widely used by legal researchers worldwide. These publications give detailed and up to date account of the law on a particular subject.

[69] In the legal discipline, it has now become almost a common practice to bring out 'cases and materials' and 'handbooks' on a particular subject. These 'cases and materials' and 'handbooks' help a researcher to gain 'working insight' in the subject of his inquiry as well as to locate further references. For example see, J C Smith, *Smith & Hogan criminal Law-Cases and Materials* (LexisNexis Butterworths, 8th edn, 2002), C M V Clarkson & H M Keating, *Criminal Law: Texts and Materials* (Sweet & Maxwell, London, 4th edn, 1998), Martin Dixon & Robert Maccarquodale, *Cases and Materials on International Law* (Blackstone Press, Ltd, 2nd edn, 1991), and Keith Walmsley, *Butterworth's Company Law Handbook* (LexisNexis Butterworths, 19th edn, 2005).

reference books, owing limitation of space, cover a broad area in the compressed form. Therefore, some ideas may be left with some cursory remarks by the authors.

Nevertheless, a researcher working on a relatively new theme is advisable to start with the textbooks, reference books, and 'cases and materials' on the subject. It will also enable him to acquaint himself with and understand the basic principles and dimensions of the theme or the subject under investigation. It will also help him to find several other pertinent sources of study and decided cases, with comments, on the subject.

Sometimes, the researcher may have also to look into the debates that took place on floor of the House on the draft statute when it was in the making. Reading of Parliamentary Debates will enable him to get acquainted with the underlying legislative policy of the statute. It will also reveal the different alternatives suggested on the floor of the House and the reasons for their acceptance or rejection in the final version of the statute. Such an acquaintance will undoubtedly lead to a well-reasoned in-depth analysis of the statute. It may also be of worth exercise for a doctrinal legal researcher to look for (and to have peep therein) a pre-& post-legislative Reports[70] on the statutes under inquiry. A peep into these reports will divulge different underlying legislative currents and paradigms and thereby will enable him to have deeper insight into the legislative and operational facets of the statute(s)/statutory provision(s) under consideration. Further, a look into Parliamentary Debates and Government Records may exhibit some hidden or new dimensions of the doctrine or legal principle under investigation.

(ii) Case reports

In almost all the common law legal systems, judicial decisions of higher courts are published in Case Reports.[71] A doctrinal legal researcher, therefore, has to look for the

[70] In common law jurisdictions, sometimes, controversial draft legislations are refereed to the Joint Parliamentary Committee for its 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 given Act and offers proposals for reforms.

[71] For example, *All England Reporter* (All ER) and *Weekly Law Reports* (WLR), which publish judicial pronouncements of all the higher judicial institutions in the UK, are useful for locating cases decided by the higher courts. While in India, courts and legal researchers rely upon *All India Reporter* (AIR) [publishes cases decided by the Supreme Court of India and by all the State High Courts]; *Supreme Court Reporter* (SCR) [publishes cases handed down by the Supreme Court of India], *Supreme Court Cases* (SCC) [publishes only cases decided by the Supreme Court of India], for locating judicial decisions of the higher courts.

apt Case Reports for laying his hands on the required judicial pronouncements for his analysis.

In addition, in these jurisdictions one finds a number of well-articulated case digests.[72] Case Digests, which refer to all the reported cases, play a significant role in collecting cases on a particular subject/topic. They undeniably assist the researcher in 'locating' relevant judicial decisions and grasping quickly the legal principles laid down therein. As mentioned earlier, textbooks and reference books on the subject contain cases on the statute(s) and statutory provision(s) under inquiry. But the case law dealt under these books may not be comprehensive and up-to-date. Authors of the textbooks and reference books may omit cases not considered relevant by them.

Almost all the legal periodicals published from common law countries invariably devote some of their pages for 'Case Comments' wherein comments by experts on leading cases are published. Some periodicals also contain a segment on 'Notes on Cases' wherein brief but pertinent comments on, and/or summary of, contemporary leading judicial decisions are published. A careful look at these pages will help the researcher in identifying apt cases that deserve his serious attention and analysis in his research.

Further, *Annual Survey*,[73] publishing a summary of the most important cases and outlining the consequential development in different branches of law, may also be a significant tool for finding cases on the identified statutes or statutory provisions. In such a survey, an expert of repute in the field, not only identifies significant judicial decisions rendered in the field during the year under survey but also makes their analysis with a view to finding the way in which they have followed or deviated from the past judicial dicta and judicial reasons given therefor. Based on such analysis, he

[72] In India, for example, *Yearly Digest*, *Five Yearly Digest*, *Fifteen Years Digests* and *Fifty Years Digest*, etc, are quite helpful to a legal researcher. These publications, as revealed in the respective titles, give citation of the original case along with a brief summary of legal principles used and involved therein. *American Digest System* (published by St Paul, Minn. West Publishing Co, USA) and *US Supreme Court Digest* (published by Lawyers Cooperative Publishing Co, New York) are widely used digests of cases. *Index to Supreme Court of Canada Reports* and *Supreme Court Cases* are widely used digests of cases in Canada. A consolidated index of three years of *All England Law Report* (All ER) is widely used in the UK and outside for locating cases decided by different courts in Great Britain. For a scholar of international law, Marjorie M Whiteman, *Digest of International Law* (Department of State, Washington, USA), a multi-volume, is a useful reference.

[73] For example, see *Annual Survey of Indian Law*, an annual publication of the Indian Law Institute, New Delhi, India.

also sketches the development, progressive or otherwise, of the law in the field during the year under survey and predicts future course of development.

(iii) Legal periodicals

It may also be necessary for a doctrinal legal researcher to know what others have said and found in the area of his research. Therefore, he is required to look into research articles published in legal periodicals of repute. Research articles published on the topic/theme of inquiry are of immense help for a doctrinal legal researcher. A reading of these articles not only unconsciously inspires him to pursue his inquiry with vigor but also helps him in crystallizing his ideas that are still imprecise. These articles may expose him to some new dimensions or aspects of the problem, which he has not been so far able to conceive. It may also help him in assuring himself that he has not missed anything pertinent from original sources. Further, he may unconsciously learn the ways of effective persuasion and presentation of his inquiry. To put simply, it becomes necessary for a legal scholar to know what other researchers have said on the topic to: (i) seek inspiration, (ii) crystallize his ideas, (iii) organize his thoughts, and (iv) ensure that he has not missed any original sources. Hence, legal periodicals become indispensable tools of doctrinal legal research.

However, he may come across a number of legal periodicals with an umpteen number of research articles written by scholars of repute in the field. Some times, he may feel, rightly so, that it is impossible for him to go even through the Table of Contents of these legal periodicals (with numerous issues thereof) to 'locate' research articles that are 'relevant'. He may carry a feeling of reluctantly sinking, forever, in these voluminous legal periodicals.

However, there are a good number of *indexes* published by commercial organizations and academic and professional bodies that help him in 'locating' research articles with comparatively lesser efforts and time. Some of the acclaimed and widely used *indexes* for locating articles are:

1. *Index to Legal Periodicals*- The *Index* is prepared and published since 1908 by the American Association of Law Libraries, New York. It indexes various

legal periodicals published in the United States, Canada,[74] Great Britain, Northern Ireland, Australia and New Zealand. Articles are indexed 'subject-wise' as well as 'author-wise'.[75]

2. *Index to Foreign Legal Periodicals*- The *index* is prepared and published since 1960 by the Institute of Advanced Legal Studies of the University of London, London, in co-operation with the American Association of Law Libraries, New York. It is published in three quarterly parts covering the contents of legal literature received over the period October to June and it is followed by an annual volume cumulating the first three parts. It indexes articles published in legal periodicals published from the countries other than the United States, Great Britain, and the countries of the British Commonwealth whose systems of law have a common law basis. It thus complements and, to a limited extent, duplicates the *Index to Legal Periodicals*.

   It gives 'subject index', 'author index' and 'book reviews'. It also gives 'geographical index' giving by country, subject and headings used for article mainly concerned with laws of a country or countries.

3. *Index to Periodical Articles Related to Law*- This *index* commenced in 1958. It is compiled by the librarians of the Yale and Columbia Law Schools. It has coverage of selective articles published in English throughout the world, which were not covered by *Index to Legal Periodicals* and *Index to Foreign Legal Periodicals*.

4. *Index to Indian Legal Periodicals*- It is a half-yearly publication of the Indian Law Institute, New Delhi. Its publication started in 1963. It indexes articles (subject-wise and author-wise) published in leading legal periodicals published in India including *Yearbooks* and other annual publication pertaining to law. It also indexes case comments and book reviews published in these periodicals.

[74] The Canadian Association of Law Libraries has started bringing out its own *Index to Canadian Legal Periodicals*, as the *Index to Legal Periodicals* has not included *all* the Canadian titles published in *all* the periodicals published in Canada. *The Index to Canadian Legal Periodicals* indexes all the titles published in *all* the Canadian periodicals. Like other *indexes*, it gives subject-wise and author-wise index of articles. It also gives book review index and table of cases.

[75] It also gives an index of 'cases' commented upon in the periodicals indexed therein. It also gives index of book reviews published in the periodicals covered by the *Index*.

5. *Legal Journals Index*- The publication started in 1986 from the UK. It indexes research articles published in legal periodicals published from almost all the common law countries.

In addition to these *Indexes*, a few legal periodicals bring out their own *Cumulative Index* (of a certain period).[76] Such a *Cumulative Index* lists articles, author-wise as well as subject-wise, published in different issues of the periodical. It also gives index of cases refereed to, and books reviewed therein. It helps a legal scholar to locate relevant articles published over the years in the legal periodical.

Bibliographies on certain subjects are also available to a legal researcher. Such bibliographies also help him in locating research articles, books, and reports on the subject of his inquiry.

However, a researcher may find an umpteen number of articles published in different periodicals that deal with or touch upon same, similar or identical themes expositing him, in a way, to repetitive ideas pertaining to, and explanations of an identical theme, concept or doctrine. In such a situation, he, with a view to saving his time and energy without compromising with the need to know 'comments' or 'view points' of others on the subject of his inquiry, will have to opt for a few leading articles written by authors of eminence in the field. A fairly trained researcher will be able to easily identify such articles by merely looking at the title or reading abstract or conclusion of the research papers and professional standing of the journal carrying them.

A legal researcher may also gather comments on the statutes/statutory provisions and cases thereon from standard textbooks and reference books on the subject. However, there is basic advantage of an article over a textbook and reference book. A research paper, unlike a textbook or reference book, deals with a specific issue(s) in depth.

[76] A scholar of law, for example, may find *Cumulative Index* (covering a certain duration or issues) of *Modern Law Review* (Mod LR), *Law Quarterly Review* (LQR), *Criminal Law Review* (Crim LR), *Yale Law Review* (Yale LR), *Harvard Law Review*(Har LR), *International and Comparative Law Quarterly* (ICLQ), *American Journal of International Law* (AJIL), *American Journal of Comparative Law* (AJCL), *Tulane Law Review* and *Journal of the Indian Law Institute* (JILI), and of many other legal periodicals of international repute in any well-equipped law library. The *British Yearbook of International Law* also brings out *cumulative index* of articles, notes and cases published in its different issues during the period of cumulative index.

3.2.3 Advantages and Limitations of Doctrinal Legal Research

3.2.3.1 Advantages

Doctrinal legal research has a number of advantages to its credit. A few pertinent among them are outlined here below. *First*, doctrinal legal research, which basically involves analysis of legal principles, concepts or doctrines, their logical ordering and systematizing of legal propositions emerging therefrom, has some practical utility. It provides quick answers to the problem as the researcher is continuously engaged in the exposition and analysis of legislation and case-law and the integration of statutory provisions and judicial pronouncements into a coherent and workable body of doctrine. It provides lawyers, judges and others with the tools needed to reach decisions on an immense variety of problems, usually with very limited time at disposal. Empirical research, unlike doctrinal legal research, takes much more time to draw conclusions. In this connection, the following observation of Kenneth Culp Davis deserves our attention. He observed:

> --- [I]t may be a hundred or several hundred years before we get truly scientific answers to some of the questions I am trying to explore, and we need to make some judgments in the meantime. Some of the most useful thinking can be unscientific, impressionistic, intuitive based on inadequate observation or insufficient data or wild guesses or imagination. Scientific findings are obviously the long term objective, but a good many judgments which fall far short of scientific findings are valuable, respectable and urgently needed. [77]

Secondly, a doctrinal legal researcher, through his analysis, attempts to test the logical coherence, consistency and technical soundness of a legal proposition or doctrine. His knitting of legal principles or doctrines, with sound reasoning, may lead to a well-developed law. In this context, evolution and development of law of torts and of administrative law, for example, stand as classic testimony of doctrinal legal research. *Thirdly*, doctrinal legal research contributes in our 'understanding' of 'law', legal concept or doctrine, and legal processes in a better way as it offers logical exposition

[77] Kenneth Culp Davis, Behavioral Science and Administrative Law, 17 *Jr of Legal Edu* 137 at 151-52 (1964-65).

and analysis of such a law or a doctrine or legal system. Such an analysis also reveals (in)consistency in, and (un)certainty of, the law, legal principles or doctrines.

Fourthly, a scholar of law indulged in doctrinal legal research, in a systematic way and with convincing reasoning, exhibits 'inbuilt' 'loopholes', 'gaps', 'ambiguities' or 'inconsistencies' in the substantive law inquired into as well as in some of principles or doctrines embodied therein. He thereby invites the Legislature to plug them through amendments (or to repeal it or substitute it by another piece of legislation if it is with full of defects or a proved 'failure') so that the law can be more purposive and effective. Such a legislative move, either leading to amending the law or replacing it by another one, results in the development or improvement of the law. Further, a comparative analysis of identical legal rules, concepts or doctrines from different systems of law by a scholar of law gives a further impetus to improvement of the law, legal concept or doctrine, as the case may be.

Fifthly, a doctrinal legal researcher, through logical ordering and systematizing of legal propositions that emerged from his analysis and reasoning may initiate a theory in the concerned field of law. Such a theoretical proposition, in due course of time, may gain further support from the researcher himself or other researchers working in the field. In other words, doctrinal legal research helps in theory building.

Sixthly, a doctrinal legal researcher, through his systematic analysis of legal principles, concepts or doctrines, in the light of judicial statements, may predict 'future' of the principle, concept or doctrine, its probable 'contents' and 'directions' in which it is likely proceed in future.

Seventhly, doctrinal legal research provides a sound basis for non-doctrinal legal research. Socio-legal research requires a strong base of doctrinal legal research. Before a scholar of law embarks upon non-doctrinal research, it is necessary for him to acquire sufficient grounding and experience in doctrinal legal research. Unless he understands the legal doctrines, case law and legal institutions, he can hardly venture into socio-legal research. In the absence of strong base in doctrinal legal research, non-doctrinal research is bound to be a futile and infructuous exercise. The utility of non-doctrinal research very much depends upon the ability of the legal scholar to

translate his findings and data into legal doctrines and concepts. Upendra Baxi, in his monograph captioned '*Socio-Legal Research in India: A Programschrift*,[78] observes, and rightly so, that 'law-society research cannot thrive on a weak infra-structure base of doctrinal type analyses of the authoritative legal materials'. 'Legal and policy studies of the state of law', he further observes, 'provide not merely an assurance of sound understanding, but may also hold promise of needed starting-points for sociological research.'[79] The reason is obvious. It will be difficult for a legal researcher to venture into highlighting, through empirical research, operational dimensions of law and legal institutions, the bottlenecks in their implementation and suggesting solutions to overcome these defects without having in-depth knowledge of the legal doctrines, case law and legal institutions. Further, such knowledge is essential for identifying 'issues', 'delimiting areas' of his inquiry, formulating apt 'hypothesis' for inquiry, and devising appropriate strategies and tools for collecting relevant data. In the absence of these, the sociological research will be like a boat without a rudder and a compass, left in the open sea. The whole exercise of the researcher will be fruitless.

3.2.3.2 Limitations

Doctrinal legal research, in spite of the above-mentioned strengths, suffers from certain limitations of worth noting. They are:

First, analysis of the legal principle, doctrine under inquiry, in particular, and of 'law' in general, and the consequential projections of the doctrinal researcher, ultimately, become 'subjective' and exhibit his 'perception' about the inquired subject-matter. A different perception of the same legal principle, concept, doctrine or law by another scholar(s) of law, therefore, cannot be ruled out. In other words, doctrinal legal research, depending upon the reasoning power and analytical skills of the researcher, may lead to different 'perceptions' and 'projections' of the same legal fact, concept or doctrine when different scholars of law analyze it. Thus, different scholars may perceive a legal fact or doctrine differently with equally convincing logical reasoning.

[78] Upendra Baxi, *Socio-legal Research in India-A Programschrift* (Indian Council of Social Science Research (ICSSR), New Delhi, 1975). Also reprinted in, S K Verma & M Afzal Wani (eds), *Legal Research and Methodology* (Indian Law Institute, New Delhi, 2nd edn, 2001), at pp 656-657.
[79] *Ibid*., at p 648.

Secondly, a doctrinal legal researcher gathers the policy from his own experience, authoritative statutory materials, case reports, and his reflections thereon. His 'inquiry' into a legal principle or concept or law, therefore, does not get any support from social facts or values. His research, undeniably, becomes merely theoretical and devoid of any social facts. Consequently, his 'projections' of law and 'predictions' regarding changes in the law are bound to be far from social reality and inadequate. When law is viewed as an effective instrument of socio-economic transformation, it becomes necessary to see it (law) in the light of social facts and values. It also needs to be studied and analyzed in terms of its actual working and consequences and not as it stands in the book. Obviously, doctrinal legal research, in this context, becomes inadequate and inapt. Further, contemporary social-goal-oriented law requires pre-legislative study to know and appreciate the extra-legal factors that have played significant role, positive or negative, in shaping the legal rule or doctrine in the present form. Doctrinal legal research, by its nature, does not bring such pre-legislative issues in its ambit. It is also not fully equipped for such a study.

Thirdly, doctrinal legal research does not involve a study of the factors that lie outside law or legal system but have directly or indirectly influenced the operation of the law, a legal rule, concept or doctrine. Sometimes the prevailing stakes and prejudices of a dominant social group may hamper the law's operation and success. A study of such extra-legal factors, interests and prejudices, therefore, becomes necessary for understanding their role and contribution in making the law or doctrine effective, less effective or ineffective in its operation. Such a study also becomes desirable, rather inevitable, to devise appropriate legislative or policy-oriented measures to do away with the factors that are desisting/have desisted the law to be effective or to minimize their adverse effects on the law's performance. Doctrinal legal research practically overlooks the need to study these factors.

Fourthly, a doctrinal legal researcher puts his sole reliance on, and gives prominence to, traditional sources of law and judicial pronouncements of appellate courts. The actual practice and attitude of lower courts and of administrative agencies with quasi-judicial powers, whose judgments remain unreported, are left unexplored in doctrinal legal research.

A comparative look at the advantages and limitations of doctrinal legal research outlined in the preceding paragraphs may create a serious doubt about utility and

relevance of doctrinal legal research. However, doctrinal legal research should not be undermined simply because it, through analysis of statutory provisions and cases, revolves around legal principles and doctrines, and it is, therefore, devoid of 'social facts' or is far away from 'social reality'. Doctrinal legal research, contrary to this general belief, is in fact involves consideration of social value, social policy and the social utility of law. A scholar of law observed:

> It is naive to think that the task of a doctrinal researcher is merely mechanical - a simple application of a clear precedent or statutory provision to the problem in hand, or dry deductive logic to solve a new problem. He may look for his value premises in the statutory provisions, cases, history in his own rationality and meaning of justice. He knows that there are several alternative solutions to a problem (even this applies to a lawyer who is arguing a case before a court or an administrative authority) and that he has to adopt one which achieves the best interests of the society. The judges always unconsciously or without admitting think of the social utility of their decisions, ---.[80]

Conventional legal materials contain a lot of data with which a doctrinal legal researcher may make a significant contribution to our understanding of legal processes. The basic need is for a conception of research that, even if it is confined to traditional legal materials, ask the most meaningful questions that such materials may help answer. A doctrinal legal researcher, through careful content analysis, qualitative and quantitative, of case reports and other conventional legal source materials, can, *inter alia*, identify the processes through which a doctrine is formed, the values preferred and articulated thereunder, and its underlying policy and goal. Conventional legal materials are also of some help in tracing the actual consequences adopting a doctrine. [81]

3.3 NON-DOCTRINAL LEGAL RESEARCH OR SOCIO-LEGAL RESEARCH

[80] S N Jain, Doctrinal and Non-Doctrinal Legal Research, 17 *Jr of Ind Law Inst* 516 (1975). Reprinted in, S K Verma & M Afzal Wani (eds), *Legal Research and Methodology* (Indian Law Institute, New Delhi, 2nd edn, 2001) 68 (74).

[81] Ernest M Jones, Some Current Trends in Legal Research, 15 *Jr of Legal Edu* 121 (1962-63).

3.3.1 Introduction

However, in the recent past, doctrinal legal research has received a severe jolt due to change in the political philosophy of law from the *laissez faire* to the welfare state envisaging socio-economic transformation through law and legal institutions, the consequential new substantive and functional facets of law, and certain compelling pragmatic considerations arising from this metamorphosis.

Prominent reasons and arguments stressing the need for inquiry into social facets of law are: *First*, the emergence of sociological jurisprudence[82] and its underlying philosophy assigned 'law' the task of 'social engineering'. Almost every modern civilized State perceives 'law' as an active instrument of socio-economic justice and thereby a vehicle of social engineering. This new operational facet of law has inevitably led to enactment of enormous statutes with specified socio-economic drives. In fact, we have come to live in an age is of social welfare laws. *Secondly*, in the light of such a role assigned to law, it is argued, it becomes necessary to look into the 'factors' or 'interests' of the Legislature that play significant role in setting the legislative process in motion and in identifying the beneficiaries thereof and the reasons therefor. These 'factors' and 'interests' (for putting law in motion for the desired planned socio-economic change), indicate, rather dictate, 'framework' of the law as well reveal the choices opted by the Legislature when it faced with alternative 'paths' towards, or 'strategies' for, the intended legislative goal. *Thirdly*, it becomes necessary to carry out frequent attitudinal studies of those whose legal position is sought to be modified by a given law as well as of those who are vested with the power of interpreting and implementing it so that the Legislature, armed with this feedback, can fulfill its job in a more satisfactory manner. *Fourthly*, a number of facts or factors that lie outside a legal system may be responsible for non-implementation or poor implementation of a given piece of social legislation. A systematic probe into these factors and their influence on the operation of law, therefore, becomes necessary to identify these bottlenecks and to design appropriate strategy to remove them or to minimize their influence on the law so that the law can be made an effective instrument of socio-economic transformation. *Fifthly*, there is nearly always a certain

[82] See, Roscoe Pound, *Jurisprudence*, vols 1-3 (St. Paul, Minn., West Publishing Co., USA). Also see, M D A Freeman, *Lloyd's Introduction to Jurisprudence* (Sweet & Maxwell, London, 6th edn, 1994), chap 7: Sociological Jurisprudence and the Sociology of Law.

'gap' between actual social behavior and the behavior demanded by the legal norm and certain 'tension' between actual behavior and legally desired behavior. Identification of the 'gap' and 'tension' as well as factors responsible therefor becomes necessary for strengthening potentials of law as a vehicle for socio-economic justice.

It is, thus, stressed that an investigation into, through empirical data, the operational facets of law intending to change or mould human attitudes and to bring some socio-economic transformation in the society is more important than analyzing law as it exists in the book. Such an inquiry ostensibly involves research into link between law and other behavioral sciences. Here, emphasis is not on legal concepts or doctrines but on people, social values and social institutions. It gives importance to economic and social data rather than legal facts. It concerns with the impact of the legal process upon people, their values and institutions. Such a research prominently involves an inquiry into dynamics of law, its social contents, role and impact of law in the social system.

3.3.2 Aims and Basic Tools of Non-Doctrinal Legal Research

3.3.2.1 Aims

In a non-doctrinal legal research, the researcher tries to investigate through empirical data how law and legal institutions affect or mould human attitudes and what impact on society they create. He endeavors to look into 'social face or dimension' of law and 'gap', if any, between 'legal idealism' and 'social reality'. Non-doctrinal legal research, thus, involves study of 'social impact' of law (existing or proposed) or of 'social-auditing of law'. The researcher tries primarily to seek, among other things, answers to: (i) Are laws and legal institutions serving the needs of society? (ii) Are they suited to the society in which they are operating? (iii) What forces in society have influenced shaping or re-shaping a particular set of laws or legal norms? (iv) Are laws properly administered and enforced or do they exist only in statute books? (v) What are the factors, if any, responsible for poor or non-implementation of the laws? (vi) What are the factors that influenced the adjudicators (courts or administrative agencies) in interpreting and administrating the laws? (vii) For whose benefit a law is enacted, and are they using it? Have the intended 'legislative targets' benefited from

the law? If not, for what reasons? Where do 'bottlenecks' lie? (viii) What has been impact of the law or legal institutions in changing attitude of the people or molding their behavior? and what are the social obstacles in realization of the expected behavior or change?

The inquiry, in ultimate analysis, relates to: (i) the legislative processes (inquiring into the initiation and formalization of law, and the forces, factors or pressure groups that played significant role in its making and with what objectives), (ii) its social assimilation (involving an inquiry into its operational facets and the factors that are responsible for making it dysfunctional), and (iii) its impact on the intended beneficiaries (involving a post-natal study of the law). Most of non-doctrinal legal research, thus, seeks: (i) to assess the impact of non-legal factors or events upon legal processes or decisions, or (ii) to find the 'gap' between legal idealism and social reality, or (iii) to identify and appraise the magnitude of the variable factors influencing the outcome of legal processes and decisions-making, or (iv) to trace the consequences of the outcome of legal decision making in terms of value gains and deprivations for litigants, non-litigants, non-legal institutions.[83]

A legal researcher undertaking non-doctrinal legal research takes either some aspects of law or the people and institutions supposedly regulated by law as the focus of his study. Such a research undertaking, compared to doctrinal legal research, is much broader and the questions involved therein for further inquiry are more numerous, the answers of which are not ordinarily available in conventional legal sources-statutory materials, case reports and legal periodicals. The researcher is usually required to undertake fieldwork to collect data for seeking answers to these questions.

However, legal doctrines do not altogether become irrelevant in a non-doctrinal legal research. They may be included in a non-doctrinal legal study, but if so, they are treated simply as one of the many variables that may influence decisions, or affect the practices and attitudes of people, or affect the operation of institutions. In a non-doctrinal legal research intending to assess the impact of non-legal factors or events upon legal processes or decisions, legal doctrines may appear either as a response to non-legal events or as a factor conditioning the impact of non-legal events. If research

[83] Schwartz, Field Experimentation in Sociological Research, 13 *Jr of Legal Edu* 401 (1961).

is aimed at identifying and appraising factors influencing outcomes, legal doctrine becomes relevant, if at all, simple as *one* of such factors.

The distinguishing characteristics of a non-doctrinal legal research, thus, are: (i) it lays down a different and lesser emphasis upon legal doctrines and concepts, (ii) it seeks answers to a variety of broader questions, (iii) it is not anchored exclusively to appellate case reports and other traditional legal sources for its data, and (iv) it invariably involves the use of research perspectives, research designs, conceptual frameworks, skills, and training not peculiar to law trained personnel.[84]

To put it differently, non-doctrinal legal research aims at highlighting the 'gaps' that exist between the 'law-in-the statute book' (that is, the image of law projected in the books) and 'law-in-action' (that is, the perception it exhibits in reality), and impact of law on the social behavior. The former discloses the gap between legal idealism and social reality and thereby it highlights the disjunction that exists between the law-in-the books and the law-in-action. While the latter, highlights the factors that are thwarting the operation of law and thereby diminishing the attainment of its goal. It helps us to find out the deficiencies in an enactment and the problem of its implementation. And its impact on the society.

3.3.2.2 Basic tools

There are several ways of collecting empirical data for social-legal research. The required information can be collected from the identified respondents in a face-to-face interaction by administrating them a set pre-determined questions or through sketchy questions prepared by the respondent. These methods of data collection are known as 'interview' and 'schedule' respectively. The pre-determined questions can also be administered to the respondents indirectly through post, fax, emails or any other appropriate methods of communication. This method of data collection is known as 'questionnaire'. A socio-legal researcher can also collect the required information by systematic 'observation' of a phenomenon, behavior of his respondents or institutions that constitute focus of his study or by studying other existing records that reflect the phenomenon under his inquiry.

[84] Ernest M Jones, Some Current Trends in Legal Research, *supra* n 17.

The basic tools of data collection for a socio-legal research, thus, are: (i) interview, (ii) questionnaire, (iii) schedule, (iv) interview guide, (v) observation, participant or non-participant, and (vi) published or unpublished materials (such as Census Reports, Reports of Governmental and/or Non-Governmental Agencies, and appropriate literature on sociology of law). The first four methods of data collection are 'primary sources' of empirical data as they are used in getting the required information 'directly' from the respondents. While the last one is 'secondary source' of information as the researcher collects the necessary information 'indirectly' from published and/or unpublished documents. Further, 'interview' and 'schedule' involve direct 'oral communication' between the information-giver (respondent) and the information-seeker (investigator), while 'questionnaire' involves 'written communication' between the researcher and his respondents. In 'observation', unlike in interview, schedule and questionnaire, the researcher uses his 'eyes', rather than ears, for collecting data. Hence, it is a 'visual method' of data collection.

These tools of data collection are discussed extensively elsewhere[85] in the current volume. Nevertheless, it will not be out of context and thematically inappropriate to mention them here, in brief, to put them in the right perspective.

Interview, a verbal technique of data collection, may be structured or unstructured. The former involves the use of a set of pre-determined questions and highly standardized technique of recording responses thereto. The latter, as opposed to the former, is characterized with flexibility of approach to questioning the respondents and lesser-standardized way of recording the responses. Interview is the most commonly used method of data collection in the study of human behavior. It is regarded as 'a systematic method by which a person enters more or less imaginatively into the life of a comparative stranger'.[86] It is used to either secure the information from the person who alone knows the subject or a particular matter. Interview is the most effective method of gaining information about a person's perceptions, beliefs, feelings, attitudes, opinions, motivations, anticipations or plans. It also enables the

[85] For further details on these methods of data collection, see 'Unit 8: Basic Tools of Data Collection', *infra*.
[86] Pauline V Young, *Scientific Social Surveys and Research* (Prentice-Hall of India, New Delhi, 4th edn, 1968), see chapter on 'interview'.

interviewer to further authenticate the information flowing from the respondent by observing his facial reactions and other gestures during his narration. However, interview, as a method of data collection, is an art. Not everybody can resort to it, unless he is trained in formulating questions, their administration and recording responses thereto. Further, it, as outlined here below, has its own limitations:

> One of the limitations of the interview is the involvement of the individual in the data he is reporting and the consequent likelihood of bias. Even if we assume the individual to be in possession of certain facts, he may withhold or distort them because to communicate them is threatening or in some manner destructive to his ego. Thus, extremely deviant opinions and behavior, as well as highly personal data, have long been suspect when obtained by personal interviews---. Another limitation on the scope of the interview is the inability of the respondent to provide certain types of information ---. Memory bias is another factor which renders the respondent unable to provide accurate information.[87]

Questionnaire is that method of data collection in which a number of typed or printed pre-determined questions are used for collecting data. It is usually mailed to the respondents with a request to respond the questions in the space provided therefor and to send it back to the investigator. Like interview, questionnaire may be structured or unstructured. The questions may be open-ended, close-ended, mixed or pictorial. This method is quite popular and useful when information is to be sought from numerous respondents who are scattered in a vast area. Compared to interview, it works out to be cheaper and quicker. It also facilitates uniform tabulation Schedule is referred to as a form filled in during a personal interview in which both the interviewer as well as the respondent are present. In this method, the investigator himself presents the questions to the respondent and records his response. Questionnaire and schedule have much in common. In both the forms of data collection, the wordings of the questions are the same for all the respondents.

[87] Cannell and Kahn, The Collection of Data by Interviewing, in Leon Festinger and Daniel Katz (eds), *Research Methods in the Behavioral Sciences* (Amerind Publishing Co., New Delhi, 1953) 330-331.

However, at the same time there are two prominent differences between the two. *First*, questionnaire is usually mailed to the respondents for filling in their responses to the questions listed therein, whereas schedule is referred to a form filled in by the interviewer during his personal interview with the respondent. *Secondly*, questionnaire, due to its impersonal nature, is rigid, whereas schedule, which like in interview allows the investigator to clarify questions, if they are not clear to the respondent, is more flexible.

There is yet another related tool of data collection, which is popularly known as interview guide. It contains only the topic or broad headings on which the questions are to be asked to the respondents. The researcher formulates questions on these topics on the spot and records the responses thereto. Interview guide is generally used in case of qualitative or in-depth interviews.

Observation, which involves a visual method of data collection, becomes a scientific method of data collection if it, in the context of subject-matter of inquiry, is planned systemically, recorded systematically, and is subjected to checks and controls on validity and reliability. Observation may be participant or non-participant. In the former, the investigator mingles with the respondents to observe and record a phenomenon. While in the latter, he observes and records a phenomenon from distance.

Published or unpublished documents/reports may also serve as useful sources of information requisite for a socio-legal research. However, the investigator needs to carefully scrutinize the information and to ensure himself about reliability and adequacy of the data before he uses the information in his inquiry.

3.3.3 Advantages and Limitations of Non-Doctrinal Legal Research

3.3.3.1 Advantages

Non-doctrinal legal research, as mentioned earlier, seeks answers to a variety of questions that have bearing on the social-dimension or social-performance of law and its 'impact' on the social behavior. In fact, it concerns with 'social-auditing of law'. Hence, socio-legal research has a number of advantages. A few prominent among them are:

First, social-legal research highlights the 'gaps' between 'legislative goals' and 'social reality' and thereby 'depicts' a 'true picture' of 'law-in-action'. It particularly highlights the 'gap' in relation to (a) the practice of law enforcers, regulators and adjudicators and (b) the use or under-use of the law by intended beneficiaries of the law.

The regulatory body, existing or created under the law, vested with the power to monitor and enforce the law, may, due to some prejudices or apathy towards the 'beneficiaries' or sympathy towards their adversaries, be professionally 'inactive' in enforcing the law. It may, for certain reasons, purposefully fail to enforce it effectively. Non-doctrinal legal research, in this context, highlights the 'reasons' behind making the law 'symbolic', less-effective or ineffective. It also reveals the extent to which the beneficiaries have been (or have not been) able to 'use' the law and the 'reasons' or 'factors' that have desisted/are desisting them from using it. Through empiricism, non-doctrinal legal research highlights the underlying currents or factors (like unawareness on part of the beneficiaries, unaffordable cost in seeking the legal redress, or the fear of further victimization if the legal redress is pursued, and the like) that have been desisting them from seeking the benefits that the law intended to bestow on them and to seek legal redress against those who prevent them from doing so. It, thus, exposes the 'bottlenecks' in operation of law.

Secondly, non-doctrinal legal research carries significance in the modern welfare state, which envisages socio-economic transformation through law and thereby perceives law as a means of achieving socio-economic justice and parity. Through empiricism, socio-legal research assesses 'role and contribution of law' in bringing the intended social consequences. It also helps us in assessing 'impact of law' on the social values, outlook, and attitude towards the 'change(s)' contemplated by law

under inquiry. It highlights the 'factors' that have been creating 'impediments' or posing 'problems' for the law in attaining its 'goal(s)'.

Thirdly, in continuity of what has been said in *firstly* and *secondly* above, non-doctrinal legal research provides an 'expert advice' and gives significant feedback to the policy-makers, Legislature, and Judges for better formulation, enforcement and interpretation of the law.

Fourthly, socio-legal research renders an invaluable help in 'shaping' social legislations in tune with the 'social engineering' philosophy of the modern state and in 'making' them more effective instruments of the planned socio-economic transformation.

3.3.3.2 Limitations

Though socio-legal research has great potentials, yet a few limitations[88] thereof need to mention here to put its role in the right perspective. A few significant are outlined below.

First, non-doctrinal legal research is extremely time consuming and costly as it requires a lot of time for collecting the required information from field. Further, it calls for additional training in designing and employing tools of data collection and entails greater commitments of time and energy to produce meaningful results, either for policy-makers or theory-builders.[89]

Secondly, socio-legal research, as explained earlier, needs a strong base of doctrinal legal research. A legal scholar who is weak in doctrinal legal research cannot handle non-doctrinal legal research in a meaningful way. It may turn out to be a futile exercise leading to no significant results.

Thirdly, the basic tools of data collection, *namely* interview, questionnaire, schedule and observation, are not simple to employ. They require specialized knowledge and skill from the stage of planning to execution. Each one of them is bridled with a

[88] See, S N Jain, Doctrinal and Non-Doctrinal Legal Research, *supra* n 16.

[89] International Legal Center for Law in Development (Research Advisory Committee on Law and Development), *Report on Law and Development* 10 (New York, 1974).

number of difficulties.[90] A researcher has to have a sound skill-oriented training in social science research techniques. A cumulative effect of this limitation of non-doctrinal legal research and of the one mentioned in *secondly* is that a well-trained social scientist cannot undertake socio-legal research without having a strong base in doctrinal legal research. Similarly, a scholar of law, though having a strong base in legal principles, concepts or doctrines as well as in doctrinal legal research, cannot venture into non-doctrinal legal research unless he has adequate training in social science research techniques. In either case, non-doctrinal legal research becomes a mere nightmare for both of them. A way out, therefore, seems to be an inter-disciplinary approach in investigating legal problems. However, inter-disciplinary legal research has its own difficulties and limitations.[91]

Fourthly, invariably public opinion, as mentioned earlier, influences contents and framework of law. Law, most of the times, also seeks to mould and/or change the public opinion, social value and attitude. In such a situation, sometimes it becomes difficult for a non-doctrinal legal researcher to, on the basis of sociological data, predict with certainty the 'course' or 'direction' the law needs to take or follow. Such a prediction involves the maturity of judgment, intuition, and experience of the researcher. He may fall back to doctrinal legal research. Nevertheless, sociological research may be of some informal value to the decision-makers.

Fifthly, sometimes, because of complicated social, political and economic settings and varied multiple factors a socio-legal researcher may again be thrown back to his own ideas, prejudices and feelings in furnishing solutions to certain problems.

Sixthly, Socio-legal research becomes inadequate and inapt where the problems are to be solved and the law is to be developed from case to case (like in administrative law and law of torts).

May be due to some of these limitations of socio-legal research, coupled with some other non-conducive situations for non-doctrinal legal research, scholars of law and legal academia, in the past, have not contributed significantly to non-doctrinal legal

[90] See, 'Unit 8: Basic Tools of Data Collection', *infra*.
[91] For details see, 'Unit 4: Models of Legal Research and Current Trends in Legal Research', *infra*.

research. In fact, they have, due to different professional priorities,[92] not ventured into socio-legal research. Future trend seems to be equally bleak. They are not well-trained in the techniques and nuances of socio-legal research. This lack of training has made them to be away from non-doctrinal legal research and developed a somewhat professionally unfavorable climate for socio-legal research. Further, law schools and legal academia lack the aptitude for, and tradition of, sustaining non-doctrinal legal research. However, in the recent past, most of the law schools in Asia and Africa have introduced a course on research methodology at both under-graduate and post-graduate studies of law to induce and train their inmates for undertaking doctrinal as well as non-doctrinal legal research with vigor.

Doctrinal legal research, for a variety of reasons, plausibly including the inability and inaptitude of legal scholars to undertake socio-legal research, has been (and is still) prominent in the field of law. Since its evolution, law has been viewed as a science of norms and a 'closed discipline'. Hence, scholars of law have been endeavoring to look into normative character of 'law' and the 'principles' involved therein through analysis of 'statutory' law. Most of the conventional Law Schools have been (and are) engaged in training their inmates about the techniques of 'finding law' and of 'reading principles' involved therein. Hence, scholars of law have been engaging themselves in writing classic treatises by carefully looking into 'law' and 'legal principles' and organizing them in a systematic manner. They have been producing works that are designed for practitioners'-lawyers and judges- reference. One finds classic treatises[93] that have carefully organized and analyzed the doctrinal contents of a field of law in abundance. Another equally significant reason for making doctrinal legal research more prominent in the field of law is the historical and traditional influence of analytical positivism on law and lasting influence of overseas (American and British) legal training of academia, lawyers and judges. Analytical positivism has obsessed the thinking of Bar, Bench and academicians to such an extent that no other approach

[92] The key professional priorities of law teachers that have kept them away from socio-legal research are: obsessive pre-occupation in teaching, preparation of teaching materials and casebooks for monetary and professional gains, and tendering advice to their clients. See, Ernest M Jones, Some Current Trends in Legal Research, *supra* n 17.

[93] To mention a few acclaimed treatises, as illustrations, are: H W R Wade, *Administrative Law* (Oxford, New Delhi, 9th edn, 2004), De Smith, *Judicial Review of Administrative Action* (Stevens & Sons, London, 3rd edn, 1973), P H Winfield, *A Textbook of the Law of Tort* (Sweet & Maxwell, London, 1937), [the author himself had five editions between 1937 and 1950, for latest edition, see W V H Rogers, *Winfield, and Jolowicz on Tort* (Sweet and Maxwell, London, 2002), and M P Jain and S N Jain, *Principles of Administrative Law* (N M Tripathi, Bombay, 1973).

(other than doctrinal one) to the understanding of the nature and purpose of law could really have thrived. This kind of concern tended to identify 'law' and 'a legal order' only with those elements which are statable in the form of legal propositions.[94]

Further, modern legal systems, particularly from common law system, provide ample scope for judicial creativity. As our experience tells, statutory language can never be perfect. Certain ambiguities, gaps and inconsistencies, advertent or inadvertent, are bound to exist in legal phraseology. A word used in a statute, which may appear to be fairly clear at the time of enactment of the statute, may acquire vagueness when the occasion of its application to a case by the court arises. Similarly, the plain statutory language may lose its plainness at the time of actual controversy because of the human limitation to foresee all the difficulties and nuances of the problem. Therefore, Legislature, most of the times, deliberately vests judiciary with certain judicial discretion to meet the ends of 'justice'. Judiciary, as and when called upon, to interpret statutes has through judicial process evolved certain standards, legal 'principles', 'doctrines' and 'concepts' that attracted attention of scholars of law and of law teachers trained 'overseas' to make analysis of these principles, concepts and doctrines.

3.4. INTER-RELATION BETWEEN DOCTRINAL AND NON-DOCTRINAL LEGAL RESEARCH

These two broad types of legal research- doctrinal legal research and non-doctrinal legal research- are overlapping rather than mutually exclusive. It is difficult to draw a sharp theoretical or pragmatic line of differentiation between the two.

The distinction between doctrinal and non-doctrinal legal research, if there be one, is one of emphasis. In doctrinal legal research the main objective is to clarify the law, to take a position, to give reasons when the law is in conflict, and, perhaps, to suggest methods for improving the law. It involves the identification of 'fact', its underlying policy, and 'measures' for improvement. While non-doctrinal legal research gives emphasis on understanding 'social dimension' or 'social facet' of law and its 'impact'

[94] See, Julius Stone, *Social Dimension of Law and Justice* (Stanford University, Stanford, 1966), chap 1.

on the ‘social attitude’. It gives emphasis on ‘social auditing of law’. In doctrinal legal research legal materials, such as statutes, regulations, and cases, are used, whereas in non-doctrinal legal research, materials from other fields, like sociology, are sought and used.

Doctrinal legal research and non-doctrinal legal research, thus, are not mutually exclusive. They compliment each other. Non-doctrinal legal research cannot supplant doctrinal legal research. It can be a valuable supplement or adjunct to doctrinal legal research. It is now accepted that theoretical research without any empirical content is hollow and that empirical work without supporting theory is shallow.

? Activity 3.1: Classify the following published Research products into Doctrinal, Non-Doctrinal, and both types of legal researches, by reading the papers?

a. **Tilahun Teshome, <u>The Legal Regime Governing Arbitration in Ethiopia: A Synopsis</u>, Ethiopian Bar Review, Vol. 1 No. 2 ,February 2007.**

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b. **Filipos Aynalem, <u>De facto Divorce(dÃó~ /Ç= ó¡„/ õˆ)</u>,Mizan Law Review, Vol.2 No. 1,January 2008.**

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? Activity 3.2: Compare and Contrast the advantages and Disadvantages of conducting Doctrinal and Non-Doctrinal legal Researches, in the Ethiopian legal system? Which one is more important?

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CHECK YOUR PROGRESS

- Define and explain doctrinal legal research. Why is it is known as ‘research *in* law’?
- Discuss aims and significance of doctrinal legal research
- Enumerate and explain different basic tools of doctrinal legal research

- Assess strengths and weaknesses of doctrinal legal research
- What is meant by non-doctrinal legal research? How would justify the view that it is ‘research *about* law’ or ‘socio-legal research’? Identify and explain prominent factors that are responsible for its emergence
- Discuss basic aims of non-doctrinal legal research
- Explain basic tools of non-doctrinal legal research
- Highlight and discuss advantages and limitations of non-doctrinal legal research
- Do you think that doctrinal legal research and non-doctrinal legal research are distinct and separate from each other in their operation

FURTHER SUGGESTED READINGS

- S N Jain, Legal Research and Methodology, 14 JILI 487 (1972).
- S N Jain, Doctrinal and Non-doctrinal Legal Research, 17 JILI 516 (1975). Also reprinted in, S K Verma and M Afzal Wani (eds), *Legal Research and Methodology* (2nd edn, 2001, Indian Law Institute, New Delhi) 68.
- Vilhelm Aubert (ed), *Sociology of Law* (Penguin, 1975). See 'Introduction', pp 9-14.
- Yehezkel Dror, Law and Social Change, 33 *Tulane L R* 787 (1958-1959)
- Vilhelm Aubert, Some Social Functions of Legislation, in Vilhelm Aubert (ed), *Sociology of Law* (Penguin, 1975) 116.
- Julius Stone, *Social Dimensions of Law and Justice* (Stanford University, Stanford, 1966) pp 71-85 [See particularly the Project Notes A and B which list English Studies of 'Law in the Books and 'Law in Action', and 'Conditions of Effectiveness of Legal Rules'.]
- Julius Stone, *Legal Systems and Lawyers' Reasoning* (Stanford University Press, Stanford, 1966).
- Ernest M Jones, Some Current Trends in Legal Research, 15 *Jr of Legal Edu* 121 (1962-63).
- W Friedmann, *Law in a Changing Society* (Stevens & Sons, London, 2nd edn, 1972)

UNIT 4

MODELS OF LEGAL RESEARCH AND CURRENT TRENDS IN LEGAL RESEARCH

Legal research necessarily overflows into non-legal areas in its search of data, and also in its search of research methods and models that traditionally do not belong to law.

STRUCTURE

UNIT 4

MODELS OF LEGAL RESEARCH AND CURRENT TRENDS IN LEGAL RESEARCH

4.1 Models of legal research

- 4.1.1 Evolutive and evaluative
- 4.1.2 Identificatory and impact studies
- 4.1.3 Projective and predictive
- 4.1.4 Collative
- 4.1.5 Historical
- 4.1.6 Comparative

4.2 Current trends in legal research

- 4.2.1 Mono-disciplinary legal research
- 4.2.2 Trans-disciplinary legal research
- 4.2.3 Inter-disciplinary legal research

OBJECTIVES

After going through the Unit, you will be able to:

- Describe different models of legal research
- Explain objectives and significance of different models of legal research
- Explain emerging trends in legal research
- Describe weaknesses and strengths o inter-disciplinary legal research

4.1 MODELS OF LEGAL RESEARCH

Legal research, like any other research, invariably involves collection and analysis of facts and their interpretation to ascertain or refute existing information or add new information thereto. Inquiry into a legal fact, thus, either supplements the existing theory/information or supplants it with new one.

However, a legal researcher, depending upon focal theme and research goals of his inquiry, resorts to research tools and techniques and follows a paradigm that differs from others. A few prominent paradigms or models of legal research, in brief, along with their utility, are outlined here below.[95]

4.1.1 Evolutive and evaluative

A legal research gets the label of 'evolutive model of legal research' when a researcher endeavors to find out how a legal fact, rule, concept, an institution or the legal system itself come to be what it is today. He attempts to trace the origin and development of a legal fact, [such as rule against self-incrimination or double jeopardy], or a legal institution, [like the institution of an ombudsman or a judicial institution, say the Federal Supreme Court of Ethiopia]. Such legal research can also be undertaken even to trace the development of a given law, like the development of constitutional law of a country.

The legal researcher can do this by either of the two ways. *First*, he may prepare a calendar of the successive formal baptismal dates of the legal fact in question.

[95] Liberally relied upon, Rajkumari Agrawala, Indian Legal Research: An Evolutionary and Perspective Analysis, in S K Verma & M Afzal Wani (eds), *Legal Research and Methodology* (ILI, 2nd edn, 2001) 138.

Secondly, he may trace the evolution of a legal fact or an institution by locating various supportive and causal phenomena, events or factors that were responsible for shaping the growth of a legal fact or an institution under study.

Evaluative model of legal research aims at expounding the logical coherence of concepts, elements, facts and interests of legal phenomenon individually, of their relationship *inter se* and their relationship with the concepts, elements, facts and interests outside the legal system for determining and defining the terms and presuppositions used in law. The research is to ascertain the nature, scope and source of law in order to explain what law is, and also to spell out several propositions used in law.

4.1.2 Identificatory and impact studies

Almost every law, other than procedural law, as mentioned earlier, has certain 'legislative goal(s)' to attain, and 'legislative targets' to handle through 'law'. A legal researcher, through an identificatory legal research, seeks to ascertain the 'beneficiaries' of a particular law or legal provision. His interest is to find out the persons (or group of persons) for whose benefit the identified law (or legal fact) is made to exist. To be more precise, he seeks to answer the question-which are the parties expected or intended to be benefited by a given rule, concept, institution or the system of law.

Identification of the parties intended to be benefited by a particular law or legal fact help to ascertain the legislative intent or object of that law or legal fact and to seek and clarify the justification for its existence. It also helps to ascertain the legal framework and strategy employed in it to help the 'intended' beneficiaries. It further helps to ascertain whether the intended beneficiaries are actually being benefited or not. In a way, an identificatory legal research serves to assess the utility of the law or a legal fact under inquiry. Such a model of legal research, for example, can be successfully used by undertaking research into the law relating domestic violence, child abuse or harmful traditional practices.

Impact of law studies endeavor to assess effectiveness or actual result of an established or a newly conceived law, legal provision, rule or institution. Here legal

researcher gives emphasis not on contents of the substantive law under inquiry but on its ultimate impact on the society or its legislative target. His focus is not merely on the law as is found in the Codes, Statutes, judicial pronouncements and treatises but on its operation or 'law in action'. He intends to study and understand the effects of the working of law and legal institutions on the life of the individuals and society at a particular time and place. The focus of inquiry, thus, is the 'law in action' and on the behavioral and attitudinal changes of the people effected by law. He intends to record and explain how a particular legal fact works within a given social setting. The investigation, incidentally, involves identification of non-legal factors or forces that affect the legal fact(s) in bringing about the intended changes in the society and their interaction with legal facts.

The significance of such a legal research can be realized if one recalls that law operates as one of the social sub-systems and it has some social object behind it. As stressed earlier, Lawmakers do not enact law either extempore or by accident. They enact it with deliberation and assign some social role to it. Every law has some purpose behind it. In this sense, law puts other co-existing social sub-systems in motion and thereby the social system itself. However, in this process, law also gets influenced by these co-existing social sub-systems as well as the whole social process and other factors. They affect and influence each other. Such a constant interplay ultimately leads to a complex interactive process between law and legal system on one hand and the society and social process on the other. Therefore, the impact of law studies are primarily concerned with assessment of the actual 'working' and 'role' of a given law or legal provision, or an institution in terms of the satisfaction of its expected or intended object(s). Such an assessment of law helps to monitor the success or failure of a given law or a legal provision or an institution, to identify bottlenecks, if any, and to amend or replace it by other more apt law, a legal provision. It is a preliminary step to law reform.[96] It gives feedback to the policy-makers.

[96] See, Julius Stone, *Social Dimensions of Law and Justice* (Stanford University Press, Stanford, 1966) 9 &73.

4.1.3 Projective and predictive

A legal researcher generally uses projective model of legal research when he wants to anticipate and highlight effects of a draft legislation or a proposed legal measure. Such a legal research is mainly attitudinal, intended to anticipate the probable response in terms of rejection or acceptance of a proposed measure. Its purpose is to identify the parties who stand for and against the proposed law or legal measure and to locate determinant variables and situations for peoples' apathy or sympathy.

Predictive legal studies are used when a legal researcher intends to anticipate and highlight possible misuse of the proposed law or legal measure. Such a legal research helps the lawmakers to minimize or to do away with the possible undesirable consequences of the proposed measure. Predictive legal studies are generally carried out by Law Commissions, Parliamentary Committees or Joint Select Committees, invariably, before a proposed legal measure takes formal shape and becomes operational.

4.1.4 Collative

When a legal researcher prepares a digest of laws, statutory provisions, judicial pronouncements or annotated bibliography[97] on a particular topic or subject, that research gets the label of collative legal research. Here the legal researcher collects all the relevant materials, with or without its summary, on a given topic and arranges/classifies them in a logical manner. Digests of cases and statutes, like *Halsbury's Statutes of England* and *Yearly Digests* (of cases published by All India Reporter, India), published by well-known law publishers fall in this category of legal research.

It would be a mistake to undermine this type of legal research as inferior to other types of legal research. Properly collated legal material, which is reliable, reasonably extensive and classified logically, is as much contribution to legal writing as any other material. A well-collated material will serve a useful purpose by reducing the labor of

[97] For example see, R M W Dias, *Bibliography of Jurisprudence* (Butterworths, London, 2nd edn, 1964).

researchers. It offers reliable versions of the law. Collative material has its own value and collative research is an end in itself.

4.1.5 Historical

In historical legal research, a legal researcher intends to trace historical antecedents of a legal fact. Tracing history of a particular legal fact becomes significant for its following attributes. *First*, it becomes useful, rather warranted, when the present statute or statutory provision has raised meaningful queries and it becomes necessary to explore the circumstances in which the present position came out. In such circumstances, it gives a significant clue to the reasons why it (the particular law or legal provision) was framed in the form in which now it appears. It helps to remove certain doubts about the legal fact. *Secondly*, it supplies the researcher the reasons that justify the present position. It would also exhibit that a particular existing provision, fully justifiable at the time when it was introduced, is no longer so justifiable because the reasons and the circumstances that justified its inclusion are no longer valid or exist. *Thirdly*, it discloses the alternatives, different than the currently adopted ones, which were considered and rejected by the lawmakers and reasons therefor. Such a revelation not only exhibits the sound and valid reasons for rejection of an alternative but also discloses the comparative positive and negative attributes of different alternatives that were thought of (or rejected) and of that are adopted in the legislation under inquiry. In this way, it initiates or contributes in legal reforms. *Fourthly*, history of a legal fact, when traced deeply and arranged logically, shows the gradual evolution of the law or legal fact on certain lines, and thereby of general trend of its change. It shows the way the legal fact is evolved.[98] *Fifthly*, historical background of law enables law-makers to know the principles used or followed by Legislature from home or abroad in earlier identical law(s) as very few pieces of legislation are original in the sense of being pure innovations of a skilled draftsman. In majority of the cases, Legislature consults and adapts earlier statutes or makes use of principles laid down or proposed in decided cases. *Sixthly*, historical background of law or a statutory provision helps judiciary (particularly in Common Law jurisdictions) in interpreting law in a more rational and pragmatic way as historical research helps it to know the

[98] See, P M Bakshi, Legal Research and Law Reform, in S K Verma & M Afzal Wani (eds), *Legal Research and Methodology*, *supra* n 1, 111.

historical and political spirit in which that particular law (or a legal provision) came into existence and for what reasons. Laws are not made in a vacuum. They are passed in order to meet some needs of society. *Seventhly*, a law may have relevant international background when it is enacted to give effect to the treaty obligations accepted by the government towards other countries. The practical importance of an understanding and knowledge of that wider political context is evidenced by the increasing willingness of the courts to take account of relevant international instruments when construing the legislation.[99]

4.1.6 Comparative

A comparative legal research carries significance as Legislators, it has been said, imitate each other and try to learn from each other's experience. Schlesinger has observed:

> --- [L]egal practitioners and scholars in ever-increasing members have intuitively discovered a simple but significant fact: that when confronted with the same problem, decision-makers ---, though independent of each other and widely separated by time and space, more often than not will respond in a similar way.[100]

However, there are two schools of thought about comparative legal research. The first school perceives comparative legal research as a mere *process*, a method of approaching legal problems. While the second school treats it as a dogmatic *science* as it aims to study and collate the law of different countries in a systematic order, with the object of placing stress upon the resemblances and differences in the rules adopted by various countries, to solve the many problems coming out of the organized society. The former school has four shades of views. A comparative legal research, according to it, is undertaken (i) to initiate acquaintance with a foreign law, (ii) to animate and modernize the study of private law of a country, (iii) to prepare an internal law by

[99] See, E P Ellinger & K J Keith, Legal Research: Techniques and Ideas, 10 *Victoria Uni Wellington L Rev* 1 (1979-1980)

[100] Schlesinger, the Common Core of Legal Systems-an Emerging Subject of Comparative Study, in Tune, *Comparative Law, Peace and Justice* (1961), *cited in* W J Wagner, Research in Comparative Law: Some Theoretical Considerations, in Ralph A Newman (ed), *Essays in Jurisprudence in Honor of Roscoe Pound* (the Boobs-Merrill, Indianapolis, New York, 1962) 511 at 527.

knowing the way in which the legislature from other jurisdictions has carried out reforms, and (iv) to study law 'common to all'.

In spite of the two different schools of thought, it is, however, undeniable that comparative legal research serves as a good means for introducing new ideas into a legal system. The adoption of the Scandinavian institution of the Ombudsman in many Common Law jurisdictions and the adoption in many jurisdictions of consumer protection laws reflecting the American approach are classic examples in point. In most of these instances law reformers, academic lawyers and Law Commissions have conducted comparative study of foreign systems before initiating a new law or proposing amendments in the existing ones. Invariably, every good piece of comparative approach to law not only gives useful ideas to Legislature but also suggests suitable solution to legal problems. However, it may be emphasized that comparative law becomes legitimate only if the comparison is applied to laws of countries whose social conditions are substantially similar.

Nevertheless, in connection with the comparative law method, one problem occupied the minds of legal scholars more than any other: that of criteria for profitable comparisons. What should be the subject matter of comparable studies? legal principles and rules can be either similar or dissimilar both in space and time and occasionally they have no counterpart in other legal systems. In the tremendous maze of materials from which the comparative may draw, which should he select for his research? The simple obvious reply is that the answer to the question should depend upon the purpose of the study undertaken. The comparative jurist will mainly refer to such legal systems that are likely to supply him with special stimulation for the problem he examines.[101]

4.2 CURRENT TRENDS IN LEGAL RESEARCH

4.2.1 Mono-disciplinary legal research

Legal research, depending upon its objectives and the nature of inquiry, may be mono-disciplinary or trans-disciplinary. Traditionally, legal scholars have been

[101] See, Schlesinger, the Common Core of Legal Systems-an Emerging Subject of Comparative Study, in Tune, *Comparative Law, Peace and Justice* (1961), *cited in* W J Wagner, Research in Comparative Law: Some Theoretical Considerations, in Ralph A Newman (ed), *Essays in Jurisprudence in Honor of Roscoe Pound* (the Boobs-Merrill, Indianapolis, New York, 1962) 511 at 518-19.

engaged in analyzing legal concepts, doctrines, statutes, or statutory provisions in the light of judicial pronouncements. Based on such an analysis, they have been coming up with some tentative explanations of law and principles deducible therefrom and from judicial pronouncements thereon, predicting future course of development of law, hinting at the problems that may likely arise in future and suggesting a way out. Such a research obviously is confined to the discipline of 'law', as the researchers, treating law as a closed discipline, need not go beyond the discipline of law or look for material lying beyond 'law'. This type of legal research is characterized as 'mono-disciplinary legal research' as the discipline involved is only one, i.e. 'law'. All doctrinal legal researches obviously fall in this category.

However, mono-disciplinary legal research, in spite of its potentials to contribute in bringing clarity, consistency and certainty in law and initiating reforms in law, has its own limitations. It is addressed to a limited audience-the members of the profession – judges and lawyers and it is meant to assist them in the discharge of their day-to-day professional tasks. It does not fully reflect the social dimensions of law. Therefore, the feedback it supplies to the policy-makers is merely partial.

4.2.2 Trans-disciplinary legal research

During the recent past, however, some new trends, away from mono-disciplinary legal research, have emerged in the domain of law. An inquiry into a legal fact transgresses the discipline of 'law' and touches upon the disciplines 'related' to law. Such a legal research, to distinguish it from the former one, may be labeled as trans-disciplinary legal research.

It is worth to recall here that law does not operate in a vacuum. It operates in a complex social setting. It has certain roles to play in a society. Each legal rule, in ultimate analysis, intends to apply and govern a factual situation of life. All disciplines that are connected with this factual situation of life, therefore, have nexus with 'law'. History, philosophy, sociology, psychology, religion, to mention a few, are thus related with 'law'. Law's nexus and affinity with the disciplines related with law have made some legal scholars to extend their range of investigation beyond 'law' and to enter into other 'related' disciplines, for bringing out the wider

implications of legal rules and for recommending more meaningful policies and rules. Such a legal research, as stated earlier, takes the label of 'trans-disciplinary legal research'. as he transgresses the discipline of 'law' to see other dimensions of the legal fact under investigation. He goes 'beyond law' and peeps into other disciplines, with which 'law' is proximately connected. Socio-legal research generally falls into the category of trans-disciplinary legal research.

Trans-disciplinary legal research, compared to mono-disciplinary legal research, has more potential for contributing to the advancement of knowledge and development of law as it depicts comparatively holistic picture of the legal fact under inquiry. However, trans-disciplinary legal research may be quasi-disciplinary, multi-disciplinary, or inter-disciplinary in nature.

Quasi-disciplinary legal research is a research undertaken by the same scholar of law in different perspectives that transgress the discipline of law. For example, legal research undertaken by a scholar of law, well conversant with religious literature, delves into personal laws and highlights niceties of legal issues associated therewith, or a writer on taxation laws makes use of his learning in accountancy or public finance to explain in depth the legal rules, falls in this category. A multi-disciplinary legal research, unlike quasi-disciplinary research, involves a study of a common problem by scholars of several disciplines, each studying it from his own specialized angle. For example, scholars of law, sociology, or political science may individually study the issues pertaining to gender equality or an affirmative action. Inter-disciplinary legal research is a research endeavor undertaken jointly by scholars belonging to different disciplines.

However, the first and the last sub-types of trans-disciplinary research, *namely*, quasi-disciplinary and inter-disciplinary, have close bearing on legal research. Hence, they do deserve our more attention.

Quasi-disciplinary legal research enables a legal scholar to offer more realistic and meaningful policy and reform-oriented proposals in the area of his inquiry. However, contribution of a quasi-disciplinary legal research depends upon the depth of scholarship of the researcher in the field of law as well as in the fields allied to law.

Further, it is bridled with the difficulty of making a 'right choice' of 'allied' disciplines. A legal researcher will be confronted with more than one option. Nevertheless, the problem will be non-existent for a legal researcher who has set out his research objectives in unambiguous terms, formulated his research problem in a precise manner, and clearly fixed dimensions of his inquiry. This will help him to be on the 'right' path in his research journey.

4.2.3 Inter-disciplinary legal research

With a view to overcoming some of the limitations of quasi-disciplinary legal research, scholars from different disciplines may join hands in making an inquiry into a legal fact. This type of legal research, as stated earlier, is known as inter-disciplinary legal research.[102]

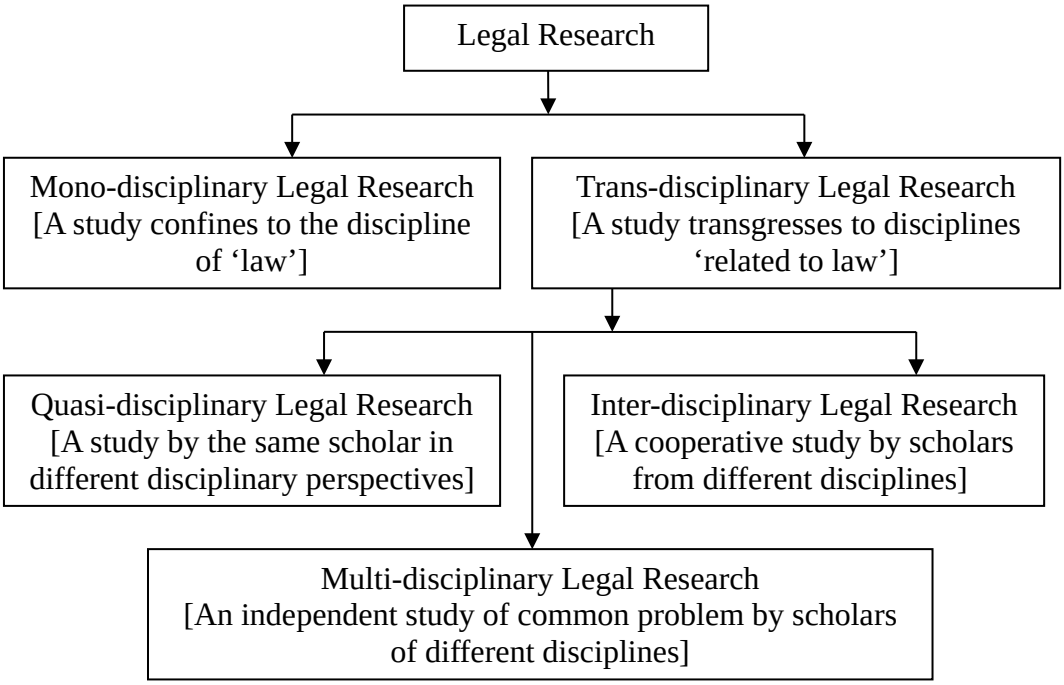
Inter-disciplinary legal research, thus, is the research done by a legal scholar in close association with scholars from other disciplines related with law, such as sociology, anthropology, political science, history, philosophy, psychology, and economics. It is a sort of concerted or cooperative effort by several scholars belonging to different disciplines to integrate their disciplinary insights, and to apply integrated insight to the study of legal problems. An inter-disciplinary legal research, compared to mono-disciplinary and quasi-disciplinary legal research, leads to better insight into the legal fact under investigation. It also results into offering more sound and sophisticated solutions to problems than can be suggested with the aid of mono-disciplinary and quasi-disciplinary legal research. However, inter-disciplinary legal research suffers from some operational difficulties. A few prominent among them are:

1. The question regarding what and how many disciplines should be combined in the research endeavor may sometimes become difficult to resolve. It requires a lot of planning and decision-making.

[102] See, B S Murthy, Socio-legal Research-Hurdles and Pitfalls, in S K Verma & M Afzal Wani (eds), *Legal Research and Methodology supra* n 1, 61, and Ernest M Jones, Some Current Trends in Legal Research, in S K Verma & M Afzal Wani (eds), *ibid*., 24.

2. Priorities and interests of research in different disciplines vary; therefore, the lack of consensus upon the ‘issues to be resolved’ may create operational difficulties in a cooperative research.
3. Sometimes it becomes difficult to develop ‘communication’ between the research partners belonging to different disciplines. Each discipline has its own concepts. It may take considerable time for the participants to understand different ‘language’ (i.e. content expression) spoken by them. For example, the languages of law and social sciences differ. The language of law is essentially directive and normative, whereas the language of sociology is descriptive, revealing or explanatory. It may even be an inhibiting barrier between a legal scholar and a non-lawyer to join hands for a cooperative legal research.
4. Every discipline has its own research tools, techniques and methods. They vary from discipline to discipline. Therefore, some times integration of these tools, methods and techniques in an inter-disciplinary legal research becomes difficult.
5. A sort of ‘tension’ among the participants may arise as they proceed with research. Each participant, consciously or unconsciously, may be tempted to see that his discipline dominates the other in the research endeavor.
6. A cooperative legal research requires compatible habits of the scholars involved therein and a working atmosphere that puts every one at ease. Lack of either of these two may deter individual researchers from taking an initiative in the research. The hitherto tradition of mono-disciplinary research has inculcated some peculiar habits in the researchers, which they might find difficult to deviate from.

Scholars who have joined hands to undertake and carry out a co-operative legal research have to be cautious that none of the above-mentioned limitations surfaces in their concerted efforts. These two types of legal research, with their sub-categories essence, may be graphically presented as:



? Activity 4.1: 1.Remembering the activities given under Activity 2.2 and 3.1, try to categorize the researches conducted by the authors, in to either of the Models of Legal research, or to two or more of them?(Do the activity in groups)

_____

_____

? 2. Do these research papers reflect the current trends of legal research in the Ethiopian Legal system?

_____

_____

CHECK YOUR PROGRESS

- What is difference between evolutive and historical legal research?
- Write a note on historical model of legal research and discuss its significance.
- What is meant by impact studies? Why should they be undertaken?
- What is significance and utility of identificatory legal research? In what way does it contribute to the development of law?

- Discuss and comment upon projective and predictive legal studies. Do they relate each other?
- Do you agree with a view that collative legal research is not research in real sense of the term and it therefore should be discouraged?
- What is significance of comparative legal research? Comment upon its strengths and weaknesses.
- What is meant by trans-disciplinary legal research? What is its utility?
- What is meant by inter-disciplinary legal research? In what respect does inter-disciplinary legal research differ from multi-disciplinary legal research?
- Assess the significance of inter-disciplinary legal research and highlight its limitations.
- Write a note on mono-disciplinary, trans-disciplinary and inter-disciplinary legal research highlighting their characteristics and weaknesses. Which one, in your opinion, is more preferable and for what reasons?
- What is the significance of knowing different models of legal research?
-

Further Suggested Readings

- Rajkumari Agrawala, Indian Legal Research: An Evolutionary and Perspective Analysis, in S K Verma & M Afzal Wani (eds), *Legal Research and Methodology* (ILI, 2nd edn, 2001) 138
- E P Ellinger & K J Keith, Legal Research: Techniques and Ideas, 10 *Victoria Uni Wellington L Rev* 1 (1979-1980)
- B S Murthy, Socio-legal Research-Hurdles and Pitfalls, in S K Verma & M Afzal Wani (eds), *Legal Research and Methodology* (ILI, 2nd edn, 2001) 61
- Ernest M Jones, Some Current Trends in Legal Research, in S K Verma & M Afzal Wani (eds), *Legal Research and Methodology* (ILI, 2nd edn, 2001) 24
- Julius Stone, *Social Dimensions of Law and Justice* (Stanford University Press, Stanford, 1966) 9 &73

UNIT 5
HYPOTHESIS

We cannot take a single step forward in any inquiry unless we begin with a suggested explanation or solution of the difficulty which originated it. Such tentative explanations are suggested to us by something in the subject-matter and by our previous knowledge. When they are formulated as propositions, they are called hypotheses.

Morris R Cohen & Ernest Nagel

The scientific imagination devises a possible solution-a hypothesis-and the investigator proceeds to test it. He makes intellectual keys whether and then tries whether they fit the lock. If the hypothesis does not fit, it is rejected and another is made. The scientific workshop is full of discarded keys.

Sir J A Thompson

STRUCTURE

UNIT 5
HYPOTHESIS

5.1 INTRODUCTION
5.2 SOURCES OF HYPOTHESIS
5.2.1 Hunch or intuition
5.2.2 Findings of others'
5.2.3 A theory or a body of theory
5.2.4 General social culture
5.2.5 Analogy
5.2.6 Personal experience
5.3 CHARACTERISTICS OF A WORKABLE OR USABLE HYPOTHESIS

5.3.1 Hypothesis should be conceptually clear
5.3.2. Hypothesis should be specific
5.3.3 Hypothesis should be empirically testable
5.3.4 Hypothesis should be related to available techniques
5.3.5 Hypothesis should be related to a body of theory or some theoretical orientation
5.4 ROLE OF HYPOTHESIS
5.4.1 Role of hypothesis in navigating research
5.4.2 Role of 'tested' hypothesis
5.4.2.1 To test theories
5.4.2.2 To suggest new theories
5.4.2.3 To describe social phenomenon
5.4.2.4 To suggest social policy

OBJECTIVES

After going through the Unit, you will be able to:

- Explain hypothesis and its sources
- Describe characteristics of a workable hypothesis
- Explain roles hypothesis in a scientific investigation
- Explain utility of hypothesis in socio-legal research

5.1 INTRODUCTION

Formulation of hypothesis becomes essential in studies involving use of empirical research techniques.

'Hypothesis' is derived from two words: '*hypo*' means 'under', and 'thesis' means an 'idea' or 'thought'. Hence, hypothesis means 'idea' underlying a statement or proposition. In fact, the word 'hypothesis' is derived from the Greek, *hypo* (means under) and *tithenas* (means to place). It suggests that a statement when it is placed under evidence as a foundation becomes hypothesis. *Webster's New International*

Dictionary explains 'hypothesis' to mean 'a proposition, condition or principle which is assumed, perhaps without belief, in order to draw out its logical consequences and by this method to test its accord with facts which are known or may be determined'. It is a proposition which can be put to test to determine its validity.[103]

Ordinarily, 'hypothesis' is a plausible statement or generalization that is susceptible to empirical testing in a scientific manner. It is a mere assumption, some supposition, a predictive or a provisional statement, that is capable of being objectively verified and empirically tested by scientific methods. In its most elementary stage, a hypothesis may be a mere hunch, guess, or an imaginative idea. Hypothesis is a tentative proposition about something, which can be put to empirical test to determining its validity. It is a tentative statement of presumed relationship between two or more concepts or variables.[104]

A hypothesis, therefore, needs to be formulated in such a way that one can gather empirical evidence for verifying or refuting its correctness. It may prove correct or incorrect. But in either case, it leads to an empirical test. Whatever may be the outcome, the hypothesis is a question put in such a way that an answer of some kind can be forthcoming. If a hypothesis is empirically proved, the problem, which was tentative in the beginning of the research, is answered. The statement ceases to be a mere proposition. It becomes a verified fact. If hypothesis is not proved, the statement, in the absence of empirical support, merely remains as a proposition, probably, seeking for validity in future. Nevertheless, such a disproved hypothesis may lead to an alternative or additional hypothesis.

However, hypotheses can pertain to virtually anything. For example, urbanization and urban life style boost suicide rate, broken homes tend to lead juvenile delinquency, modernization and education among women lead to increase in divorces, poverty causes criminality, and unemployment among youths leads to violent crimes. There can be no restrictions whatsoever about what can be hypothesized. A hypothesis need

[103] William J Goode & Paul K Hatt, *Methods in Social Research* (McGraw-Hill, 1952) at 56.

[104] A concept is an idea, something conceived in mind. It is a mental abstraction or construction developed to symbolize an idea, a thing or an event. When it is operationally defined, it becomes a variable. Two variables are related when the values observed for one variable vary, differ, or change according to those of another. Merely fact of association between variables is not sufficient for concluding their association is causal.

not necessarily be true. However, it needs to recollect here that hypothesis needs to be empirically tested. What a researcher, therefore, has to convince and ensure himself that he needs to formulate such a proposition, though tentative, he can work with and put it to empirical test and that the proposition guides his research. He has to make the statement in such way that it is empirically specific and specifically hints at the inter-relationship between the indicated variables. In fact, a researcher needs to put a great deal of thought into formulation of his hypothesis. Robert Bales[105] has suggested that before a hypothesis is adopted for testing, the following questions, among others, should be asked:

1. Are the terms empirically specific, so that the concepts or variables can be distinguished in concrete situations?
2. Is the posited relationship between variables such that it could be verified or nullified by means of empirical operation?
3. Is there any prior evidence as to the truth of falseness of the posited relationship?
4. Can an appropriate study design be devised?
5. Are the variables 'context-bound' or could they be equally well applied to other inaction situations?
6. Are the generalizations 'culture-bound' or can they be also applied realistically to other cultures?
7. Is the empirical system that is constructed sufficiently precise and articulate to permit predictions in concrete situations?

However, even if the researcher has addressed himself to the above mentioned questions and seeks answers therefor before formulating his hypothesis and is aware of the fact that his hypothesis is a mere tentative statement that posits a relationship between the identified variables, formulating a hypothesis is not an easy task. It is still bridled with difficulties. According to Goode & Hatt, there are three 'chief difficulties' in the 'road to the formulation of useful hypothesis'. They are:

1. Absence of (or the absence of knowledge of) a clear theoretical framework.

[105] Quoted in, Pauline V Young, *Scientific Social Surveys and Research* (Prentice-Hall, 3rd edn, 1960) at 107-108.

2. Lack of ability to utilize that theoretical framework logically.
3. Failure to be acquainted with available research techniques so as to be able to phrase the hypothesis properly.

5.2 SOURCES OF HYPOTHESIS

A hypothesis or a set of hypotheses may originate from a variety of sources. The source of hypothesis, however, has an important bearing on the nature of contribution in the existing body of knowledge. A few prominent sources of hypothesis are discussed here below.

5.2.1 Hunch or intuition

A hypothesis may be based simply on hunch or intuition of a person. It is a sort of virgin idea. Such a hypothesis, if tested, may ultimately make an important contribution to the existing science or body of knowledge. However, when a hypothesis is tested in only one study, it suffers from two limitations. *First*, there is no assurance that the relationship established between the two variables incorporated in the hypothesis will be found in other studies. *Secondly*, the findings of such a hypothesis are likely to be unrelated to, or unconnected with other theories or body of science. They are likely to remain isolated bits of information. Nevertheless, these findings may raise interesting questions of worth pursuing. They may stimulate further research, and if substantiated, may integrate into an explanatory theory.

5.2.2 Findings of other'

A hypothesis may originate from findings of other study or studies. A hypothesis that rests on the findings of other studies is obviously free from the first limitation, i.e. there is no assurance that it may relate with other studies. If such a hypothesis is proved, it confirms findings of the earlier studies though it replicates earlier study conducted in different concrete conditions.

5.2.3 A theory or a body of theory

A hypothesis may stem from existing theory or a body of theory. A theory represents logical deductions of relationship between inter-related proved facts. A researcher may formulate a hypothesis, predicting or proposing certain relationship between the facts or propositions interwoven in a theory, for verifying or reconfirming the relationship. A theory gives direction to research by stating what is known. Logical deductions from these known facts may trigger off new hypotheses.

A hypothesis that originates from a theory is free from the second limitation – that of isolation from a theory or larger body of knowledge- mentioned above.

5.2.4 General social culture

General social culture, in which a science develops, furnishes many of its basic hypotheses. Particular value-orientation in the culture, if it catches attention of social scientists for their careful observation, generates a number of empirically testable propositions in the form of hypotheses.

5.2.5 Analogy

Analogies may be one of the fertile sources of hypothesis. Analogies stimulate new valuable hypotheses. They are often a fountainhead of valuable hypotheses. Even casual observation in the nature or in the framework of another science may be a fertile source of hypotheses. A proved particular pattern of human behavior, in a set of circumstances or social settings, may be a source of hypothesis. A researcher may be tempted to test these established co-relations with similar attributes in different social settings. He may be interested to test these analogies in a sort of different settings and circumstances. He seeks inspiration for formulating the hypothesis from analogies of others.

However, a researcher, when he uses analogy as a source of his hypothesis, needs to carefully appreciate the theoretical framework in which the analogy was drawn and its relevancy in his new frame of reference.

5.2.6 Personal experience

Not only do culture, science and analogy, among others, affect the formulation of hypotheses. The way in which an individual reacts to each of these is also a factor in the statement of hypotheses. Therefore, individual experience of an individual contributes to the type and the form of the questions he asks, as also to the kinds of tentative answers to these questions (hypotheses) that he might provide. Some scientists may perceive an interesting pattern from merely seem a 'jumble of facts' to a common man. The history of science is full of instances of discoveries made because the 'right' individual happened to make the 'right' observation because of his particular life history, personal experience or exposure to a unique mosaic of events. His personal experience or life history may influence his perception and conception and in turn direct him quite readily to formulate certain hypothesis.

Thus, a hypothesis may originate from a variety of sources, in isolation or in combination with another. The sources discussed above provide a wealth of hypotheses.

However, in spite of these fertile sources of hypotheses, it is not easy to formulate a usable or workable hypothesis. 'It is often more difficult to find and formulate a problem than to solve it', observed Merton, a renowned sociologist. If a researcher succeeds in formulating a hypothesis, he can assure himself that it is half-solved. 'A problem well put is half solved' says an old and wise saying.

What is, therefore, more significant is a researcher is ability to formulate a hypothesis with which he can work. A proposition may be interesting but it may not be amenable to empirical verification. While formulating a hypothesis, he has to keep himself reminding that he has to formulate his tentative proposition in such a way that it becomes usable in his systematic study. A set of questions that begs our attention, therefore, is: how to formulate those ideas in a form of proposition that may actually

prove useful; how to judge its usability or workability and on what criteria? Let us now address to these questions.

5.3 CHARACTERISTICS OF A WORKABLE HYPOTHESIS OR USABLE HYPOTHESIS

It is said that man's mind, like his body, is often active without any immediate goal. A number of interesting hypotheses may emanate from man's mind but all of them may not necessarily be empirically verifiable. Some of them may be left to die alone, While a few (or most) of them may not even destined to play any significant role in either advancement of knowledge or of development of science. What we, as researchers, in interested in can be hypotheses that are usable in our research endeavor and are liable to be empirically verifiable. We, therefore, should have some criteria to judge the usability or workability of a hypothesis. Let us now turn to some of the criteria for judging the usability of a hypothesis. A 'workable' or 'usable' hypothesis would be the one that satisfies many of the following criteria.[106]

5.3.1 Hypothesis should be conceptually clear

The concepts used in the hypothesis should be clearly defined, not only formally but also, if possibly, operationally. Formal definition of the concepts will clarify what a particular concept stands for, while the operational definition will leave no ambiguity about what would constitute the empirical evidence or indicator of the concept on the plane of reality. Obviously, an undefined or ill-defined concept makes it difficult or rather impossible for the researcher to test his hypothesis as there will not be any standard basis for him to know the observable facts. However, a researcher, while defining concepts, should use, as far as possible, the terms that are communicable or definitions that are commonly accepted. It should be stated as far as possible in most simple terms so that it can be easily understandable all concerned. He should not create 'a private world of words'.

[106] Relied liberally on, William J Goode & Paul K Hatt, *Methods in Social Research*, *supra* n 1, chap 6; T S Wilkinson & P L Bhandarkar, *Methodology and Techniques of Social Research* (Himalaya Publishing House, Mumbai, 16th edn, Reprint 2005), chap 5, and C R Kothari, *Research Methodology: Methods and Techniques* (New Age International Publishers, New Delhi, 2nd edn, 2004, Reprint 2007), chap 9.

Goode and Hatt have suggested 'a simple device' for clarifying concepts used in the hypothesis. It involves the following steps: (i) preparation of a list of different concepts used in the research outline, (ii) making efforts to define the listed concepts in words and in terms of particular operations, and with reference to other concepts found in previous research, and (iii) deciding, in the light of these identified different meanings, possible meanings of the concepts used in the current hypothesis.[107]

5.3.2. Hypothesis should be specific

A hypothesis should be couched in specific terms. No vague or value-judgmental terms should be used in formulation of a hypothesis. It should specifically state the posited relationship between the variables. It should include a clear statement of all the predictions and operations indicated therein and they should be precisely spelled out. Specific formulation of a hypothesis assures that research is practicable and significant. It helps to increase the validity of results because the more specific the statement or prediction, the smaller the probability that it will actually be borne out as a result of mere accident or chance. A researcher, therefore, must remember that narrower hypothesis is generally more testable and he should develop such a hypothesis.

5.3.3 Hypothesis should be empirically testable

A hypothesis, as, stated earlier, should be formulated in such a way that it should possibly be to empirically verifiable. It should have empirical referents so that it will be possible to deduce certain logical deductions and inferences about it. It should be of such a character that deductions can be made from it. It should be conceivable and not absurd. Therefore, a researcher should take utmost care that his hypothesis embodies concepts or variables that have clear empirical correspondence and not concepts or variables that are loaded with moral judgments or values. Such statements as 'criminals are no worse than businessmen', 'capitalists exploit their workers', 'bad parents beget bad children', 'bad homes breed criminality', or 'pigs are well named because they are so dirty' can hardly be usable hypotheses as they do not have any empirical referents for testing their validity. In other words, a researcher should avoid

[107] William J Goode & Paul K Hatt, *Methods in Social Research*, *ibid*., at 68.

using terms loaded with values or beliefs or words having moral or attitudinal connotations in his hypothesis.

5.3.4 Hypothesis should be related to available techniques

A hypothesis, as mentioned earlier, needs to be empirically tested. This requirement obviously makes it necessary that a hypothesis should be related to available techniques of data collection. A researcher who does not know what techniques are available to him to test his hypothesis cannot test his hypothesis. His ignorance of the available techniques, makes him weak in formulating a workable hypothesis. A hypothesis, therefore, needs to be formulated only after due thought has been given to the methods and techniques that can be used for measuring the concepts or variables incorporated in the hypothesis.

However, the insistence for this criterion of a workable hypothesis should not be taken to imply that the formulations of some complex hypotheses or hypotheses that are not related to available techniques and go unamenable to verification are either barred or not worthwhile. It should be noted that posing some interesting complex formulations, even though they, at the time of formulation, are not amenable to the available techniques, may stimulate the growth of innovations in techniques.

5.3.5 Hypothesis should be related to a body of theory or some theoretical orientation

It is needless to re-emphasize here that a researcher, through testing his hypothesis, intends to contribute to the existing fact, theory or science. While formulating his hypothesis, he has to take a serious pause to see the possible theoretical gains of testing the hypothesis. A hypothesis, if tested, helps to qualify, support, correct or refute an existing theory, only if it is related to some theory or has some theoretical orientation. Science can be cumulative only by building on an existing body of fact and theory. Science develops block by block. It cannot develop if each study is an isolated one. A hypothesis related to a body of theory or having some theoretical orientation can only contribute to the development of science. A hypothesis, therefore, must be capable of being brought into the accepted body of knowledge.

However, this does not mean that a hypothesis that does not have some theoretical base throttles ventures into new scientific fields and thereby development of science. A hypothesis imaginatively formulated does not only elaborate and improve existing theory but may also suggest important links between it and some other theories. Thus, exercise of deriving hypothesis from a body of theory may also be an occasion for scientific leap into newer areas of knowledge. 'Theory', observed Parsons, 'not only formulates what we know but also tells us what we want to know.'[108]

Insistence on this criterion, in ultimate analysis, leads to filter out formulation of repetitive hypotheses and testing thereof as they do not take science any further. Moreover, a hypothesis derived from a theory invests its creator with the power of prediction of its future. He, with reasonable certainty, can predict future outcome of his hypothesis based on, or related with, existing theory. The potency of hypothesis in regard to predictive purpose constitutes a great advancement in scientific knowledge. A genuine contribution to knowledge is more likely to result from such a hypothesis. A hypothesis, it is said, to be preferred is one which can predict what will happen, and from which we can infer what has already happened, even if we did not know (it had happened) when the hypothesis was formulated.[109]

5.4 ROLE OF HYPOTHESIS

A hypothesis, which is a provisional formulation, plays significant role in empirical or socio-legal research. It not only navigates research in a proper direction but also contributes in testing or suggesting theories and describing a social or legal phenomenon.

5.4.1 Role of hypothesis in navigating research

[108] Parsons, *The Structure of Social Action*, vol 1 (Free Press, New York, 1962) at 9.
[109] Morris R Cohen & Ernest Nigel, *An Introduction to Logic and Scientific Method* (HarCourt, Brace, New York, 1934) 207.

A hypothesis, regardless of its source, states what a researcher is looking for. It also suggests some plausible explanations about the probable relationships between the concepts or variables indicated therein. In fact, it navigates the research. Without it, no further step is possible in empirical research or non-doctrinal legal research. Cohen and Nagel, highlighting the value of hypothesis in a scientific inquiry, have aptly observed that 'we cannot take a single step forward in any inquiry unless we begin with a suggested explanation or solution of the difficulty which originated it.'[110] Once a researcher knows what is his hypothesis is, he can easily make predictions about its possible answers or explanations and proceed further to seek those answers or explanations. It directs the lines of inquiry and thereby makes it more specific. It is the necessary link between the theory and investigation, which leads to the discovery of additions to knowledge.

A hypothesis, by delimiting the area of research, keeps a researcher on the right track in his research journey. It also helps him in sharpening his thinking and focusing attention on the more important facets of the problem under investigation. Without a hypothesis, a socio-legal research or empirical research becomes 'unfocused' and 'a random empirical wandering'.[111] It prevents a blind search and indiscriminate gathering of masses of data which may later prove irrelevant to the problem under study.[112] The results of the study premised on irrelevant data can only lead to 'facts' with 'unclear meaning'. A hypothesis, thus, helps the researcher in drawing 'meaningful conclusions' supported by 'relevant' empirical data.

A hypothesis serves as a sound guide to: (i) the kind of data that must be collected in order to answer the research problem; (ii) the way in which the data should be organized most efficiently and meaningfully, and (iii) the type of methods that can be used for making analysis of the data.

5.4.2 Role of 'tested' hypothesis

[110] Morris R Cohen and Ernest Nagel, *An Introduction to Logic and Scientific Method*, *ibid*., chap 11, *cited in*, Claire Seltiz, Marie Jahoda, *et. al.*, *Research Methods in Social Relations* (Methuen, London, UK, 1972) at 38.
[111] William J Goode & Paul K Hatt, *Methods in Social Research*, *supra* n 1, at 57.
[112] Pauline V Young, *Scientific Social Surveys and Research*, *supra* n 3.

A hypothesis, as stated earlier, needs to be empirically tested to draw some inferences about the initially posited relationship between the variables indicated in the hypothesis. Therefore, when it is empirically tested (or not), the initially assumed relationship between the concepts or variables, as the case may be, becomes a proved fact. Once a hypothesis is established, it ceases to be a hypothesis. In this sense, a hypothesis also performs the following significant functions:

5.4.2.1 To test theories

A hypothesis, when empirically proved, helps us in testing an existing theory. A theory, as mentioned earlier, is not a mere speculation, but it is built upon facts. It is a set of inter-related propositions or statements organized into a deductive system that offers an explanation of some phenomenon. Facts constitute a theory when they are assembled, ordered and seen in a relationship,. Therefore, when a hypothesis is 'tested', it not only supports the existing theory that accounts for description of some social phenomenon but also in a way 'tests' it.

5.4.2.2 To suggest new theories

It is, however, likely that a hypothesis, even though related to some existing theory, may, after tested, reveal certain 'facts' that are not related to the existing theory or disclose relationships other than those stated in the theory. It does not support the existing theory but suggests a new theory.

5.4.2.3 To describe social phenomenon

A hypothesis also performs a descriptive function. Each time a hypothesis is tested empirically, it tells us something about the phenomenon it is associated with. If the hypothesis is empirically supported, then our information about the phenomenon increases. Even if the hypothesis is refuted, the test tells us something about the phenomenon we did not know before.

5.4.2.4 To suggest social policy

A hypothesis, after its testing, may highlight such 'ills' of the existing social or legislative policy. In such a situation, the tested hypothesis helps us in formulating (or reformulating) a social policy. It may also suggest or hint at probable solutions to the existing social problem(s) and their implementation.

CHECK YOUR PROGRESS

- What is meant by hypothesis? What considerations are generally required to be taken into account while formulating a hypothesis?
- Is formulating a hypothesis an easy task? Identify difficulties in formulating a hypothesis and assess their potentials in diminishing utility of a hypothesis.
- What suggestions would you like to offer to overcome these difficulties?
- Enumerate and discuss different sources of hypothesis with apt illustrations.
- Discuss important characteristics of a workable hypothesis.
- Is hypothesis essential in every social research? Evaluate its relevance and role in a scientific investigation of a socio-legal problem.
- Discuss, with appropriate illustrations, the role of hypothesis in a scientific inquiry.

FURTHER SUGGESTED READINGS

- William J Goode & Paul K Hatt, *Methods in Social Research* (McGraw-Hill, 1952), Chap 6: Basic Elements of the Scientific Method: Hypothesis

- Morris R Cohen and Ernest Nagel, *An Introduction to Logic and Scientific Method*, (HarCourt, Brace, New York, 1934), chap 11

- Melvin H Marx, Hypothesis and Construct, in Melvin H Marx, *Phychological Theory* (MacMillan, New York, 1951), pp 112-128

- T S Wilkinson & P L Bhandarkar, *Methodology and Techniques of Social Research* (Himalaya Publishing House, Mumbai, 16th edn, Reprint 2005), chap 5: Hypotheses: Their Nature and Role in Social Research

- C R Kothari, *Research Methodology: Methods and Techniques* (New Age International Publishers, New Delhi, 2nd edn, 2004, Reprint 2007), chap 9: Testing Hypothesis –I (Parametric or Standard Tests of Hypothesis)

UNIT 6

RESEARCH DESIGN

A research design is the arrangement of conditions for collection and analysis of data in a manner that aims to combine relevance to the research purpose with economy in procedure.

Clair Seltiz

STRUCTURE

UNIT 6

RESEARCH DESIGN

6.1 Introduction

6.2 Major contents of research design

6.2.1 Types of research design

6.3 Role (utility) of research design

OBJECTIVES

At the end of this unit, you will be able to:

- explain research design and considerations in designing it
- explain major steps followed in a research design
- explain the different types of research design and their utility
- explain the role of research design in a scientific investigation

6.1 INTRODUCTION

Once a research problem is formulated clearly enough, the researcher has to think of pursuing it. He has to think about the information that is needed, the way to gather it,

and the manner in which it is analyzed and interpreted. In other words, he has to work out the 'plan' and 'design' of his research.[113]

The process of research design can be explained by an analogy of an architect designing a building. In 'designing' a building, the architect has to consider each decision that is required to be made in constructing the building. Bearing in mind the purpose for which the building is to be used, he has to consider various matters such as how large it will be, how many rooms it will have, how these rooms will be approached, what materials will be used and so on. He considers all these factors before the actual construction begins. He proceeds in this way because he wants a picture of the whole structure before starting construction of any part. This paper-picture helps to visualize clearly the difficulties and inconveniences that he and his assistants would face when the building is under construction and to devise the strategies to overcome them. On the basis of the sketch, he can effect corrections or modifications and make improvements before the actual construction starts. It is obvious that the building may be defective and cause a lot of inconveniences to its users and thus the very purpose for which it is to be constructed may be defeated if careful thought was not given to the matter at the 'designing' stage.[114]

This analogy is applicable with equal force to any research. A researcher has, therefore, to 'design' his research before he pursues it so that he can anticipate the problems that he may encounter during his research journey and can take appropriate precautions and measures to overcome them. Such a design will not only make his research journey less problematic but will also enhance the reliability of his research findings and thereby of its contribution to the existing knowledge.

A researcher, like a building architect, has to take decision about certain aspects of his proposed research before he starts 'designing' his research. The major design decisions, which are required to be taken, are to be in reference to the following aspects:

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[113] For some preliminary remarks also see, '2.10.4 Research Design', *supra*.

[114] See, T S Wilkinson & P L Bhandarkar, *Methodology and Techniques of Social Research* (Himalaya Publishing House, Mumbai, 16th edn, Reprint 2005) 97, and K D Gangrade, Empirical Methods as Tools of Research, in S K Verma & M Afzal Wani (eds), *Legal Research and Methodology* (Indian Law Institute, New Delhi, 2nd edn, 2001) 273 (276-77).

1. What is the study about?
2. What is the purpose of the study and its scope?
3. What are the types of data required?
4. Where can the data needed data be found and what are their sources
5. What will be the place or area of the study?
6. What periods of time will the study include?
7. What time is approximately required for the study?
8. What amount of material or number of cases will be needed for the study?
9. What bases will be used for the selection of the required material /cases?
10. What techniques of data gathering will be adopted?
11. What type of sampling, if required, will be used?
12. How will the data be analyzed?
13. How best can all these questions be decided upon and what should be make so that decisions the research purpose will be achieved with minimum expenditure of money, time and energy?

The consideration of these questions, which, in ultimate analysis, enters into making the decision regarding the what, where, when, how much, and by what means, constitutes research design. However, the decision relating to these questions must be based on convincing and pragmatic grounds. Keeping in view the fact that research is a systematic, scientific investigation of a fact, the design decisions must also be based on an accepted methodology.

Broadly speaking, research design refers to the visualization of the entire process of conducting research before its commencement. It is a planned sequence of the entire process involved in conducting a research study. It is a conceptual structure within which the research is to be conducted.

Research design is the plan, structure and strategy of investigation conceived so as to obtain answers to research questions. The ‘plan’ includes everything the investigator will do from formulating the research problem or the hypothesis to the final analysis of the data and presenting his inferences. The ‘structure’ is the outline, the scheme, or the paradigm of the operation of the variables. While, the ‘strategy’ includes the methods to be used to collect and analyze the data.

However, the 'design' of a research study depends, to a great extent, on the particular purpose that the proposed research is intended to serve. The purpose of research influences the design of study. Research design is closely linked to the investigator's objectives. Research designs, therefore, differ depending on the research purpose just as the plan of a building would depend upon the purpose for which it is intended to be used.

'A research design', against this backdrop, according to Claire Selltiz and others, 'is the arrangement of conditions for collection and analysis of data in a manner that aims to combine relevance to the research purpose with economy in procedure'.[115]

Research design, in this sense, tells the researcher what observations to make, how to make them and how to analyze the quantitative representation of the observations. It constitutes the blueprint for the collection, measurement and analysis of data. It, in a way, guides the investigator in the process of collecting, analyzing and interpreting observations. It also tells him as to what types of statistical analysis to use. It is the logical and systematic planning and directing of a piece of research. 'Research design' is invented to enable the researcher to answer research questions as validly, objectively, accurately, and economically as possible.

Based on the above explanation, one can say that research design possesses three important characteristics. *First*, it is a plan that specifies the sources and types of information relevant to the research problem. *Secondly*, it is a strategy specifying which approach will be used for gathering and analyzing the data. *Thirdly*, it includes the time and cost budgets since most studies are done under these two constraints.

However, it is difficult, though not impossible, to prepare an ideal research design in social science as well as in socio-legal research for two prominent reasons. *First*, sometimes it may not be possible for a researcher to foresee 'everything' and 'visualize' all the contingencies in the beginning of the research. *Secondly*, he, in spite

[115] Claire Selltiz, Marie Jahoda, *et. al.*, *Research Methods in Social Relations* (Holt, Rinehart & Winston, New York, 1962) 50.

of his perfect or near perfection foreseeablity, may encounter with some unforeseen factors or facts on the way of his research journey that need to be handled.

A research design is only tentative in the sense that as the study progresses, new facts, new ideas and new conditions, which may necessitate a change in the original research plan may occur. The researcher has to amend his design to meet these and other similar contingencies. Thus, a research design can be flexible. Research design furnishes guidelines for investigative activity and not necessarily hard-and-fast rules that must remain unbroken. A universal characteristic of any research design is flexibility.

Nevertheless, he needs to translate the research design, with apt modifications, into a working procedure.

6.2 MAJOR CONTENTS OF RESEARCH DESIGN

The term 'research design', as mentioned earlier, refers to the entire process of planning and carrying out a research study. It involves the following major steps:[116]

1. Identification and selection of the research problem.
2. Choice of a theoretical framework (conceptual model) for the research problem and its relationship with previous researches.
3. Formulation of the research problem or hypothesis, if any, to be tested, and specification of its objectives, its scope.
4. Design of experiment or inquiry.
5. Definition and measurement of variables.
6. Identification of the 'suitable population' for the study and of 'sampling' procedures.
7. Tools and techniques for gathering data.
8. Editing, coding and processing of data.
9. Analysis of data-selection and use of appropriate statistical procedures for summarizing data and for statistical inference.

[116] See, Delbert C Miller, *Handbook of Research Design and Social Measurement* (David McKay, New York, 3rd edn, 1970) 3-6 and K D Gangrade, Empirical Methods as Tools of Research, *supra* n 2.

10. Reporting-description of the research process; presentation, discussion and interpretation of data; generalization of research findings and their limitation; and suggestions for further research.

The broad outline of the design of a research study may be re-stated in the following main steps:

1. Formulation of the research problem.
2. Decision about suitable population for the study and setting down the sampling procedure.
3. Devising tools and techniques for gathering data.
4. Determination of the mode of administering the study.
5. Setting the arrangements for the editing, coding and processing of data.
6. Indicating the procedures and statistical indices for the analysis of data.
7. Deciding about the mode of presentation of the research report.

These steps can further be grouped into four major stages: (i) the planning stage, (ii) the design stage, (iii) the operational stage, and (iv) the completion stage. The planning stage includes the identification, selection and formulation of research problem as well as the formulation of hypothesis and its linkage with theory and existing literature. The design stage consists of drawing up the design of the experiment or inquiry, definition and measurement of variables, sampling procedures, tools and techniques of gathering data. The operational stage deals with the drawing of the finances and budgeting, recruitment and training of the staff, if necessary. The completion stage is concerned with analysis and interpretation of data.

Each of these steps of conducting research is a complex one and requires a separate discussion which is not attempted in this Unit. It must, however, be emphasized that several alternatives are possible at every step. Therefore, efficiency of a research design involves in selecting from among the several alternatives at every step, those procedures for the collection and analysis of data, which are most economical as well as most relevant for the purpose of research.

Nevertheless, it is imprtant to list here below some essential considerations that should be taken into account by a researcher while developing each of the research design steps of, particularly a socio-legal problem.[117]

1. Identification and selection of the research problem.

   (i) Presents clear and brief statement of the problem with concepts defined where necessary.
   (ii) Shows that the problem is limited to bounds amenable treatment or test.
   (iii) Describes the background and significance of the problem with reference to one or more of the following criteria:
      (a) Is timely.
      (b) Fills research gap.
      (c) Permits generalization to broader principles of social interaction or general theory.
      (d) Sharpens the definition of an important concept or relationship.
      (e) Has many implications for a wide range of practical or theoretical problems.
      (f) May create or improve an instrument for observing and analyzing data.
      (g) Provides opportunity for gathering data.
      (h) Provides possibility for a fruitful exploration of data with known techniques.

2. Theoretical Framework

   (i) Clearly states the relationship of the problem to a theoretical framework.
   (ii) Demonstrates the relationship of the problem to the previous research studies.
   (iii) Presents alternate hypotheses considered feasible within the framework of the theory.

3. The Hypothesis

   (i) Clearly states the hypothesis selected for test.

[117] See, Delbert C Miller, *Handbook of Research Design and Social Measurement, ibid.*

(ii) Indicates the significance of test hypothesis to the advancement of research and theory.

(iii) Identifies limitations, if any, of the hypothesis.

(iv) Defines concepts or variables (preferably in operational terms).

(a) Independent and dependent variables should be distinguished from each other.

(b) The scale upon which variables are to be measured (quantitative, semi-quantitative, or qualitative) should be specified.

4. Design of the experiment or inquiry and measurement of variables.

(i) Describes ideal design or designs with especial attention to the control of interfering variables.

(ii) Describes selected operational design.

(iii) Specifies statistical tests.

5. Sampling Procedure

(i) Specifies the population to which the hypothesis is relevant.

(ii) Explains determination of size and type of sample.

(iii) Specifies method(s) of drawing or selecting sample.

(iv) Estimates relative costs of the various sizes and types of samples.

6. Methods of Gathering Data

(i) Describe measures of quantitative variables showing reliability and validity when these are known. Describe means of identifying qualitative variables.

(ii) Include the following in description of questionnaires or schedules, if these are used,:

(a) Approximate number of questions to be asked to each respondent.

(b) Approximate time needed for interview.

(c) Preliminary testing of interview and results.

(iii) Include the following in description of interview procedure, if this is used,:

(a) Means of obtaining information, i.e. by direct interview, all or part by mail, telephone, e-chatting, or other means.
(b) Particular characteristics of interviewers must have or special training that must be given them.

7. Working Guide

(i) Prepare working guide with time and budget estimates.
(a) Planning.
(b) Drawing sample.
(c) Preparing observational materials.
(d) Collecting data.
(e) Processing data.
(f) Preparing final report.

8. Analysis of Results

(i) Specify method of analysis.
(a) Use of tables, sorter, computer, etc.
(b) Use of graphic techniques

9. Interpretation of Results

(i) Discusses how conclusions will be fed back into theory.

10. Publication or Reporting Plans

(i) Write these according to Department and Graduate School requirements.
(ii) Select for journal publication the most significant aspects of the problem in succinct form. Follow style and format specified by the journal to which the article will be submitted.

6.2.1 Types of research design

It is important to recall that the purposes of research influence contents of the design of study. Research design is closely linked to an investigator's objectives. Invariably, every research begins with a question or a problem of some sort. Researches are undertaken for various purposes. These purposes, as discussed elsewhere,[118] may be classified under the following four major categories:

7. To gain familiarity with a phenomenon or to gain insight into it with a view to formulate the problem precisely. [Studies having this purpose are known generally as Exploratory of Formulative studies.]
8. To describe accurately a given phenomenon and to determine associations between different dimensions of the phenomenon. [Studies characterized by such aims are known generally as Descriptive studies.]
9. To determine the frequency with which something occurs or with which it is associated or see causal relationships between its different dimensions. [Studies having this purpose are known as Diagnostic studies.]
10. To test a hypothesis suggesting a causal relationship between different variables. [Studies characterized by this purpose are called Experimental studies.]

Research designs, based on these purposes, take different structural forms as well as nomenclature. The research designs that are appropriate for the first, second, third and the fourth purposes indicated above are terminal: (i) exploratory or formulative, (ii) descriptive, (iii) diagnostic, and (iv) experimental or explanatory, respectively.[119]

Some of the distinctive features of these research designs are discussed in brief in the following paragraphs.

(i) Exploratory or formulative research design

[118] See, '2.1.2 Objectives Research', *supra*.
[119] Claire Selltiz and Marie Jahoda, *et. al*., *Research Methods in Social Relations*, *supra* n 3. However, there seems to be disagreement amongst social scientists about ways of classifying research designs used in social science research. See, I H McGrath, *Research Methods and Designs for Education* (International Text Book Co, Scranton, 1970), and Malida White Riley, *Sociological Research 1-Case Approach* (HarCourt, Brace and World, Inc, New York, 1963).

Generally, every research study is built upon the existing stock of our knowledge. The formulation of the problem, spelling out the objectives of the study and formulation of the hypothesis, if required, depend upon the existence of adequate knowledge. But occasionally a researcher may be confronted with a problem in a hitherto uncharted area without sufficient knowledge even to formulate his problem adequately. The researcher has little or no knowledge about the problem. He just wants to 'explore' it. His primary aim is to acquaint with the characteristics of research target. He intends to discover ideas and to have insight into the problem or situation under investigation.

Research design in exploratory studies has to be flexible to provide opportunity for the consideration of different aspects of the problem or situation under study. Inbuilt flexibility in research design is needed because the research problem, broadly defined initially, is transformed into one with more precise meaning.

Generally, the important methods to conduct exploratory studies include (a) a review of the related literature, (b) a survey of people who have had practical experience of the broad problem with the problem to be studied, and (c) an analysis of 'insight-stimulating' cases or examples.[120]

A careful review of literature helps the investigator to formulate his research problem precisely or to develop a workable hypothesis with precise meaning. A review of hypotheses stated in earlier works may also help him in identifying the thitherto-analyzed concepts and theories and deciding utility of the thitherto formulated/tested hypotheses. It also enables the researcher to decide the possibility of any new hypotheses from those concepts and hypotheses. A survey of experienced people and unstructured interactions with them will help the investigator to obtain insight into the problem under investigation and to get clues to the possible hypotheses. It gives him information about the effectiveness or otherwise of the thitherto used methods and procedures used for achieving specific goals. It can also provide information about the practical possibilities for doing different kinds of research. While the third method, i.e. analysis of 'insight-stimulating' cases, involves intensive study of selected instances of the phenomenon under investigation. It helps the researcher to gain

[120] Claire Selltiz and Marie Jahoda, *et. al*., *Research Methods in Social Relations supra* n 3, 53.

information about the cases that exhibit sharp contrasts or have striking features. This diverse information helps him to have insight into the problem under study.

Most exploratory studies use one or more of these three methods. Whatever method is chosen, it must be used with flexibility so that many different facets of a problem may be considered as and when they arise and come to the notice of the researcher. But it is important to remember that exploratory studies merely lead to insights or hypotheses; they do not test them. An exploratory study must always be regarded as simply a first step; more carefully controlled studies are needed to test whether the hypotheses that emerge (from the exploratory study) have general applicability.

(ii) Descriptive and diagnostic research designs

A descriptive research study, as its name suggests, is concerned with describing the characteristics of a particular individual or a phenomenon. It is aimed at detailed description or measuring of the different aspects of a phenomenon, group or community. It is mainly a fact-finding study with adequate interpretation. Such a study, unlike exploratory study, presupposes prior knowledge of the problems to be investigated.

In descriptive studies, the researcher must be able to define clearly what he wants to measure and find adequate methods for measuring. In addition, he must be able to specify the subject is to be included in his 'population' of study and how he is going to collect evidence. In other words, in a such a study, what is needed is a clear formulation of 'what' and 'who' is to be measured, and the techniques for valid and reliable measurements.

A diagnostic research is more directly concerned with causal relationships and with implications for action than a descriptive study. It is more concerned with the frequency with which something occurs or its association with something else.

In fact, there is a very thin line of distinction between descriptive and diagnostic studies. A descriptive study is oriented towards finding out what is occurring while a diagnostic study is directed towards discovering not only what is occurring but also

why it is occurring and what can be done. The former is about 'what is it?' while the latter is concerned with 'why is it?' A diagnostic study is more actively and explicitly guided by hypothesis than a descriptive study. They have a common element of emphasis on the specific characteristics of a given situation.

From the point of view of research design, the descriptive as well as diagnostic research studies, in spite of a thin of distinction between them, share common requirements. The research design of a descriptive and diagnostic study, unlike that of an exploratory study, has to be rigid. It must address and focus on:

(1) *Formulation of the objectives of the study*- The first step in a descriptive as well as diagnostic study is to define, precisely the research problem and the research objectives. This enables him to perceive the required and relevant data.
(2) *Designing the methods of data collection*- After the research problem is formulated, it becomes necessary for the investigator to identify the methods by which the required data are to be obtained. The techniques of data collection must be carefully identified and indicated in the research design.
(3) *Selecting the sample*- The researcher must specify the methods of drawing sample from the identified 'population'.
(4) *Collecting the data*- In the design of his study he must specify the sources of the relevant and required information and the period to which such data are related.
(5) *Processing and analysis of data*- As the collected data need to be processed and analyzed, the researcher must indicate coding and decoding of the collected data and methods of processing and analyzing them.
(6) *Reporting the findings*- Finally, the investigator has to draw a broad outline of his research report for effective communication of his findings to his audience. The layout of the report needs to be well planned so that all things relating to the research study may well be presented in simple and effective style.[121]

(iii) Experimental or explanatory research design

[121] See, C R Kothari, *Research Methodology: Methods and Techniques* (New Age International Publishers, New Delhi, 2nd edn, 2004, Reprint 2007) 37-38.

Experimental studies deal with cause and effect problems. They are concerned with testing the causal hypotheses. However, testing of a causal hypothesis is a very complex matter. At least three kinds of evidence are needed to confirm that the given independent variable (the cause) produces the given dependent variable (the effect). *First*, several independent variables have their effect on a given dependent variable. Therefore, in order to test the effect of a given independent variable, it is necessary to hold constant the effect of other independent variables and to isolate the effect of the given variable. *Second*, it is necessary to show that change in the given dependent variable did not take place before the change in the given independent variable, since the cause ought to precede or be simultaneous with the effect but it should not succeed the effect. *Third*, it is necessary to show that the change in the given independent variable has actually produced change in the given dependent variable; the greater the change in the independent variable the greater the change in the dependent variable.

These three kinds of evidence may be summarized as follows:

1. Ruling out the effect of other causal variables.
2. Causal time sequence between the changes in the independent and dependent variables.
3. Concomitant variation between the independent and the dependent variables.

A descriptive study which is designed to make observations about the reality as it exists can best provide evidence about concomitant variation. To procure the other two kinds of evidence, one has to make observation under controlled conditions. The procedures of making observation under controlled conditions constitute the experiment. The chief requirement of an experiment is to induce change in the given independent variable while holding constant the effect of the other independent variables.

There are different ways of conducting experiments. In the physical and natural sciences laboratories are used extensively for experimentation. But laboratory experiments for studying human behavior are ruled out in most cases for obvious

reasons. However, the use of laboratories is not necessary condition for experimentation. What is important is the logic of making observation under controlled conditions. Utilizing this logic, the social scientists have devised, among other methods, an experimental mechanism of using two groups of subjects, one termed the experimental group and the other, control group.

The subjects in the experimental and the control groups are so chosen that the two groups are similar, if not identical, with regard to the given independent and dependent variables as well as with regard to the various other variables which also exert their causal effect on upon the given dependent variable. Observations and measurements are made at two points of time. First, before the change is induced in the independent variable, the given independent and dependent variables are measured in both the groups. Then change is induced in the given independent variable only in the experimental group. After allowing sufficient time for the impact of the change to be felt on the given dependent variable, the given independent and dependent variables are measured in both the groups for the second time. According to the causal hypotheses, it is expected that at the second point of time there would be greater change in both the given independent and dependent variables in the experimental group as compared with their counterparts in the control group. Existence of such a difference would confirm the hypothesis.

It can be readily seen that the above experimental design is capable of generating simultaneously all the three kinds of evidence which are required for testing a causal hypothesis. The evidence ruling out the effect of other independent variables is secured by equating these variables in both the experimental and control groups, so that whatever effect they produce on the given dependent variable would be of the same order in both the groups. The evidence that the change in the dependent variable did not take place before the change in the given independent variable is ensured by measuring the variables twice-once before inducing the change in the independent variable and a second time after the inducement. The evidence about concomitant variation is obtained by comparing the relationship between the two variables in the two different settings of the experimental and the control groups before and after the inducement of change in the given independent variable in the experimental group.

The experimental design of study poses special problems of equating the experimental and the control groups with regard to the variables to be controlled and of inducing change in the given independent variable, of which the investigator must be aware. As for securing control of the variables in the two groups there are different techniques such as randomization, equated frequency distribution and precision control or control by identical individual pair matching. The investigator should be able to judge as to which one or more of these techniques are appropriate for his study.

The experimental design differs from the descriptive study design, among other respects, in two important ways, inasmuch as the groups studied need not be representative of their population and the variables under investigation are manipulated. Therefore, the term sample survey is not applied to the experimental study.

It has been pointed out that there are different ways of designing an experimental study subject to the adherence of the same logic of experiment. Even as regards the particular experimental mechanism described above, various adaptations and modifications are possible. for instance, although ordinarily observations are made twice in an experimental study-once before the change is introduced in the experimental variable, and a second time after the inducement of change sometimes the study is conducted after the change in the experimental variable has already taken place; but in the latter case the information about the earlier point of time is obtained from the existing records. The experimental study which is designed before the change in the experimental variable is termed the projected experimental design or 'before and after' study, while the latter type is named *ex-post facto* experimental design or 'after only' study.[122]

Pre-planning of an experiment is of fundamental importance in conducting an experiment. As the experimenter is not required to be a passive spectator but an active manipulator of the situation, he must plan out things in advance and their minutest details in order to get the best results. Planning of an experiment consists of the following steps: (i) selection of problem; (ii) selection of setting; (iii) conduction of a

[122] Victor S D'Souza, Design of Study in Empirical Research, in S K Verma & M Afzal Wani (eds), *Legal Research and Methodology* (Indian Law Institute, New Delhi, 2nd edn, 2001) 309 (313-316).

pilot study; (iv) formulation of a research design; (v) collection of data, and (vi) interpretation of results.[123]

6.3 ROLE OF RESEARCH DESIGN

Regardless of the type of research design selected by the researcher or the objectives hoped to achieved, a common function of research design is providing answers to various kinds of questions and to 'guiding' him in his research journey. A methodologically prepared research design may invariably lead to the following advantages:

1. It may result in the desired type of study with useful conclusions.
2. It may lead to reduced inaccuracy.
3. It may give optimum efficiency and reliability.
4. It may minimize the uncertainty, confusion and practical hazards associated with any research problem.
5. It may be helpful for the collection of research material, required data, and testing of hypothesis.
6. It may operate as a 'guide post' for giving research a 'right direction'.
7. It may minimize the wastage of time and beating around the bush.

To be more precise, a research design, regardless of its type, performs one or more of the following functions:

1. *Research design provides the researcher with a blue print of the proposed research* - A researcher, like a building-constructor having a blueprint of the proposed building, can easily foresee and overcome the possible obstacles if he has some kind of research plan to execute. Preparation of research design makes him pay attention to pertinent queries and take decision before beginning his research. For example, if he chooses to study people directly, some possible considerations might be: (i) a description of the target population about which he seeks information, (ii) the 'sampling methods' to be used to obtain 'elements' of sample and to decide the size of sample, (iii) the data collection procedures and techniques to be used to acquire the needed information,

[123] K D Gangrade, Empirical Methods as Tools of Research, *supra* n 2, at 285.

and (iv) the possible ways to analyze the collected data. These problems are given strong considerations in socio-legal research proposal.

2. *Research design dictates boundaries of the research activity* - Research design outlines boundaries of the proposed research endeavor and enables the researcher to channel his energies in a specific direction. Without delineation of research boundaries and/or objectives, a researcher's activities may virtually be endless. The study-plan and structure enables the investigator to reach closer to the proposed research.

3. *Research design enables the researcher to anticipate potential problems in the implementation of the study* - As mentioned earlier, one of the processes of research is review of literature. Literature review, *inter alia*, enables the researcher: (i) to know about new or alternate approaches to the research problem, (ii) to acquire information concerning what can reasonably be expected to occur in his own investigation, and (iii) to have a critical review of the earlier work on the theme of his research so that he can seek some guidelines for improvement.

4. *Research design enables the researcher to estimate the cost of his research, possible measurement of problems and optimal research assistance* - It enables the researcher to estimate the approximate time and financial budget required to accomplish his proposed research.

SELF-CHECK QUESTIONS 1

- What is meant by research design? Why is it important to prepare a research design?
- What decisions a researcher needs to take before designing his research?
- Why is a research design closely linked with the purpose of the research? Explain with illustrations.
- What are the different types of research design?
- Discuss utility and limitations of different types of research design.
- Describe and explain, with apt illustrations, the major steps followed in preparation of a research design.
- Enumerate and explain the different roles of a research design in a scientific inquiry.
- Is research design sacrosanct? Give reasons of your answer.
- Do you agree with the view that research design in exploratory studies has to be flexible while rigid in descriptive and diagnostic studies? Explain and give reasons for your answer.
- Comment upon the framework of a research design of an experimental study and highlight the difficulties in preparing it.
- Write a short note on the significance of 'insight-stimulating' cases or examples in exploratory research studies.
- Explain 'experience survey' and its utility in formulative research studies.
- Discuss the major steps in scientific research and their application in a socio-legal study.
- What type of research design do you suggest for a descriptive study? Prepare a broad outline of such a research design.

CHECK YOUR PROGRESS 2

- Prepare a Model Outline of a Plan for a Study highlighting the considerations that need to take into be account under each step of the design.
- Prepare a research design of a socio-legal researchable problem with which you might be familiar.

- Prepare an ideal research design on:
  (i) Constitutional protection of women and the general prohibition of discrimination on the basis of sex.
  (ii) Abuse of children and the law in Ethiopia.
  (iii) Child employment: Causes and cures.
  (iv) Street children and their rehabilitation.
  (v) Victims of HIV/AIDS and their rehabilitation.
  (vi) Domestic violence: Social and legal responses in Ethiopia.
  (vii) Harmful traditional practices in Ethiopia.
  (viii) Right to a clean and healthy environment.
  (ix) Reformation and rehabilitation of prisoners.
  (x) Legal control of environmental pollution in Ethiopia.
  (xi) Implications of divorce on children.
  (xii) Computer crimes and the law in Ethiopia.
  (xiii) Gender equality and the Criminal Code (2004).

FURTHER SUGGESTED READINGS

- Claire Selltiz, Marie Jahoda, *et. al.*, *Research Methods in Social Relations* (Holt, Rinehart & Winston, New York, 1962) 50 *et seq*

- T S Wilkinson & P L Bhandarkar, *Methodology and Techniques of Social Research* (Himalaya Publishing House, Mumbai, 16th edn, Reprint 2005), chap 7: The Design of Research

- C R Kothari, *Research Methodology: Methods and Techniques* (New Age International Publishers, New Delhi, 2nd edn, 2004, Reprint 2007), chap 3: Research Design

- Black and Champion, *Methods and Issues in Social Research* (1976) 75 *et seq*

- B N Ghosh, *Scientific Method and Social Research* (1984) 179 *et seq*

- Delibert C Millar, *Handbook of Research Design and Social Measurement* (1970)

- Victor S D'Souza, Design of Study in Empirical Research, in S K Verma & M Afzal Wani (eds), *Legal Research and Methodology* (Indian Law Institute, New Delhi, 2nd edn, 2001) 309

- K D Gangrade, Emperical Methods as Tools of Research, in S K Verma & M Afzal Wani (eds), *Legal Research and Methodology* (Indian Law Institute, New Delhi, 2nd edn, 2001) 273

UNIT 7

SAMPLING TECHNIQUES: RANDOM AND NON-RANDOM

Sampling is an important aspect of life in general
and enquiry in particular. We make judgments about people, places
and things on the basis of fragmentary evidence. Sampling considerations pervade all aspects of research and crop up in various forms
no matter what research strategy or investigatory technique we use.

Colin Robson

OBJECTIVES

At the end on this unit, students are expected to:

- define some key concepts used in sampling Method.
- understand the significance of sampling technique in carrying out legal research.
- describe the difference between random and non-random sampling techniques.
- identify various types of sampling techniques .
- describe the respective advantages and disadvantages of the various types of sampling techniques.
- apply sampling technique in legal research.

STRUCTURE

UNIT 7

SAMPLING TECHNIQUES: RANDOM AND NON-RANDOM

7.1 Some key-technical concepts: Population, sub-population, stratification, element, sample, sampling, sampling techniques, sampling-error

7.2 Assumptions underlying in sampling

7.3 Factors to be considered while drawing sample

7.4 Major Sampling Techniques: Random and Non-random

7.4.1 Random sampling techniques: Types with their relative advantages and disadvantages

7.4.2 Non-random sampling techniques: Types with their relative advantages and disadvantages

Review Questions

7.1 INTRODUCTION

Every research begins with a question or a problem of some sort. The aim of research is to discover answers to meaningful questions through the application of scientific procedures. Accordingly, as one form of scientific procedure in carrying out research, there are six major steps in research. These are:

(I) A statement of purpose made in the form of formulation of the problem.

(II) A description of the study designs.

(III) Designing of the technique of sampling.

(IV) Speculation of the methods of data collection.

(V) Classification and tabulation of data.

(VI) Conclusions and interpretation, i.e., Report writing.

As the first two steps have been discussed in the previous chapters, of this chapter discuss the third research step mentioned above. Sampling Method is an important tool in the realm of social science researchers. This unit is concerned with an analysis of this technique with a view to explore the possibility of its use in projects concerning law, judiciary and the vast hitherto untapped field of legal research. In the first section, definition will be provided for some basic concepts and other sections discuss assumptions and factors underlining sampling and explain different techniques of sampling, i.e. random and non-random sampling techniques.

7.1. Definition of some key-technical concepts:

A. Sampling and population? 1 The idea of 'sample' is linked to that of 'population`. The whole group from which the sample is drawn is technically known as universe or population and the group actually selected for a study is known as sample. Population refers to all of the cases. Since it is usually difficult for any researcher to study the entire universe or the total population (people or things) he/she proposes to

investigate, it becomes incumbent upon him/her to select a portion of elements taken from the larger portion or population. Such a portion is referred as a sample and the process of drawing these elements from the larger population or universe is called the sampling method.

The population might be, for example, all benches of Federal and Regional courts in the Ethiopian judicial/justice system. A sample is a selection from the population.(i.e. selection from the given list of benches of the Federal and Regional courts in the Ethiopian judicial/justice system, may be selecting a few benches on the basis of jurisdiction, levels, area/region, etc). There are also some circumstances where it is feasible to survey the whole of a population, for example, when the population interest is manageably small.

Sampling studies are becoming more and more popular in all types of mass studies, but they are especially in case of social surveys. When a social scientist is unable to observe or investigate a total population, he usually gathers data on a part or a sample. The vastness of population and the difficulties of ascertaining the universe make sampling the best alternative in case of social studies. But while selecting a sample, proper care is required by selecting the sample out of the population by scientifically proved methods, minimizing the chances of bias/errors and ultimately acquiring a representative sample.

B. Stratification and sub-population: Stratification is a technique of dividing the whole group from which the sample is drawn/the population into a number of strata or groups, and thereby those strata is called sub-population. Again the reason to adopt these techniques may be the vastness of population or other difficulties of ascertaining the universe by taking samples from the whole population.

7.2 ASSUMPTIONS UNDERLYING IN SAMPLING

The problem of sampling is the third important stage in the field of social research, including the legal research method. It is physically and financially not possible for the researcher to contact each and every person coming under the purview of a social

problem. For example, if the legislatures want to enact a special criminal law prohibiting Domestic Violence in Ethiopia, they will assign the responsibility of conducting a social inquiry to a social scientist/ legal researcher. Then, the social scientist/ the researcher, carrying out a research on the basis of sample data/facts, will come up with recommendation to the issue of the need to enact the law. You can also think, as how much it is difficult to collect relevant information/facts/cases from all levels of Federal and Regional Courts to carry out a research on a selected topic, such as the role of Ethiopian courts in the protection of Women/Child right, unless the researcher uses sampling technique.

Further, it may not be possible to know the names of all those concerned. Exhaustive and intensive study also rendered impossible because of the large numbers. Above all, the main advantage of opting for a sample is that it gives significantly correct results with much less time, money and material. Sampling also becomes necessary as some members of a population can never be studied directly because of lack of accessibility, limited time or prohibitive cost, e.g. no one perhaps undertake a study of all the inhabitants in the world. Taking this natural truth and practical problem into consideration, sampling is an important aspect of life in general and research/enquiry in particular. We make judgments about people, places, institutions and things on the basis of fragmentary evidence. Samples are assumed to represent the total population. Sampling considerations pervade all aspects of research and crop up in various forms no matter what research strategy or investigation techniques we use.

Accordingly, the selection of a sample as representative of the whole group is based upon some assumptions which are given below: (2)

(1) The units or samples selected must have likeness or similarity with other units to make the sampling more scientific.
(2) The sample should be such that it can represent adequately the whole data.
(3) Each unit should be free to be included in the sample.
(4) Absolute accuracy is not essential in the sample method. The results of the sampling method should be such that valid generalizations can be drawn.
(5) The maximum amount of information must be gathered as accurately as possible.

Activity

The Ethiopian Women Lawyers Association wants to carry out research on the following title. The significance of the Ethiopian courts in the protection of women rights: Case based study.

Taking this research topic into consideration, do you think collecting facts/cases related to women rights from all Federal, Regional and City Courts or from each bench, be practical unless sampling technique is employed? Discuss

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7.3 FACTORS TO BE CONSIDERED WHILE DRAWING SAMPLE

In selecting ways of choosing samples for the collection of social and economic data, the best method for any inquiry will depend on both the nature of the population to be sampled, the time and money available for investigation, and the degree of accuracy required. It should, however, be emphasized that a sample ought to be representative of the population under study. Essentially, inference from sample to populations is a matter of confidence that can be placed in the representativeness of the sample. A sample is representative to the degree to which it reflects the characteristics of population.

It must also be stressed that the representativeness of a sample is difficult, if not impossible, to check. It depends upon the degree of precision with which the population is specified, the adequacy of the sample and the heterogeneity of the population. Confidence in the representativeness of a sample is increased if the population is well defined. In another way adequacy of the sample is also an important consideration in case a very small sample is taken. To be adequate a sample must be of sufficient size to allow the researcher to have confidence in the inference. Finally, it must also be stated that representativeness depends on the degree of homogeneity of the population. The more alike the units of the population, the smaller

the sample can be and still be representative. To choose a representative sample is the most difficult exercise in the sampling process. The majority of persons are subject to conscious or unconscious bias or prejudice which causes them to choose a sample which is unrepresentative in some respect.

As it is discussed in part 7.4, below there are many methods of choosing a sample. The most popular and commonly used is the simple random sampling. The other more complex methods include stratified random sampling, proportionate stratified random sampling, disproportionate stratified random sampling, and area or cluster sampling.

To conclude, it is clear that though the procedure of selecting a sample differs according to the type of the sample selected, certain fundamental rules remain the same. These include:

(1) The universe or population must be defined precisely;

(2) Before drawing a sample, the unit of the sample should be defined;

(3) the appropriate source list which contains the names of the units of universe or population from which the sample is to be selected should be prepared before hand in case it does not already exist, and

(4) The size of the sample to be selected should be pre-determined.

7.4 MAJOR SAMPLING TECHNIQUES: RANDOM AND NON-RANMDOM*(3)*

7.4.1.Types of Sampling Techniques: There are various types of sampling plans which are usually divided into based on probability/random samples/where the probability of the selection of each respondent is known/ and on non-probability/non-random samples(where it is not known). In probability sampling, statistical inferences about the population can be made from the responses of the sample. For this reason, probability sampling is sometimes referred to as representative sampling. The sample is taken as representative of the population. In non-probability samples, you cannot make such statistical inferences. It may still be possible to say something sensible about the population from non-probability samples-but not on the same kind of statistical grounds.

Besides this broad classification, a number of methods are used for drawing samples, and they can be grouped into the following: (1) Simple random sampling; (2) purposive sampling; (3) stratified sampling: (4)quota sampling; (5)multistage sampling;(6)convenience sampling; and (7) self selecting sampling. These methods are categorized into the two broad classifications of sampling techniques. Here, discussion of each method will be made classifying them under the umbrella of the broad classification. Furthermore, other types of probability and non-probability sampling methods will also be discussed. In this chapter, the phrases probability sampling and random sampling; and the phrases non-probability sampling and non-random sampling will be used interchangeably, respectively.

7.4.2 Probability/Random sampling techniques:

As to the size of a sample, while probability samples allow you to generalize from sample to population, such generalizations are themselves probabilistic. The larger the sample, the lower the likely error in generalizing may be. Probability samples are classified into the following five types of sampling methods:

a. Simple random sampling- This involves selection at random from the sampling frame of the required number of persons for the sample. If properly conducted, this gives each person an equal chance of being included in the sample, and also makes all possible combination of persons for a particular sample size equally likely. So, random sampling is the form applied when the method of selection assures each element or individual in the universe an equal chance of being chosen. It is more suitable in more homogeneous and comparatively larger groups. A random sample can be drawn either by lottery method or by using Tipett's number or by grid system or by selecting from sequential list.

b. Systematic sampling- This involves choosing a starting point in the sampling frame at random, and then choosing every n^{th} person. Thus if a sample of fifty is required from a population of 2,000, then every fortieth person is chosen. The problem of simple random and systematic samplings is, that both require a full list of the population, and getting this list is often difficult.

c. Stratified random sampling- This involves dividing the universe or population into a number of groups or strata, where members of a group share a particular characteristic or characteristics(e.g. stratum A may be females; stratum B males). There is then random sampling within the strata. It is usual to have proportionate sampling. It may sometimes be helpful to have dis-proportionate sampling, where there is an unequal weighting. It is possible to combine stratification with systematic sampling procedures. It is the combination of both random sampling and purposive selection. In the selection of strata, we use purposive selection method, but in selecting actual units from each stratum, random method is used.

Sampling theory shows that, in some circumstances, stratified random sampling can be more efficient than simple random sampling, in the sense that, for a given sample size, the means of stratified samples are likely to be closer to the population mean. This occurs when there is a relatively small amount of variability in whatever characteristic is being measured in the survey within the stratum, compared to variability across strata. The improvement in efficiency does not occur if there is considerable variability in the characteristic within the stratum.

d. Cluster/Area sampling- This involves dividing the population into a number of units, or clusters, each of which contains individuals having a range of characteristics. The clusters themselves are chosen on a random basis. The subpopulation within the cluster is then chosen. This tactic is particularly useful when a population is widely dispersed and large, requiring a great deal of effort and travel to get the survey information.

An example might involve school children, where there is initially random sampling of a number of schools, and then testing of all the pupils in each school. This method has the valuable feature that it can be used when the sampling frame is not known (e.g. when we do not have full list of children in the population, in the above example).

e. Multistage sampling- This is an extension of cluster sampling. This method is generally used in selecting a sample from a very large area. It involves selecting the sample in stages, i.e. taking samples from samples. Thus one might take a random

sample of schools, then a random sample of the classes within each of the schools, and then from with in selected classes choose a sample of children. As with cluster sampling, this provides a means of generating a geographically concentrated sampling.

It is also possible to incorporate stratification into both cluster and multistage sampling. Judging the relative efficiencies of these more complicated forms of sampling, and their relationship to the efficiency of simple random sampling, is difficult, and if you are expending considerable resources on a survey it is worth seeking expert advice.

7.4.3. Non-probability/Non-random Sampling techniques: *(4)*

In probability sampling it is possible to specify the probability that any person (or other unit on which the survey is based) will be included in the sample. Any sampling plan where it is not possible to do this is called 'non-probability sampling`. Small-scale surveys commonly employ non-probability samples. They are usually less complicated to set up and are acceptable when there is no intention or need to make a statistical generalization to any population beyond the sample surveyed. They typically involve the researcher using his judgment to achieve a particular purpose, and for this reason are sometimes referred to as purposive samples.

A wide range of approaches has been used. The first two, quota and dimensional sampling, basically try to do the same job as a probability sample, in the sense of aspiring to carry out a sample survey which is statistically representative. They tend to be used in situations where carrying out a probability sample would not be feasible , where, for example, there is no sampling frame, or the resources required are not available. Their accuracy relies greatly on the skill and experience of those involved. The types of non probability sampling methods will be presented in short as follows:

a. Quota sampling- Here the strategy is to obtain representative of the various elements of a population, usually in the relative proportions in which they occur in the population. Quota sampling is a special form of stratified sampling. According to this

method, the universe is first divided into different strata. Then the number to be selected from each stratum is decided. This number is known as quota.

b. Dimensional Sampling- It is an extension of quota sampling. The various dimensions thought to be of importance in a survey are incorporated into the sampling procedure in such a way that at least one representative of every possible combination of these factors or dimension is included.

c. Convenience sampling-It involves choosing the nearest and almost convenient persons to act as respondents. The process continues until the required sample size is reached. It is sometimes used as a cheap and dirty way of doing a sample survey. You do not know whether or not findings are representative. This is probably one of the most widely used and least satisfactory methods of sampling.

This method is generally known as unsystematic, careless, accidental or opportunistic sampling. According to this system, a sample is selected according to convenience of the field workers or researchers. The convenience may be in respect of availability of source list and accessibility of the units. It is used when universe or population is not clearly defined, sampling unit is not clear or a complete source list is not available.

c. **Purposive sampling-** The principle of selection in purposive sampling is the researcher's judgment as to typicality or interest. A sample is built up which enables the researcher to satisfy his/her specific needs in a research project. Accordingly, when the researcher deliberately or purposively selects certain units for study from the population it is known as purposive selection. In this type of selection the choice of the selector is supreme and nothing is left to chance. It is more useful especially when some of the units are very important and, in the opinion of the researcher, must be included in the sample.

Merits

(1)If this method is properly followed a small sample can be representative.

(2) In this method the researcher has the final say on the election.

Demerits

(1) The selection is biased and prejudiced.

(2) The results drawn are unscientific and inaccurate.

e. Snowball sampling- Here the researcher identifies one or more individuals from the population of interest (for e.g. selecting a few judges, prosecutors or advocates for interview in conducting research on effectiveness and efficiency of the Federal judiciary system). After they have been interviewed, they are used as informants to identify other members of the population, who are themselves used as informants, and so on. Snowball sampling is useful when there is difficulty in identifying members of the population, e.g. when this is a clandestine group. It can be seen as a particular type of purposive sample. Both approaches tend to be used in field work types of research, particularly in case studies and where participant observation is involved.

7.4.4. Other types of samples- other types of sample may be used for special purposes. They include the following *:(5)*

- Time samples- Sampling across time. It is commonly used in observational studies.
- Homogeneous samples- covering a narrow range or single value of a particular variable or variables.
- Heterogeneous samples- A deliberate strategy of selecting individuals varying widely on the characteristic (s) of interest.
- Extreme case samples- Concentration on extreme values when sampling, perhaps where it is considered that they will throw a particularly strong light on the phenomenon of interest
- Rare element samples- values with low frequencies in the populations are over-represented in the sample; the rationale is similar to the previous approach.
- Self selected people-Sometimes a sample is not actually selected but people themselves opt to be included or not to be included in a sample. For example, when an enquiry is to be made about the opinion of people about a particular legislation and an announcement to this effect is made on the radio, the sample is also not fixed.

7.4.5 Advantages and **Disadvantages of Sampling**: *(6)*

A. Importance of Sampling in Social /Legal Research-The sampling technique is very widely used nowadays. Due to the following factors it has occupied an important place in social research:

(1) With the help of this method a large number of units can be studied**.** When the area is very large this method can be applied easily.

(2) This method saves a lot of time, energy and money.

(3) When all the units of an area are homogenous sampling technique is very useful.

(4) Intensive study is possible through this method.

(5) When the data are unlimited, the use of this method is very useful.

(6) When cent per cent accuracy is not required the use of sampling technique becomes inevitable.

B. Advantages/Merits of Sampling: The sample survey provides a flexible method that can be adapted to almost every requirement of data collection. It covers many circumstances in which inferences about population are required. The advantages/merits of sample surveys are usually summed up as follows:

(1)Economy: This includes economy of cost and of time because only a limited number of units have to be examined and analyzed. Generally, sample study requires less money. The space and equipment required for this study are very small, for it involves the study of a smaller number of cases.

(2) Accuracy: The quality of data collected should be better because the quality of enumeration and supervision can be higher than in a census. It ensures completeness and a high degree of accuracy due to small area of operation.

(3) Adaptability: Many topics, particularly those involving detailed transactions of individuals or households, can not conceivably be covered by a census. A sample is the only mode of inquiry available.

(4)Feasibility: The administrative feasibility of a sampling plan as compared to the complex organization required for a census of the total population.

(5)Organizational Facilities-Sampling involves very few organizational problems as is conducted by few enumerators.

(6) Reliable Inferences-The data collected by well-trained investigators on a sample basis are quite reliable.

(7) Intensive in nature-Since the area of the study is quite small a detailed and intensive study is possible through this method.

(8) Vast Data- When the numbers of units are very large, or the units are scattered, sampling technique is very useful, and can be conducted in a convenient manner.

Sampling methods can be applied to many kinds of data. For example, they can be used to know people's reaction and response to some controversial piece of legislation or lawyers` reaction to any judgment of a court or the possible consequences or implications of a court decision to constitutional provision in a given situation.

C. Sampling error and Demerits of Sampling:

1. Although one of the advantages of the sampling method is that it saves both time and money and obtains information that could not be obtained in any other way, the method is not free from errors. As a sample includes a few members of the group or population which is being sampled, necessarily excluding the others, the information from samples is unlikely to be completely accurate. A sample average, for example, will almost certainly differ from that which would have been obtained from the whole population, had such an inquiry been possible or undertaken. This difference is known as sampling error, and the usefulness of the sample results must depend on the size of this error and the possibility of measuring it. These sampling errors are also aspects of disadvantages of the sampling method.

The size of these errors depends on three factors: First, the size of the sample. Results from large samples are generally more reliable than results from small samples. Second, the variability of the population or group from which it is taken. Thus, if the members of the population are all alike, every sample will give the sample result; but the more the members of the population differ amongst themselves, the greater the error that can be introduced into the sample by the inclusion of some individuals and the exclusion of others. Third, the way the sample is chosen. Obviously a researcher requires a sample which is free from bias and representative of the population of which it is a part. This can only be achieved in practice by using some form of random or scientific sampling.

2. **Demerits of Sampling-**Sampling technique have the following demerits:

(i) Less Accuracy- If the method of sampling is faulty, the conclusions derived from this become inaccurate.

(ii) Difficulties in Selecting a Representative Sample- If the phenomena are of complex nature, the selection of representative sample is very difficult.

(iii) Changeability of Units- If the units are not homogenous, the sampling technique will be hazardous and unscientific.

(v) Need of Specialized Knowledge- The sampling technique becomes scientific and successful when it is done by specialized investigators. If this is done by ordinary people the conclusions derived from this technique may be biased and sometimes entirely wrong.

D. Advantages and Disadvantages of Random Sampling

1. Advantages of Random Sampling

(i) The random sampling method is more representative since in this method, each unit has equal chance to be selected.

(ii) There is no scope for bias and prejudices.

(iii) The method is very simple to use.

(iv) It is easy to find out the errors in this method.

2. **Disadvantages of Random Sampling**

(i) If the units or items are widely dispersed, the selection of sample becomes impossible.

(ii) If the units or items are heterogeneous in nature or different size and nature, the random sampling method becomes inapplicable.

(iii) Strictly speaking the random sampling method is not very often possible. Instead of random selection generally the investigator seeks chance selection.

Unit Summary

SAMPLING TECHNIQUES

Cary of the following:

- ❖ Definitions of some key-technical concepts in sampling techniques: Population, sub-population, stratification, element, sample, sampling, sampling techniques, sampling-error.
- ❖ The significance of sampling technique in legal research.
- ❖ The distinction between random and non-random sampling techniques.
- ❖ Assumptions underlying in sampling.
- ❖ Factors to be considered while drawing sample /in Choice of Samples.
- ❖ Various types of random, non-random and other sampling techniques.
- ❖ Advantages/merits and limitations/demerits of sampling method in general and each types of sampling techniques in particular.

Foot notes

1. Colin Robson, Real World Research (Blackwell Publishing, 2002); and

   S. K. Verma and M.Afzal Wani (eds), *Legal Research and Methodology* (Indian Law Institute, 2001)

   2. S. K. Verma and M.Afzal Wani (eds), cited above at note 1, p.442

3. Cited above at note 1 pp.261-268 and 318-328, respectively.
4. Ibid.
5. Colin Robson cited above at note 1, p.266.
6. S. K. Verma and M.Afzal Wani (eds), cited above at note 1, pp.318-321 and pp.440-447

UNIT 8

BASIC TOOLS OF DATA COLLECTION

…… The heart of any research design is the collection of data.

There are two sources of data –the primary and the secondary….

The primary data is collected mainly through questionnaire and interview schedule….

K.D.Gangrade

STRUCTURE

UNIT 8

BASIC TOOLS OF DATA COLLECTION

8.1 Interview

8.2 Interview Schedule

8.3 Questionnaire

8.4 Observation

8.4.1 Participant observation: Advantages and limitations

8.4.2 Non-participant observation: Advantages and limitations

OBJECTIVES

At the end of this unit, students are able to:

- identify the various types of research data collection tools;
- appreciate the significance of collecting facts/data and techniques of data collection in the legal research process;
- understand the rules to be followed in using interview, questionnaire, and observation as tools of data collection;

- describe the advantages and disadvantages of each types of tools of data collection; and
- apply the tools in carrying out legal researches;

INTRODUCTION

Analysis based on social science research methods has revolutionized the legal system. The effective and efficient administration of justice will require a penetrating study of social phenomenon using research tools and techniques. The heart of any research is collections of data. There are two sources of collecting data- the primary and the secondary. In the first, the data is directly collected from the respondent, whereas in the second the main source is published and unpublished material. This is often called library research as well. Several devices are also employed to collect primary data. In this unit we will discuss three important basic tools and techniques: Interview, Questionnaire and Observation.

8.1 INTERVIEW

▪ What are interviews? Does interview need any rule to be complied with?

Interviewing, as a research method, typically involves you, as researcher, asking questions, and hopefully, receiving answers from the people you are interviewing. It is very widely used in social research including the legal research. There are many types of interview.

8.1.1 Types and styles of interview *(1)* – The form of interviews may vary widely. A commonly made distinction is based on the degree of structure or standardization of interview. Interviews may range all the way from the rigidly standardized to a completely unstructured interview.

1. **Fully structured interview**- has predetermined questions with fixed wording, usually in a pre-set order. The use of mainly open-response questions is the only essential difference from an interview-based survey questionnaire.

2. **Semi-structured interview-** It has predetermined questions, but the order can be modified based upon the interviewer's perception of what seems most appropriate. Question wording can be changed and explanations given; particular questions which seem inappropriate with a particular interviewee can be omitted, or additional ones included.

3. **Unstructured interviews**- The interviewer has a general area of interest and concern, but lets the conversation develop within this area. It can be completely informal. Here, both the questions asked and responses given are left flexible and open. Semi structured and unstructured interviews are widely used in flexible, qualitative designs and they are referred as qualitative research interviews.

8.1.2 General advice for interviewers *(2)*

The interview is a kind of conversation, something that we all have had experience in doing. Your job, as interviewer, is to try to get interviewees to talk freely and openly. Your own behavior has a major influence on their willingness to do this. To this end, you should:

1. 1.listen more than you speak-Most interviewers talk too much. The interview is not a plat form for the interviewer's personal experiences and opinions.

2. put questions in a straight forward, clear and non-threatening way. If people are confused or defensive, you will not get the information you seek.
3. eliminate cues which lead interviewees to respond in a particular way. Many interviewees will seek to please the interviewer by giving 'correct' responses
4. enjoy it (or at least look as though you do). Do not give the message that you are bored or scared. Vary your voice and facial expression. It is also essential that you take a full record of the interview. This can be from notes made at the time and/ or from a recording of the interview. Experienced interviewers tend to have strong preferences for one or other of these approaches.

8.1.3. Content of interview *(3)*

In interviews which are to a greater or lesser extent pre-structured by the interviewer, the content, which can be prepared in advance, consists of:

- a set of items (usually questions) often with alternative subsequent items depending on the responses obtained;
- suggestions for so -called probes and prompts;
- and a proposed sequence for the questions which, in a semi-structured interview, may be subject to change during the course of the interview.

The items or questions *(4)*-Three main types are used in research interviews: closed (or fixed-alternative), open and scale items. Closed questions, as the fixed-alternative label suggest, force the interviewee to choose from two or more fixed alternatives. Open questions provide no restrictions on the content or manner of the reply other than on the subject area. Scale items ask for a response in the form of degree of agreement or disagreement.

The advantages of open-ended questions are that they:

- are flexible;
- allow you to go into more depth or clear up any misunderstandings;
- enable testing of the limits of a respondent's knowledge;
- encourage co-operation and rapport;
- allow you to make a truer assessment of what the respondent really believes;
- can produce unexpected or unanticipated answers.

The disadvantages lie in the possibilities for loss of control by the interviewer, and in particular in responses being much more difficult to analyze than those from the closed ones;

Probes- A probe is a device to get interviewees to expand on a response when you intuit

that they have more to give. There are tactics, such as asking 'anything more?' or

'would you go over that again?' or using a period of silence, or an enquiring

glance, etc.

Prompts- They suggest to the interviewee the range or set of possible answers that the interviewer expects. The list of possibilities may be read out by the interviewer, or a 'prompt card' with them can be shown (e.g a list of names of alcoholic drinks for a question on drinking habits).

8.1.4 **Questions to avoid in interviews** :(5) in conducting interview the interviewer should avoid the following forms of questions.

- Long questions- The interviewee may remember only part of the question, and respond to that part.
- Double barreled (multiple-barreled) questions.
- Questions involving Jargon- Generally you should avoid questions containing words likely to be unfamiliar to the target audience.
- Leading questions-Modify such questions if you realize that they are leading in a particular direction.
- Biased questions- provided that you are alert to the possibility of bias, it is not difficult to write unbiased questions.

8.1.5 **The sequence of questions** (6)

A commonly used sequence is as follows:

1. Introduction- Interviewer introduces herself, explains purpose of the interview, assures of confidentiality, and asks permission to tape and / or make notes.
2. 'Warm-up' - Easy, non -threatening questions at the beginning to settle down both of you
3. Main body of interview- covering the main purpose of the interview in what the interviewer considers to be a logical progression.
4. 'Cool-off'-Usually a few straight forward questions at the end to defuse any tension that might have built up.
5. Closure- Thank you and goodbye.

a. Interview may be conducted with face-to face interviewing, telephone interviewing and in this computerization age even through electronic (e-mail) communication.

8.1.6. Advantages and Disadvantages of Interviews (7)

- The interview is a flexible and adaptable way of finding things out.
- Face to face interviews offer the possibility of modifying one's line of enquiry, following up responses and investigating underlying motives in a way that postal and self-administered questionnaires cannot. Non-verbal cues may give messages which help in understanding the verbal response, possibly changing or even, in extreme cases, reversing, its meaning.
- Although interviewing is in no sense soft option as a data-gathering technique, it has the potential of providing rich and highly illuminating material.
- Interviewing is time-consuming, and it could have the effect of reducing the number of persons willing to participate.
- All interviews require careful preparation-making arrangements to visit, securing necessary permissions which take time; confirming arrangements, rescheduling appointments to cover absences and crises takes more time.

8.2 INTERVIEW SCHEDULE

Interviewing itself is an art, but the planning and writing of an interview schedule is all the more so. The purpose of a schedule is to provide a standardized tool for observation or for interview in order to attain objectivity. By schedule every informant has to reply the same question put in the same language and the researcher has no choice to get the desired reply by putting a different question or changing the language of the same question. The order of the questions is also the same and thus the whole interview takes place under standardized conditions and the data received is easily comparable. The other purpose of schedule is to facilitate the work of tabulation and analysis. In fact, the questions are formed while keeping the tabulation plan in mind.

8.2.1. Procedure for framing a schedule: While framing a schedule, the first question to be asked is, what are the different aspects of the problem? The problem under study should first of all be split up into various aspects. The determination of these aspects will depend upon clear understanding of the problem under study. The next question to be decided is what information is necessary? For this purpose each aspect has again to be broken up into a number of subparts. These subparts should be exhaustive enough to give a full and complete picture of the aspect under study. The third step is the framing of actual questions. This part deals with the form and wordings of the questions. More than one question may be asked to get complete information about the particular aspect. When information can not be secured through direct questions, indirect questions may be resorted to. This part is the most vital part of the schedule and any error in it may invalidate the whole enquiry through biased, incorrect, incomplete or irrelevant information. The fourth step is general layout of the schedule and arrangement of questions. Once the questions have been given definite form, the next problem is to bring them in proper form. The last step is testing the reliability and validity of schedule. After the schedule has been prepared, it has to be tested on a sample population to find out if any discrepancies have crept in. Ultimately it may be amended in the light of the experience thus gained.

8.2.2. Contents of Schedule:

The whole schedule may be divided into three parts according to the nature of contents :(1) Introductory part, (2) main schedule, and (3) instructions to the interviewer or observers.

1. *Introductory part*-This part contains introductory information about the schedules and respondent. It is more or less common to all the general information about the interviewee, e.g., his name, address, age, sex, post held, education, etc.
2. (2) *Main schedule*- After the preliminary part come the main portion of the schedule. It is the most vital part and to be prepared with great care. The schedule consists of question as well as blank table where information to be supplied by the interviewee has to be filled in.
3. (3) *Instructions to interviewers*-The schedule generally contain exhaustive instructions for the interviewers. Although they are personally explained and even practically trained in the work, still instruction in writing are necessary.

8.3. SURVEYS AND QUESTIONNAIRES (7)

8.3.1. What is survey?

- What are their characteristics?
- What relationships do survey and questionnaire have? Surveys are common. As they have different forms, it is difficult to give a concise definition, precisely because of the wide range of studies that have been labeled as surveys. The typical central features are:
- the use of a fixed, quantitative design;
- the collection of a small amount of data in standardized form from a relatively large number of individuals;
- the selection of representative samples of individuals from known populations.

In some situations, you may be able to survey all the population rather than a sample where a considerable amount of data is collected from each individual. Bryman (1989) provides the following definition:

‘‘Survey research entails the collection of data on a number of units and usually at a single juncture in time, with a view to collecting systematically a body of quantifiable data in respect of a number of variables which are then examined to discern patterns of association."

Practicalities will often dictate that data are collected over a period of weeks or even months, but they are treated as if collection were simultaneous. Survey may be questionnaire based, interview based or observational based.

Advantages and Disadvantages of surveys- Researchers tend to have strong, frequently polarized, views about the place and importance of surveys. Some see the survey as the central 'real world' strategy compared to laboratory based experiments. Survey is also viewed as generating large amounts of data often dubious value as uninvolved respondents may give different data. The reliability and validity of survey

data depend on a considerable extent on the technical proficiency of those running the survey. If the questions are incomprehensible or ambiguous, the exercise is obviously a waste of time. This is a problem of internal validity, where we are not obtaining valid information about the respondents and what they are thinking, feeling, doing, etc.

The problem of securing a high degree of involvement by respondents to a survey is more intractable. This is particularly so when it is carried out by post, but is also difficult when the survey is carried out fact-to-face. If the sampling is faulty, this produces a generalizabilty or external validity problem such as that we cannot generalize our findings. Another type of external validity problem occurs if we seek to generalize from what people say in a survey to what they actually do.

Notwithstanding all these caveats, a good, competently run survey is something all generalist real world researchers should be able to offer. Surveys provide the sort of data which are not difficult for an intelligent lay audience to understand, particularly an audience which is scientifically literate.

8.3.2 Questionnaire: It refers to a set of questions that a lot of people are asked as way of getting information about what people think or do generally. The questions are usually systematically written and printed on papers. Most kinds of researches including legal research method involve the use of a questionnaire as the basic approach to fact or information collection. Most surveys also involve use of a questionnaire as the basic approach to survey data collection. There are three major ways in which questionnaire is administered:

- **Self-completion-**Respondents fill in the answers by themselves. The questionnaire is often sent out by post, permitting large samples to be reached with relatively little extra effort
- **Face-to-face interview-** An interviewer asks the questions in the presence of the respondent, and also completes the questionnaire.
- **Telephone interview**- The interviewer contacts respondents by phone, asks the questions and records the responses.

- Responses in surveys are usually sought from individuals, although that individual might be responding on behalf of a group or organization. The format and appearance of the questionnaire will vary depending on the method of data collection selected.

A. Advantages and disadvantages of questionnaire -based surveys

Disadvantages

General to all surveys using respondents

1. Data are affected by the characteristics of the respondents (e.g their memory; knowledge; experience; motivation; and personality).
2. Respondents will not necessarily report their beliefs, attitudes, etc accurately (e.g there is likely to be a social desirability response bias- people responding in a way that shows them in a good light).
   a. Postal and other self-administered surveys
3. Typically have a low response rate. As you don't usually know the characteristics of non-respondents, you don't know whether the sample is representative.
4. Ambiguities in, and misunderstandings of, the survey questions may not be detected.
5. Respondents may not treat the exercise seriously, and you may not be able to detect this.

   Interview surveys

6. Data may be affected by characteristics of the interviewers (e.g their motivation; personality; skills; and experience). There may be interviewer bias, where the interviewer, probably unwittingly, influences the responses (e.g through verbal or non-verbal cues indicating 'correct' answers).
7. Data may be affected by interactions of interviewer/respondent characteristics (e.g. whether they are of the same or different class or ethnic background).
8. Respondents may feel their answers are not anonymous and be less forthcoming or open.

B. Advantages

General to all surveys using respondents

1. They provide a relatively simple and straightforward approach to the study of attitudes, values, beliefs and motives.
2. They may be adapted to collect generalizable information from almost any human population.
3. high amounts of data standardization.

Postal and other self-administered surveys

4. Often this is the only, or the easiest, way of retrieving information about the past history of a large set or people.
5. They can be extremely efficient in providing a large amount of data, at relatively low cost and in a short period of time.
6. They allow anonymity, which can encourage frankness when sensitive areas are involved.

Interview surveys

7. The interviewer can clarify questions.
8. The presence of the interviewer encourages participation and involvement (and the interviewer can judge the extent to which the exercise is treated seriously).

Notes: Advantages 4 and 5 may be disadvantages if they seduce the researcher into using a survey when it may not be the most appropriate strategy to answer the research question(s). The telephone survey is a variation of the interview survey which does not involve face-to-face interaction and has rather different advantages and disadvantages.

8.3.3 Guidelines for preparing questionnaire (8) -The central part of the survey questionnaire is devoted to the survey questions which derive from your research questions. Their wording is crucially important. For this reason, here you are provided with 16(sixteen) guidelines in the form of suggestions for avoiding the most obvious problems in question wording. They are also called characteristics of good

Questionnaire. The preparation of good questionnaire is a highly skilled art. The requisites of a good questionnaire are given below:

1. Keep the language simple. Avoid jargon. Seek simplicity but avoid being condescending.
2. Keep questions short. Long and complex questions are difficult to understand.
3. Avoid double-barreled questions. Such questions ask two questions at once.(e.g Is your key worker caring and supportive?").Split into separate questions.
4. Avoid leading questions. Leading questions encourage a particular answer.(e.g Do you agree that....)
5. Avoid questions in the negative. Negatively framed questions are difficult to understand; particularly when you are asked to agree or disagree.
6. Ask questions only where respondents are likely to have the knowledge needed to answer.
7. Try to ensure that the questions mean the same thing to all respondents. Meanings and terms used may vary for different age groups, regions, etc.
8. Avoid a prestige bias- This occurs when a view is linked with a prestigious person before asking the respondent's view.
9. Remove ambiguity. Take great care with sentence structure.
10. Avoid direct questions on sensitive topics (in interview situations). Several indirect strategies are possible (e.g. using numbered cards with the alternatives; respondent gives relevant number).
11. Ensure that the question's frame of reference is clear. When asking for frequency of an event, specify the time period.
12. Avoid creating opinions. Respondents do not necessarily hold opinions on topics. Allow a no opinion alternative
13. Use personal wording if you want the respondents own feelings, etc. Impersonal wording gives their perception of other people's attitudes.
14. Avoid unnecessary or objectionable detail.
15. Avoid prior alternatives. Give the substance of the question first, then the alternative. Not the reverse.

16. Avoid producing response sets/particularly in interview situations/.

8.4. OBSERVATIONAL METHODS (9)

What is observational method of research data collection? How does it differ from the above discussed methods/tools?

As the actions and behaviour of people are central aspects in virtually any enquiry, a natural and obvious technique is to watch what they do, to record this in some way and then to describe, analyze and interpret what we have observed. Much research with people involves observation in a general sense.

Fundamentally different approaches to the use of observation methods in enquiry have been employed. Two popular extreme types are participant observation and structured observation. Participant observation is an essentially qualitative style which has been used in variety of disciplines including in the legal profession. Participant observation is a widely used method in flexible designs, particularly those which follow an ethnographic approach. Structured observation is almost exclusively linked to fixed designs of both experimental and non-experimental types.

Concentration on these two approaches has tended to eclipse a third one, which may be styled unobtrusive observation. Its defining characteristic is that it is non-participatory in the interests of being non-reactive. It can be structured but is more usually unstructured and informal. Both extremes have their own advantages and limitations.

8.4.1 Observation in Real world Research

Observation, in part, because it can take on a variety of forms, can be used for several purposes in a study. It is commonly used in an exploratory phase, typically in an unstructured form, to seek to find out what is going on a situation as a precursor to

subsequent testing out of the insights obtained. For this purpose, the unobtrusive observation approach is most appropriate.

Observation can also be used as a supportive or supplementary method to collect data that may complement or set in perspective data obtained by other means. Suppose that the main effort in a particular study is devoted to a series of interviews, observation might then be used to validate or corroborate the messages obtained in the interviews.

8.4.2 Approaches to observation-Classifying observational methods

One important dimension of the difference in approaches to observation is the degree of pre-structure in the observation exercise. This can be dichotomized as formal or informal observation. Informal approaches are less structured and allow the observer considerable freedom in the information gathered and how it is recorded. They would include note taking and generally gathering information from informants. Formal approaches impose a large amount of structure and direction on what is to be observed. The observer has only to attend to these pre-specified aspects; everything else is considered irrelevant for the purposes of the study.

A second dimension, in practice by no means is independent of the formality/structure dimension, connecting the role adopted by the observer in the situation observed. Specifically, this relates to the extent of participation in that situation.

The classes of observational methods in both dimensions will be discussed as follow:

1. Participant observation- A key feature of participant observation is that the observer seeks to become some kind of a member of the observed group. This involves not only a physical presence and a sharing of life experiences but also entry into their social and 'symbolic' world through learning their social conventions and habits, their use of language and non verbal communication, and so on. The observer also has to establish some role within the group. The primary data are the interpretations by the observer of what is going on around him. The observer is the research instrument, and hence great sensitivity and personal skills are called for if worthwhile data are to be collected.

Participant observation might be useful in a small project: with small groups, for events or processes that take a reasonably short time , for frequent events, for activities that are accessible to observers, when your prime motivation is find out what is going on, and when you are not short of time.

2. The complete participant- The complete participant role involves the observer concealing that she is an observer, acting as naturally as possible and seeking to become a full member of the group.

3. The participant as observer- It is a feasible alternative to have the participant as observer role. The fact that the observer is an observer is made clear to the group from the start. The observer then tries to establish close relationships with members of the group. This stance means that as well as observing through participating in activities, the observer can ask members to explain various aspects of what is going on. It is important to get the trust of key members of the group. It would appear that this role would have more of disturbing effect on the phenomena observed than that of the complete participant, and several, experienced participant observers have documented this. How ever, one effect may be that members of the group are led to more analytical reflection about processes and other aspects of the group's functioning.

4. The marginal participant- In some situations it may be feasible and advantageous to have lower degree of participation than that envisaged in the preceding sections. This can be done by adopting the role of a larger passive, though completely accepted, participant- a passenger in a train or bus, or a member of the audience at a concert or sports meeting.

5. The observer as- participant- This is some one who takes no part in the activity but whose status as researcher is known to the participants. Such a state is aspired to by many researchers using systematic observation. However, it is questionable whether any one who is known to be a researcher can be said not to take part in the activity-in the sense that their role is now one of the roles within the larger group that includes the researcher.

8.4.3. Advantages and Disadvantages of observational methods

A. Advantages

- Its major advantage as a technique is its directness. You do not ask people about their views, feelings or attitudes; you watch what they do and listen to what they say.
- Data from direct observation contrasts with, and can often usefully complement, information obtained by virtually any other technique. Interview and questionnaire responses are notorious for discrepancies between what people say that they have done, or will do, and what they actually did, or will do.
- Observation also seems to be preeminently the appropriate technique for getting at 'real life' in the real worlds direct observation. Direct observation in the field permits a lack of a artificiality which is all too rare with other techniques. For example, a judge in a court of law can use his observation in performing his daily judgeship tasks to do researches on the application of law on various issues.

B. Limitations

- Observation is neither an easy nor a trouble free option. There is a major issue concerning the extent to which an observer affects the situation under observation.
- A practical problem with observation is that it tends to be time consuming. The classic participant observation study, deriving from social anthropology, for example, demands an immersion in the 'tribe' for two or three years. The same also seems true as to the time required to do legal research by the observational methods, though it may not take years.

UNIT SUMMARY

BASIC TOOLS OF DATA COLLECTION

You should know and understand the following:

- Different types of research data collection tools.

- The basic tools of data collection like Interview, survey, questionnaire and observation.
- Different aspects of interview such as: schedule, types, styles, content, sequences of questions, and etc.
- The interrelationship between survey and questionnaire.
- Different aspects of questionnaire such as: ways of administering questions and guidelines in preparing questioners.
- The special advantage of using observation as method of data collection and its different types.
- The respective advantages and disadvantages of employing interview, questionnaire and observation as basic tools of legal research data collection.

Footnotes

1. Colin Robson, Real World Research (Blackwell Publishing, 2002, p.270;and
2. S. K. Verma and M.Afzal Wani (eds), *Legal Research and Methodology* (Indian Law Institute, 2001), pp.367-371
3. Colin Robson, cited above.pp.273-274
4. Id.p.274
5. Id.pp.274-276
6. Id.p.275
7. Id.p.277
8. Cited above at note 1, pp.227-259 and pp.354-363, Notes in this section are mainly taken from the two cited reference materials.
9. Colin Robson, cited above, pp.245-246
10. 9. Colin Robson.pp.310-330, and S. K. Verma and M.Afzal Wani (eds),pp.333-353

UNIT 9

ANALYSIS AND INTERPRETATION OF DATA

STRUCTURE

UNIT 9

ANALYSIS AND INTERPRETATION OF DATA

9.1 Doctrinal legal research

9.1.1 A general Approach to Legal Research

9.1.1.1. Identifying /Gathering Facts

9.1.1.2 Analyzing the facts

9.1.1.3 Formulating Legal issues

9.1.2 Doing the Legal research

9.1.2.1 Researching the issues formulated

9.1.2.2 When to complete the legal research

9.2 Non-doctrinal legal research

9.2.1 Analysis of data

9.2.2 Interpretation of data

9.3 Analysis and interpretation of data-inter-dependence and inter-relation

OBJECTIVES

Upon the completion of this unit you will be able to:

- understand the important steps of legal research, particularly the process of gathering facts, analyzing the facts, and formulating legal issues.
- understand the cardinal steps that must be used in the actual process of doing the legal research, such as finding the law, reading the law and updating the law.
- formulate legal issues and solve legal problems using the law.
- be able to differentiate doctrinal from non-doctrinal types of researches.

INTRODUCTION

The bases for a legal research are facts. Without facts, to imagine about legal research does not give much sense. A legal researcher should first identify and gather pertinent facts from various sources. As it has been discussed in the preceding units, legal research is a continuous process until it is completed or discontinued for ever, so that the legal researcher is expected to follow the steps that are instrumental to come up with an out come of research work. The first step in the process of legal research is identifying and gathering facts. It is followed by analysis of the facts and then formulating issues from the analyzed facts. Finally, doing the actual legal research comes into picture.

The first section of this unit gives general highlights regarding the approaches that may be employed on doing doctrinal legal research and the process of doing the actual legal research will also be treated. Such steps as identifying facts, analyzing facts and formulating legal issues will be duly discussed. In the second section, some aspects of analysis of facts in non-doctrinal research will be discussed. The only difference between the two sections is: the first section is supposed to emphasis some special attributes of legal research process so that you are able to employ all techniques of research process contextualizing to your field of study, i.e. law.

9.1. DOCTRINAL LEGAL RESEARCH

Law is a normative science which lays down norms and standards for human behavior in a specified situation(s) enforceable through the sanction of the state. What distinguishes law from other social sciences (and law is a social science on account of the simple fact that it regulates human conduct and relationship) is its normative character. This fact along with the fact that stability and certainty of law are desirable goals and social values to be pursued, make doctrinal research to be of primary concern to a legal researcher. Doctrinal research, of course, involves analysis of case

law, arranging, ordering and systematizing legal propositions, and study of legal institutions, but it does more-it creates law and its major tool(but not only tool) to do so is through legal reasoning or rational deduction.

Most of doctrinal legal research has characteristics of addressing a limited audience-the members of the legal profession (judges, lawyers or advocates and prosecutors); and it is meant to assist them in the discharge of their day to day professional tasks. The researcher explains the relevant judicial concepts, analyses statutory provisions, picks out judicial dicta, formulates principles deducible from judicial decisions, and arranges the whole material in some logical order. An American jurist (Justice Holmes) stated that: the life of law has not been logic: it has been experience. This proves the significance of doctrinal legal research in the task of legal profession. A few outstanding examples for doctrinal research are: carrying out legal research on: Family law, Succession law, child rights, law of torts, labour law, administrative law, etc.

Illustration: As an example to appreciate the need for doctrinal legal research in the Ethiopian legal/justice system: Read the Federal Courts Amendment Proclamation No. 454/2005 that entrusted power to the Federal Supreme Court Cassation Division to give interpretation of law which is binding on all Federal and State courts and councils, and then with the help of your instructor discuss(may be in group) the significance of carrying out doctrinal legal research to help the court/division in giving consistent/stable, coherent and predictable decisions that take social realities and consequences into account on the basis of the research imputes.

9.1.1 **A general Approach to Legal Research -** Legal research is both a science and an art. There are many approaches to legal research and there is no single or best way to do legal research. Methods will vary according to the nature of the problem and will depend on the researcher's subject expertise and research skills. Approaches to legal research may also be shaped by

where the research is conducted. The capacity to solve legal problems efficiently and accurately can best be developed by constructing a systematic approach to legal research.

The process of legal research and legal writing are closely related to each other. Legal research is often futile if the results are not communicated effectively. There are many differing view points about how legal research and legal writing interrelate. Some researchers prefer to conduct most of their research before they begin to write. Others prefer to write as they conduct their research.

A general approach to legal research, which can be modified to accommodate most problems, can be broken down into four basic steps. These steps are identifying and analyzing significant facts, formulating the legal issues to be researched and researching the issues presented and then updating. From the foregoing discussion, it is clear that steps to be followed in legal research can be categorized into two stages. The first stage involves identifying and analyzing facts, and formulating the issues. Then comes doing the actual research and updating. Steps included in both stages are going to be discussed in the following sections.

9.1.1.1. **Identifying/Gathering Facts** - As it has been well described in unit two (section 2.8) of this module, data or information or facts are the foundations of doing research. Research has also been simply defined as systematic investigation of new fact or information to increase human knowledge and to come up with some kind of solution to a problem. The technical term to use in particular in legal research to refer information or data in research in general is called fact.

Facts are the bases for a legal research. Without facts, conducting legal research does not give much sense. Legal research does not occur in a factual vacuum. The purpose of researching in law is to ascertain the legal consequences of a specific set of actual or potential facts. It is always the facts of any given situation that, indeed, indicates the issues of law that need to be researched.

In real life, the facts of a case typically do not present themselves neatly assembled. You must work to investigate them. In gathering or identifying your facts outside

classroom setting, you should begin by ascertaining the likely sources of pertinent information. The sources of facts are those that have been discussed in unit five of the module. These sources may include documents (primary and secondary authorities), people /such as clients, witnesses, victims, parties, experts, etc), library literature's/ such as books, periodicals, reports, etc), court decisions, pleadings, parliament discussion minutes, and, etc. The methods of gathering facts are employing library or literatures reading, questionnaire, interview, observational participation and legal text tools.

9.1.1.2. **Analyzing facts** – once you have identified and gathered your facts, you are ready to analyze them to determine the legal issues you need to research. This analysis involves thinking of words that describe the various aspects or characteristics of your problem, organizing the facts and shaping them. The important suggested system for gathering the elements of analysis of facts common to all legal problems are:

1. Analyzing parties or persons involved in a case under investigation
2. Places where the facts arose and objects and things involved.
3. Basis of the case or issue involved.
4. Defense or opposite argument to the action or issue
5. Relief or solution sought.

To see how analyzing facts based on the above suggested system can suggest legal issues, it is important to consider the following practical case as an example (the parties names are changed)

Fact Analysis

Facts: Ato Abebe Tefera and W/ro Almaz Kefelegn were married to each other in 1972 E.C and lived together until 1995 E.C. During their marriage they had five children. Before the date of their marriage, Ato Abebe owned a building purchas by 40,000 (forty thousand birr) in 1967 E.C. He was also owner of. A hotel business which he bought for 10,000 Birr (ten thousand birr). In 1961 by 1995 E.C the value of the building was estimated to be 800,000 (eight hundred thousand birr) because of additional constructions and changes of the original building. The hotel business

capital has also increased from birr 10,000 (ten thousand birr) to 120,000 birr (one hundred twenty thousand birr). The spouses have certificate of marriage, but no contract of marriage. Two of their children are below 18 years old.

In spite of living peacefully for 22 years, the spouses couldn't continue with their marriage beginning from the month of June 1995 E.C. Because of their disagreement W/ro Almaz filed petition to the Federal First Instance court seeking divorce decision to be granted. Next to the divorce decision of the court, both spouses also presented their written pleadings with annexes in relation to the partition of common and personal movable and immovable properties.

What legal issues are raised by these facts?

1. **Parties or person** – Fact analysis under this category involves identifying the status /i.e., membership in a particular class or group such as spouses, children, other family members, and their relationships to one another, for example, parent-child, buyer-seller, doctor-patient, principal-agent, etc). In the aforementioned case, the parties involved are Ato Abebe and W/ro Almaz (the relationship is spousal relationship). Because of the effect of their marriage the spouses will have personal and pecuniary kinds of relationship.

   As the consequence of the fact analysis, legal authorities (that is, proclamations, codes, regulations, cases, etc) involving persons in this relationship must be researched.

2. **Objects and things involved** - Here the above example involves minor children and movable and immovable property. Therefore, your legal research should focus on authorities dealing with fact patterns involving the minor children and common and personal properties. To classify the facts related to the objects and things involved, you may use words or phrases such as "contract", "marriage", "movable", "immovable", "property", "ownership", "effect of marriage", contract of "marriage", "minors", "rights of children", "guardianship", etc.

   If you still cannot find any useful law using these words, you would then go back to reanalyze the facts of your problem. You can analyze facts not only by

moving from specific to generalized words within a classification, you can also use analogy to move from one word to other words representing different objects or things that may have similar legal consequences.

3. **Places involved** -"place" may signify the specific location at which an event occurred. For example, "place" can relate to a place of conclusion of contract, a type of building, a character of location, such as "public" or "private", "rural or urban". It also refers to the geographic location or jurisdiction where an event occurs. Because the place where something occurs determines which law to apply, which court will have jurisdiction to entertain the case, etc. For example, in Ethiopia where we have federal arrangement and where regional states can pass their own laws in respect of areas provided to them by the FDRE constitution, analyzing facts related to place will be important to research the legal consequences as to the jurisdiction.

4. **Basis of the case -**This category concerns the legal theory on which the research issue or problem is based. In our illustration, since there is marriage relationship between Ato Abebe and W/ro Almaz, one legal basis would be that effect of marriage in family institution, and latter divorce of the marriage, "effect" of divorce", "guardianship authority", and "maintenance payment to the minors" would be appropriate.

5. **Defense to the action** - This category addresses matters the person being sued may be able to raise on his/her behalf to defeat the plaintiff's claim. In the case of Ato Abebe and W/ro Almaz, the plaintiff W/ro Almaz claimed all movable and immovable properties to be common properties. Ato Abebe argued that as the two spouses have no contract of marriage that regulates pecuniary effect of marriage according to the federal revised family law (proclamation number 213/2000) article 57, the properties gained before conclusion of marriage shall be his own personal property.

6. **Relief sought or solution** – In court cases, this category covers what the plaintiff is seeking. The relief sought will often depend on the preferences of

the individual issuing as well as on the type of injury or damage suffered though in some situations the law may specify or limit the type of relief a person may seek. In the above example, W/ro Almaz claimed for equal partition of the building and business to be authorized as guardian of the minors, and for payment of maintenance to their minor children. She also claimed to withhold the building until partition is effected.

This aforementioned system of analysis of facts can be usually employed in types of analytic, applied, case oriented and similar legal researches. Even in the absence of court case involvement in the legal research, as legal research is systematic investigation of problems or information and attempting to come up with a solution, the methods of analyzing facts are similarly applicable to various kinds of legal researches, , though the degree may vary.

9.1.1.3 **Formulating legal issues** – Analyzing the facts of a given research problem by using descriptive words or phrases with in the categories discussed above-will suggest the legal issues requiring research. For example, the fact we have already analyzed in the preceding sub section revealed several legal issues to research, including;

- Does W/ro Almaz have a contractual right for equal partition of property under the Ethiopian law, and does Ato Abebe have an obligation to share equally the properties under dispute?
- If not on the basis of contract, alternatively does the plaintiff have the legal right for equal partition of the properties under the Ethiopian law, and does the defendant have obligation by operation of the law for equal partition of the property under dispute?
- Who may be preferred to be the guardian of the minor children taking their interests into account? Does the preferred guardian have the right to claim payment of maintenance and does the other party have an obligation of maintenance payment? etc.

As the above family case between W/ro Almaz and Ato Abebe proves the reality, gathering your facts and then categorizing those for analysis will always suggest legal

issues. These issues are the questions that the legal research process will attempt to answer. New issues will often become apparent once the research is in the course of being done. In addition, as your legal research familiarizes you with various fact patterns that may arise in the areas of law relevant to your research problem, you may also find yourself re-assessing the relative significance of the facts you have already gathered and analyzed and perhaps determining that you need to gather additional facts.

Of course, you will always need to conduct a preliminary fact analysis and issue identification in order to provide direction for starting the legal research itself. The more carefully you think through a problem before commencing your research, the more fruitful or effective your research becomes.

Finally, once you have finished your preliminary evaluation for the facts and issues, there is still one short-but important-step you should attempt to take before actually opening the books to do your legal research. You need to consider whether the legal issues you have identified can be arranged in a logical order that will increase the efficiency and effectiveness of your research. The discussions so far made are relevant in acquainting you with important legal research steps that may help you to produce a qualitative research. These are preliminary steps, and in the next section you will be introduced to the actual legal research process.

9.1.2. **Doing the legal research**

This section aims at enlightening students regarding finding the law, reading the law and updating the law. Once issues to be researched are clear to a legal researcher, the next step is finding the law. After the legal researcher has found the law, he should read the law as critically as possible in order to determine whether the law found is applicable to the research problem and whether the law is still applicable (i.e., whether it is up to date or not repealed or amended)

As the name legal research itself shows, solve our problems using the law. Therefore, in order to use the law as an instrument of problem solving, the researcher has to find it first and then read it as thoroughly as possible to determine whether that law is

pertinent to the research problem and it is still valid /operative law. In order to equip students with the above understanding, this section is divided into subsections which deal with: the important steps in finding the law, reading the law, updating the law, and the time of completion of the legal research, respectively.

9.1.2.1 Methods and Authorities in Legal Research

In order to conduct legal research effectively a lawyer, as a researcher should have a working knowledge of the nature of legal rules and legal institutions, the fundamental tools of legal research, and the process of devising and implementing a coherent and effective research design.
These requirements will be briefly discussed as follows.

A. Knowledge of the nature of legal rules and Institutions: The identification of the issues and sources to be researched in any particular situation requires an understanding of:

1. The various sources of legal rules and the processes by which these rules are made, including:

- The Federal Democratic Republic of Ethiopia Constitution and Regional state constitutions.
- Proclamation/statutes – you should have a basic familiarity with the legislative processes at the Federal and state levels, and the relationship between the legislative and judicial branches.
- Case /precedent law – you should have basic familiarity with the organization and structure of the Federal and Regional State Courts of general jurisdiction; and the nature of making binding decisions by the Federal Supreme Court Cassation Division in accordance with proclamation number 454/2005.
- Administrative regulations, directives and decisions of the council of ministers or administrative agencies. Every lawyer as legal researcher should have basic familiarity with the rudiments of administrative law, including the procedures for administrative and executive rule making and adjudication, the relationship between the executive and judicial branches, etc.

2. Which of the sources of legal rules identified above tend to provide the controlling principles for resolutions of various kinds of research issues or problems in various substantive fields;
3. The variety of legal remedies available in any given situation, including legislative remedies (such as drafting and/or lobbying for new legislation; lobbying to defeat pending legislative bills; and lobbying for the repeal or amendment of existing legislation); administrative remedies/such as presenting testimony in support of, or lobbying for, the adoption, repeal, or amendment of administrative regulations or directives; and lobbying of an administrator to resolve an individual case in a particular way):litigation; and alternative dispute resolution mechanisms (formal mechanisms such as arbitration, mediation, and conciliation; and informal mechanisms such as self-help);

These are the most important primary aspects of methods of legal research to be employed in the process of conducting legal research and that help to come up with some kind of recommendation in the form of solution.

B. Knowledge of and ability to use the most fundamental tools of legal research;

1. With respect to each of the following fundamental tools of legal research, a lawyer or researcher in law should be generally familiar with the nature of the tool, its likely location in a law library, and the ways in which the tool is used:

- Primary legal texts (the written or recorded texts of legal rules), including: court judgment reports or collections of court decisions, consolidation of laws of Ethiopia, codifications of Federal and regional state legislations such as the civil code of Ethiopia, criminal code of Ethiopia, the revised family codes in the Federal and regional states, etc), collection of administrative regulations and decisions of administrative agencies.
- Secondary legal materials (the variety of aids to researching the primary legal texts), including treaties, digests, annotated versions of statutory compilations, commentaries, law reviews, and compilations of citations to statutes and cases;
- Sources of ethical obligations of legal professionals including the standards of professional conduct (such as code of conduct for judges, prosecutors, Federal Court advocates' and code of conduct Regulation number 57/1999)

2. With respect to the primary legal texts described in 9.1.2.1(A) supra, a lawyer or legal researcher should be familiar with:

- Specialized techniques of reading and analyzing court decisions, such as: the analysis of which portions of the decision are holdings and which are authoritative statements (in the Ethiopian case it works for decisions of the Federal Supreme Court cassation division); and techniques of construing or interpreting statutes by employing well accepted rules of statutory construction or by referring to secondary sources (such as legislative history);
- Specialized rules and customs permitting or prohibiting reliance on alternative versions of the primary legal texts such as unofficial case reports or unofficial statutory codes or drafts);

3. With respect to the secondary legal materials described above, a lawyer or legal researcher should have general familiarity with the breadth, depth, detail and currency of coverage, the particular perspectives, and the relative strengths and weaknesses that tend to be found in the various kinds of secondary sources so that he or she can make an informed judgment about which source is most suitable for a particular research purpose;

4. With respect to both the primary and the secondary materials described above, a legal researcher should be familiar with alternative forms of accessing the materials; including hard copy, microfiche and other miniaturization services, and computerized services (such technologies are still developing in the Ethiopian case).

9.1.2.2. Understanding the process of devising and implementing a coherent and effective research design: A legal researcher as a lawyer should be familiar with the skills and concepts involved in:

1. Formulating the issues /topics for research including the following;

- Determining the full range of legal issues to be researched:
- Determining the kinds of answers to the legal issues that are needed for various purposes:
- Determining the degree of confidence in the answers that is needed for various purposes;
- Determining the extent of documentation of the answers that is needed for various purposes;

- conceptualizing the issues to be researched in terms that are conductive to effective legal research (including a consideration of which conceptualizations or verbalizations of issues or rules will make them most accessible to various types of research strategies);

2. Identifying the full range of search strategies that could be used to research the issues, as well as alternatives to research, such as, inappropriate cases, seeking the information from other people who have expertise regarding the issues to be researched, for example, other legal researchers; or in the case of procedural issues, clerks of court or any appropriate organ);
3. Evaluating the various research strategies and setting a research design, which should take into account:

- The degree of thoroughness of research that would be necessary in order to adequately resolve the legal issues (i.e, in order to find an answer if there is one to be found, or, in cases where the issue is still open, to determine to a reasonable degree of certainty that it is still unresolved and gather analogous authorities);
- The degree of thoroughness that is necessary in the light of the uses to which the research will be put (e.g., the greater degree of thoroughness necessary if the information to be researched will be used at trial or at a legislative hearing; the lesser degree of thoroughness necessary if the information will be used in an informal negotiation with opposing counsel or lobbying of an administrator);
- An estimation of the account of time that will be necessary to conduct research of the desired degree of thoroughness;
- An assessment of the feasibility of conducting research of the desired degree of thoroughness, taking into account the amount of time available for research in the light of the other tasks to be performed, their relative importance, and their relative urgency; the extent of the resources that can be allocated to the process of legal research, and the availability of techniques for reducing the cost of research (such as using manual research methods to gain basic familiarity with the relevant area before using the more expensive resource of computerized services);

- If there is insufficient time for, if the researcher or sponsor or client lacks adequate resources for research that is thought enough to adequately resolve the legal issues, a further assessment of the ways in which the scope of the research can be curtailed with the minimum degree of risk of undermining the accuracy of the research or otherwise impairing the client's or sponsor's interest (if there is client to the research).
- strategies for double – checking the accuracy of the research, such as using different secondary sources to research the same issue; or using academics with expertise in the area;

4. Implementing the research design including:

- Informing the client of the precise extent to which the scope of the research has been curtailed for the sake of time or conservation of the client's resources; the reasons for these curtailments; and the possible consequences of deciding not to pursue additional research. (i.e. assuming that in most researches other than academic researches usually there are clients or sponsors to a research);
- Monitoring the results of the research and periodically considering whether the research design should be modified; whether it is appropriate to end the research, because it has fully answered the question posed; or, even though it has not fully answered the questions posed, further research will not produce additional information; or the information that is likely to be produced is not worth compared to the time and resources that would be expended;
- Ensuring that any cases that will be relied upon or cited have not been overruled, limited, or called into question; and that any statutes or administrative regulations that will be relied upon or cited have not been repealed or amended and have not been struck by the courts.

Taking the above discussions on methods of legal research, it can hardly be doubted that the ability to do legal research is one of the skills that any competent legal practitioner or professional must possess. This statement employs a broad definition of the range of knowledge and skills required for legal research. It recognizes that a pre requisite for effective research is an understanding of the nature of legal remedies and the processes for seeking these remedies. It treats legal research far more than a mechanical examination of texts; the formulation and implementation of a research

design are analyzed as processes which require a number of complex conceptual skill or techniques.

The description of the process of researching legal issues parallels the treatment of problem solving as a process consisting of; diagnosis of a problem; identification of the range of possible solutions; development of a plan of action; and implementation of the plan. This parallelism is appropriate because legal research is in essence a process of problem solving.

9.1.2.3. Classification of Authorities in Legal Research

In doing legal research authorities are indispensable tools, as they are anything that we rely on reaching a conclusion. As discussed in 5.8.1 supra, authorities are generally of two kinds: primary authorities and secondary authorities. Examples of primary authorities include any law such as constitutions, proclamations, regulations, charters, treaties, directives, and so on. Secondary authority is any non-law that the researcher relies on in reaching a conclusion. Examples include legal and non-legal encyclopedias, legal and non-legal dictionaries (such as Black's Law Dictionary), legal and non-legal treatises.

The authorities which we may use in legal research can be classified into mandatory and persuasive authorities. Mandatory authority is whatever the court must rely on in reaching its conclusion or it is a binding authority. Only primary authorities, such as a statute or constitutional provision, and Federal Supreme Court cassation division decision (exceptionally as precedent case) can be mandatory authority.

In our Ethiopian civil law system, a court is never required to rely on secondary authority such as a law review, articles, or a legal encyclopedia. Secondary authority cannot be mandatory or binding authority. But the secondary authorities can serve as persuasive authorities.

persuasive authority is whatever the court relies on when it is not required to do so. In the common law countries, such as the USA, there are two main kinds of persuasive authority: (a) a prior court opinion that the court is not required to follow but does so

because it finds the opinion persuasive and (b) any secondary authority that the court is not required to follow but does so because it finds the secondary authority persuasive. Coming to Ethiopia, laws made by the Federal government and Regional states, are mandatory authorities. Since Ethiopia is not a common law country, prior court decisions cannot generally be taken as mandatory authority (i.e except the new authority given to the decision of the Federal Supreme Court cassation division). But other prior court decisions and secondary authorities may also serve as persuasive authority.

In the process of legal research, the difference between mandatory authority and persuasive authority lies in the fact that laws or decisions as mandatory authority must be strictly followed when we are doing research. We may resort to secondary authority optionally when we feel that such authorities are important for the purpose of persuasion. Foreign laws to be used in the Ethiopian case of legal research will also have status of secondary authority or persuasive authority so that only Ethiopian laws are mandatory authority to regulate our own domestic issues. In conceptual or academic researches both mandatory and persuasive authorities may be equally important; whereas in pragmatic/applied research mandatory authorities will be more valuable compared to persuasive authorities. So, we can say that the relevance of the kinds of authorities depends on the type and nature of research, whether it is descriptive, analytical, comparative, pure or conceptual, applied or pragmatic, etc)

9.1.2.4 **Researching the issues formulated** - under the previous discussions, you have been exposed to important steps that are helpful in the process of doing your legal research. Now, you are familiar with such steps as identifying/gathering your facts, analyzing your facts and identifying/formulating legal issues. Once you have identified and formulated your issues, the next thing that must come to the fore is doing the actual legal research.

Doing the actual legal research involves such cardinal steps as finding the law, reading the law, and updating the law. When issues to be researched are clear to you, obviously the next step is finding the relevant law that may be used to solve your legal problem. Once you have discovered the law, which is pertinent to your issues, then you must read the law. Having read the law and addressed the issues you have

identified, you have to make sure that the law you have employed in your research is still operative and up-to-date. This is the step of updating.

The following deal with the steps we have already mentioned one by one.

1. **Finding the law** – In finding the law, you must initially distinguish primary sources or authorities from secondary sources or authorities.

In finding the law, your ultimate goal is to locate mandatory authorities bearing on your legal problem. If these are nonexistent or scarce, your next priority is to find any relevant persuasive primary authorities (for e.g., foreign laws). Finally, if all those are non-existent, you might rely on relevant secondary authorities.

There are some generally accepted approaches of finding the law, these are:

a. Descriptive word or fact word approach
b. Known authority approach
c. Known topic approach.

a. Descriptive word or fact word Approach - This kind of approach is the most commonly used method of finding the law in the developed legal systems such as the U.S.A. You should use this method first unless you already know the citation of a given law that may be constitutional provision, proclamation, administrative regulation or ministerial directive relevant to your problem. The descriptive method has the advantage of allowing you to begin your legal research even if you know little or nothing about legal rules or theories.

If you have followed the process of gathering, organizing and analyzing your facts, the descriptive word approach should follow naturally. The idea here is to use the "5W and H" technique to gather all the relevant facts of your problem, and then to build on those facts by thinking of words (called "descriptive words" or "fact words") that describe the important factual aspects of your research problem and that can be organized under categories of characteristics common to all research problems.

The "5W and H" technique refers to the five words which are used to ask questions in order to gather relevant facts and find the relevant law; 5W stands for what, why, who, when, and where while "H" stands for how.

b. **The known Authority Approach** - Occasionally, you may start your research already knowing the citation of at least one legal authority, constitutional provision, proclamation, administrative regulations, ministerial directives that may apply to your problem. Perhaps, you may get the citation from someone else, or you may discover it in your preliminary background reading.
c. **Known Topic Approach** –In the common law countries such as the U.S.A and U.K, legal problems can be solved both by statutory law and case-law. For the civil law countries such as ours all areas of the law are governed by laws passed by the law maker or by a delegated law-maker. Of course, there is a new development in our case because the authority given for the decisions of the Federal Supreme Court cassation division are binding on all federal and regional state councils. Some laws comprehensively treat a particular topic (s). For example, in Ethiopia it includes, the civil code, the criminal code, the commercial code, the civil procedure code, the criminal procedure code and the maritime code.

If you feel confident that your research is governed by one or more of the above laws or other regulations and proclamations, and you know from experience where the relevant laws are located, you can directly go to the appropriate law. This procedure therefore, effectively bypasses the other two approaches discussed under 'a' and 'b' above.

2. **Reading the Law** – Having found the law, your next step is to read it. Although this may seem rather mechanical, reading the law consists of more than merely passing printed words in front of your eyes. You need to decide what significance to attach to what you read. All laws are not equal in status or hierarchy and significance. One law will be better for you than another, and the real thing that you must understand is to evaluate properly what the 'right' law is and whether it helps or hurts your case. This evaluation lies at the heart of lawyers' work, and is crucial to the development of any legal argument.

Once you have found your law, you must evaluate its usefulness to you. The analysis involves two steps: Internal evaluation and external evaluation.

a. **Internal Evaluation -** It involves reading the particular legal authority you have found and determining whether it applies to the fact situation, in your research problem. The process consists of two overlapping elements: first analysis of the fact of the authority to determine how similar they are to the facts of the research problem; and second, a determination of the authority's intended legal significance and impact with respect to the research problem. In short, internal evaluation is assessing a particular law as whether it is relevant to our problem on which we are doing the research.

b. **External evaluation** – If your internal evaluation (discussed under 'a' supra) reveals that a legal authority your research has uncovered applies to your problem, you will then need to conduct an external evaluation of that authority. This evaluation requires you to determine the current status, i.e., validity) of the authority.

For statutes and administrative regulations, this process includes determining whether the legislative or administrative agency has repealed or amended the statute or regulation. For instance, the House of People's Representatives of the Federal government may repeal or amend laws for various reasons. But these laws may be still in books as the act of repealing or amendment does not remove the laws physically from the books or other instruments. Therefore, to avoid relying on an invalid law, you must always conduct an external evaluation of statutes and regulations.

3. **Updating the law** - Analytically, the final step in doing legal research is updating the law. This step involves making sure the legal rules you have determined to apply to your problem are still valid or operative laws. One of the worst blunders you can commit is to draw your legal conclusions or present your arguments or theory based on your research findings, then learn-too-late that you should have discovered a subtle but significant change in the applicable law that occurred a week(s) earlier. Because on outdated law is worse than no law at all, your legal research must include careful attention to updating the legal authorities that govern your problem.

9.1.2.5. **When to complete /stop/ the legal research**

By following the approaches outlined in the previous discussions and effective note taking and writing, you will do your legal research with maximum efficiency and effectiveness. The techniques covered so far will help you to avoid false starts, unnecessary duplicated efforts and other time-consuming pit falls.

While you should, naturally, seek speed and efficiency, it is also essential that you do your legal research thoroughly. The techniques explained so far will help you to achieve that goal, too, by organizing and directing your research in logical, coherent and comprehensive manner. Eventually, as a researcher you come to as, is it time to stop or finish off? There is never an easy or automatic answer to this question. Keeping the following consideration in mind, however, can help you to decide whether you have probably completed your research.

Your research may have time schedule to complete. Taking your time limit into account, you should explore each line of inquiry that appears relevant to your research problems especially when you are a beginner. The best policy must be continuing researching if you have doubts whether you would benefit from further research. Finally, even if you have continued researching, if you do not encounter any new thing, in other wards, if you feel that you are going in circles, you can probably safely conclude that you have found everything worthwhile to your research problem. You will have a feeling of certainty, of confidence, that your research is complete. Then you will probably stop your legal research. The remaining tasks of the research will be writing up and finishing off your research thesis or paper as most research products should be communicated in written form.

9.2 NON- DOCTRINAL LEGAL RESEARCH

9.2.1ANALYSIS AND INTERPRETATION OF DATA

9.2.1.1_Analysis of data: After the data have been collected, the researcher turns to the task of analyzing them. The data, after collection, has to be processed and analyzed in accordance with the outline laid down for the purpose at the time of developing the research plan. This is essential for a scientific study and for ensuring that we have all relevant data for making contemplated comparisons and analysis. The analysis of data requires a number of closely related operations such as establishment of categories, the application of these categories to raw data through coding, tabulation and then drawing statistical inferences. The unwieldy data should necessarily be condensed into a few manageable groups and tables for further analysis. Thus, a researcher should classify the raw data into some purposeful and usable categories. Coding operation is usually done at this stage through which the categories of data are transformed into symbols that may be tabulated and counted. Editing is the procedure that improves the quality of the data for coding. With coding the stage is ready for tabulation. Tabulation is a part of the technical procedure wherein the classified data are put in the form of tables. The mechanical devices can be made use of at this juncture. A great deal of data, especially in large inquiries, is tabulated by computers. Computers not only save time but also make it possible to study a large number of variables affecting a problem simultaneously.

Analysis work after tabulation is generally based on the computation of various percentages, coefficients, etc., by applying various well defined methods or techniques. Supporting or conflicting with original new hypotheses should be subjected to tests of significance to determine with what validity data can be said to indicate any conclusion (s). For instance, if there are two samples of weekly wages, each sample being drawn from factories in different parts of the same city, giving two different mean values, then our problem may be whether the two mean values are significantly different or the difference is just a matter of chance. Through the use of statistical tests we can establish whether such a difference is a real one or is the result of random fluctuations. If the difference happens to be real, the inference will be that the two samples come from different universes and if the difference is due to chance, the conclusion would be that the two samples belong to the same universe. Similarly, the technique of analysis of variance can help us in analyzing whether three or more varieties of seeds grown on certain fields yield significantly different results or not. In

brief, the researcher can analyze the collected data with the help of various statistical measures.

9.2.1.2 Hypothesis-testing: After analyzing the data as stated above, the researcher is in a position to test the hypotheses, if any, he had formulated earlier. Do the facts support the hypotheses or they happen to be contrary? This is the usual question that should be answered while testing hypotheses. Hypothesis testing will result in either accepting the hypothesis or in rejecting it. If a researcher had no hypotheses to start with, generalizations established on the basis of data may be stated as hypotheses to be tested by subsequent researches in time to come.

9.2.1.3 Generalizations and interpretation of data: After collecting and analyzing the data, the researcher has to accomplish the task of drawing inferences, followed by report writing. If a hypothesis is tested and upheld several times, it may be possible for the researcher to arrive at a generalization, i.e., to build a theory. As a matter of fact, the real value of research lies in its ability to arrive at certain generalizations. If the researcher had no hypothesis to start with, he might seek to explain his findings on the basis of some theory. Interpretation refers to the task of drawing inferences from the collected facts after analytical and/or experimental study. The process of interpretation may at times result in new questions that in turn may lead to further research. This process is usually the most expected task in carrying out legal research. The task of interpretation has two major aspects viz., (i) the effort to establish continuity in research through linking the results of a given study with those of another, and (ii) the establishment of some explanatory concepts.

A. Analysis and interpretation of data-inter-dependence and inter-relation

Once the data has been collected and analyzed and huge resources put into it, it will not be socially useful unless properly interpreted. The purpose of analysis is to summarize the completed observations in such a manner that these yield answers to research questions. It is the purpose of interpretation to search for broader meaning of these answers by linking them to other available knowledge. In other words, interpretation is the search for the broader meaning of research findings. In one sense, interpretation is concerned with relationships within the collected data, partially overlapping analysis. Interpretation also extends beyond the data of the study to

include the results of other research, theory and hypotheses. Thus, interpretation is the device through which the factors that seem to explain what has been observed by a researcher in the course of the study can be better understood and it also provides a theoretical conception which can serve as a guide for further research.

B. Why Interpretation?

Interpretation is essential for the simple reason that the usefulness and utility of research findings lie in proper interpretation. It is considered a basic component of a research process for the following reasons:

i. It is through interpretation that the researcher can well understand the abstract principle that works beneath his findings. Through this he can link up his findings with those of other studies, having the same abstract principle and thereby can predict later on. This way the continuity in research can be maintained.
ii. Interpretation leads to the establishment of explanatory concepts that can serve as a guide for further research studies; it opens new avenues of intellectual adventure and stimulates the quest for more knowledge.
iii. A researcher can better appreciate only through interpretation why his findings are what they are and can make others to understand the real significance of his research findings.
iv. The interpretation of the findings of explanatory research study often results into hypothesis for experimental research and as such interpretation is involved in the transition from explanatory to experimental research. Since an exploratory study does not have a hypothesis to start with, the findings of such a study is interpreted on a post- factum basis in which case the interpretation is technically described as `post factum` interpretation.

C. Technique of Interpretation

The task of interpretation is not an easy job; rather it requires a great skill and dexterity on the part of the researcher. Interpretation is an art that one learns through

practice and experience. The researcher may at times seek the guidance from experts for accomplishing the task of interpretation. The technique of interpretation often involves the following steps:

i. The researcher must give reasonable explanations of the relations which he has found and he must interpret the lines of relationship in terms of underlining processes and must try to find out the thread of uniformity that lies under the surface layer of his diversified research findings. In fact, this is the technique of how generalization should be done and concepts be formulated.

ii. Extraneous information, if collected during the study, must be considered while interpreting the final results of research, for it may prove to be a key factor in understanding the problem under consideration.

iii. It is advisable, before embarking upon final interpretation, to consult someone with insight into the study and who is frank and honest and will not hesitate to point out omissions and errors in logical argumentation. Such a consultation will result in correct interpretation and, thus, will enhance the utility of research results.

iv. The researcher must accomplish the task of interpretation only after considering all relevant factors affecting the problem to avoid false generalization. He must be in no hurry while interpreting results, for quite often the conclusions, which appear to be all right at the beginning, may not at all be accurate.

UNIT SUMMARY

ANALYSIS AND INTERPRETATION OF DATA

You should know and understand the following:

- Disuses the difference between doctrinal legal research and non-doctrinal research?
- Why do we need analyzing facts that we have already gathered?
- What are the systems of analyzing facts?
- What do you understand by authorities in legal research?
- Why do you /lawyers need to do legal research?
- Discuss the interrelationship among collection, analysis, generalization and interpretation of facts in non-doctrinal research?
- What are the techniques of interpretation?

UNIT 10

WRITING A RESEARCH REPORT

STRUCTURE

10.1.1 The Preliminaries

10.1 Structural outlay of research report

10.1.1 The Preliminaries

10.1.1.1 Preface and Acknowledgement

10.1.1.2 Table of Contents

10.1.1.3 Table of Cases

10.1.1.4 Table of Statutes

10.1.1.5 Abbreviations

10.1.1.6 List of Tables

10.1.2 The Text

10.1.2.1 Introduction

10.1.2.2 Chapters and sub-headings

10.1.2.3 Conclusion and recommendations

10.1.2.4 Footnotes (or Endnotes)

10.1.2.4.1.Content and Form of citations

A. Books

B. Articles in scholarly magazines and journals

C. News papers and News Magazines

D. Judicial decisions

E. Legislations

i. Ethiopia

ii. Foreign

F. Unpublished Reports and manuscripts, etc

G . Interviews

H.. Speeches

I. Letters

L. Shortened forms

10.1.2.4.2. **Using footnotes and endnotes**

[At this stage, The Instructor of the course is expected to make the students acquainted with basic rules and forms of citations]

10.1.3.the References

10.1.3.1.1 Bibliography

10.1.3.1.2 Appendix

10.1.3.1.3 Index/Appendices

OBJECTIVES

Upon completion of this unit you will be able to

- understand the general layout of the research paper and its major parts
- to use the layout in conducting your legal research
- To apply forms and rules of citation, footnotes and endnotes in using any source of information of research methods.
- to differentiate forms and rules of citation of various sources of information such as books, journals, speech, letters, etc.
- to distinguish some specialties of legal research from research in other fields in the case of using rules of citation and bibliography.
- to apply rules of bibliography and communicate your lists of references to the readers.
- to distinguish parts of bibliography such as table of laws, table of cases and other bibliographic materials.

10.1 INTRODUCTION

Research without writing is of little purpose. Accordingly, the research report is considered a major component of the research task that remains incomplete till the report has been presented and/or written. There are, of course, other ways of communicating your research and its findings, most notably through oral presentation, but writing them up remains of paramount importance in most areas of research. The research report, thesis or dissertation, the journal article, academic text and conference paper are the major means by which researchers communicate with each other, and with other interested parties, across space and time. The rapid development of new information and computer technologies has also changed the speed and scope of such communication, but it has not altered the importance of writing as the means for communicating. So, writing is just an instrument of communicating the researcher's

findings and conclusions to the audience or readers, or consumers of the research product.

Writing up is not just critical, but a continuation, part of the research process, which should start soon after the commencement of the research project, and continue to and beyond its completion. It begins as soon as you start thinking about and reading around your research. Finally, the researcher has to prepare the report of what has been done by him. The writing of report must be done with great care, keeping in view the following: The layout of the report should be as follows: (i) the preliminary pages (ii) the main text, and (iii) the end matter. In this unit the overall structural outlay of research report writing i.e., the preliminary pages, the text and the end matter/ the references will be studied.

Legal research can be done using sources of different authorities. A legal researcher is obliged to resort to various types of authorities which serve as secondary sources. Authorities could be books, Journals, magazines, judicial decisions; legislation of different kinds of speeches, letters and interviews. Legal research has its own specific features in terms of its sources of information and rules of citation. Content and rules of citation are the most important parts of our discussion in this section. The discussion of the section will help students how to make use of legal authorities (sources of information for legal research).

The content and form of citations are very important tools in Ethiopia, as we usually use foreign sources. They vary depending on the kind of source we make use of as a source of information. Accordingly, reference books, journals, documents, interviews, etc have their own respective rules of citation. The forms have also similarities. The form of bibliography is also another important element to be studied in this unit. In discussing each rules of citation, we will use relevant examples, and if we fail to understand the examples, it will be difficult to understand the rules. So, please give attention to each example and exercise by yourself taking your own practical and hypothetical examples.

The sources should be cited so that our audience can be convinced that our arguments are supported by appropriate sources or materials, which have direct or indirect

relevancy to the arguments we may raise. It is also important to arid plagiarism and to acknowledge the authors of our reference material. On the basis of our citation, the audience may even want to read the sources we cited. For these purposes, the researcher has to cite his sources properly adhering to generally accepted rules of citations in legal research.

This unit has summarized the most important rules of citations ranging from books to interviews including the rules of footnote and endnotes. Students are strongly advised to carefully follow these rules when they are engaged in legal research. The rule of bibliography is also another system of providing information about our references. It has 3 basic sections, which are table of laws, table of cases and other bibliographic materials.

10.1 Structural layout of research report:

Anybody who is reading the research report must necessarily be informed enough about the study so that he can place it in its general scientific context, judge the adequacy of its methods and thus form an opinion of how seriously the findings are to be taken. For this purpose there is the need for proper layout of the report. The layout of the report means what the research report should contain. A comprehensive layout of the research report should comprise (A) Preliminary pages ;(B) the main text; and (C) the end matter.

On the other hand, writing up your research report, whether in the form of a work report or an academic thesis, requires particular skills and forms of organization. In organizational terms, your report or thesis is likely to include, as minimum:

1. An introduction, at the beginning and a set of conclusions, at the end. These may be supplemented or perhaps replaced by, respectively, a summary and a series of recommendations.
2. A series of distinct sections or chapters, which may be further divided into sub-sections or sub-chapters. Each section or chapter may have its own introductory and concluding passages.

3. References to existing research and publications, possibly illuminated by selected quotations. A list of the materials referred to will be included, probably at the end of the report or thesis, possibly in the form of a bibliography.
4. Tables, diagrams, charts and other forms of illustrations.
5. A number of prefatory sections, such as a preface, abstract, dedication and acknowledgement; and/or supplementary sections, in the form of appendices.

10.1.1The Preliminaries

In its preliminary pages the report should carry a title and date, followed by acknowledgements in the form of `Preface` or and `Foreword.` Then there should be a table of contents followed by a list of tables and list of graphs and charts/illustrations, if any, given in the report. The list of tables and list of charts help the decision maker or any body interested in reading the report to locate easily the required information in the report.

The main text of the report should have the following parts:

10.1.2. The Text: The text provides the complete outline of the research report along with all details. The title of the research study will be repeated at the top of the first page of the main text and then follows the other details on pages numbered consecutively, beginning with the second page. Each main section of the report should begin on a new page. The main text of the report should have the following sections: (i) Introduction;(ii)statement of findings and recommendations;(iii) The results;(iv) The implications drawn from the results; and(v) The summary/Conclusion. The text also includes Footnotes or End notes that should be written complying with the research rules of citation.

10.1.2.1 Introduction: An introduction is the first passage in a journal article, dissertation, or scholarly research study. It sets the stage for the entire study. The introduction is the part of the paper that provides readers with the background information for the research reported in the paper. Its purpose is to establish a framework for the research, so that readers can understand how it is related to other research. It should contain a clear statement of the objective of the research and an

explanation of the methodology adopted in accomplishing the research. The scope of the study along with various limitations should as well be stated in this part. Setting the stage for a study, the introduction establishes the issue or concern leading to the research by conveying information about a research problem. Because it is the initial passage in a study or proposal, special care must be given to writing it. Unfortunately, too many authors of research studies do not clearly identify the research problem, leaving the reader to decide for himself or her007self the importance of the issue that motivates a study. Further, the research problem is often confused with the research questions-those questions that the investigator would like to be answered in order to understand or explain the problem.

A research problem can originate from many potential sources. It might spring from an experience researchers have had in their personal lives or workplaces. It may come from an extensive debate that has appeared in the literature for several years. It might develop from policy debates in government or among top executives. The sources of research problems are often multiple. To this complexity is added the need for introduction to carry the weight of encouraging the reader to read and to begin to see significance in the study. This facet alone makes introductions difficult to write. The introduction needs to create reader interest in the topic, establish the problem that leads to the study, place the study within the larger context of the scholarly literature, and reach out to a specific audience. All of this is achieved in a concise section of a few pages. Because of the messages they must convey and the limited space allowed, introductions are challenging to write and understand.

Illustration: As form of model introduction, read and examine the following example taken from a paper written on the title:

``PROTECTION OF CHILDREN UNDER THE NEW ETHIOPIAN FAMILY LAW``

Prepared Under the Auspices of the Juvenile Justice Project Office Federal Supreme Court January 2001

Introduction

The Convention on The Rights of the Child [here in after, the convention] has opened a new chapter in the treatment of children creating a legal ground for the protection of child rights. The convention states only not the civil, social, economic, political and

cultural rights of the child, but it also directs and obliges states to undertake legislative, administrative and other measures to create conditions for the realization of the convention. Such provisions as Article 2(2), Article 3(2) and Article 4 define the role of states to ensure the child rights. Thus, any state that has ratified the convention needs to change national policies in line with the responsibilities endorsed by the convention.

As a signatory of the convention, Ethiopia has begun introducing legal changes by adopting the Federal constitution in 1995, which incorporates the basic child rights recognized by the convention. Among the incorporated are the child's right to life, to a name and nationality, to know and be cared for by one's parents or legal guardians, to be subjected to exploitative practices, neither to be required nor permitted to perform work, which may be hazardous or harmful to his or her education, health, or well-being.

The constitution has set the ground for further legislative and administrative developments that require the enactment of detailed rules for the implementation of the rights.

The adoption of the new family law is one basic step up in the implementation of the basic principles in the constitution. Although the drive to change the old family law came from the perspective of protecting the rights of women, the new law has several provisions that could be counted on to protect the rights of the child.

This paper attempts to make a general assessment of the new Ethiopian family law in light of the rights of the child as incorporated in the Convention and the constitution. Some comparisons of the old and new family law will be made to demonstrate how far the latter has gone in fulfilling our aspirations to have a society that gives due respect to children. The new law will be enforced in areas under the direct jurisdiction of the federal government, while the regional governments are not in principle bound by the new family law. The new federal arrangement allows every regional state to adopt a family law that would suit its specific local needs.

Thus, it should be noted that the geographical scope of the new family law is limited to Addis Ababa and Dire Dawa. However, it is very likely that it will be used as model for regional reforms in family law.

Activity: Write your own possible form of introduction on the following given title and cross-check it with your colleagues. "*Liquidation and its Problems under the Ethiopian Law of Succession: Law and Practice*".

10.1.2.2 Chapters and Sub-headings: After introduction, the research report must contain chapters and sub-headings or main sections. The chapters and sub-headings, as the case may be, will entertain the following basic issues: Statement of findings and recommendations; Results; Arguments and criticisms; and Implications of the results.

A. Statements of findings, recommendations and Results: Statements of findings and recommendations should be presented or written in non-technical language so that it can be easily understood by all concerned. If the findings happen to be extensive, at this point they should be put in the summarized form. A detailed presentation of the findings of the study, with supporting data in the form of tables and charts together with a validation of results, is also the next step in writing the main text of the report. This generally comprises the main body of the report, extending over several chapters.

The result section of the report should contain statically summarized reductions of the data rather than the raw data. All the results should be presented in a logical sequence and split into readily identifiable sections. All relevant results must find a place in the report. But how one is to decide about what is relevant is the basic question. Quite often guidance to decide the relevancy or irrelevance comes primaries from the research hypothesis, if any, with which the study was concerned. But, ultimately the researcher must rely on his own judgment in deciding the outline of his report.

B. How to argue and How to criticize: - These organizational elements are the bare bones of any research report or thesis. To put them together to make a successful and effective argument requires four things; a context; one or more themes; some

ordering; and linkages. The context for your research thesis or project consists of your broader understanding of the area within which you are researching. This may operate at a number of levels; such as in terms of your disciplinary background, in terms of your field of study, and in terms of the methodology you are employing (e.g. questionnaire surveys or participant observation).

- The themes of your report or thesis are the key issues, concepts or questions you identify as being of relevance and interest. These will both inform the research you undertake, so will be evident in your contextual discussion, and help to structure your analysis and findings. They are the aspects of your field of study or discipline to which your research is contributing.
- The ordering of your report or thesis relates to how you set out your argument in stages, and how you break it down into manageable chunks for the reader. Some aspects of ordering are the use of introductory and concluding sections, contextualization, discussion and reflection.
- Linkages have to do with how you aid the reader in finding their way through your report or thesis. They may take the form of regular references to the themes you have identified. They are also likely to be made apparent through cross-references between chapters, sections or pages. The aim is to present a coherent whole to the reader; however the report or thesis may be structured and organized. When done effectively, the reader should be able quickly to make sense of your work whichever page they start reading from.

C. Who am I writing for - 'Research' is a process which occurs through the medium of a person. When you start to write up your research, there are two related issues which you will need to address, whether explicitly or implicitly, early on. These are the issues of voice and style:

- Style relates to how you write up your research, which may be determined by the requirements of your audience, by your own predilections, or by a mixture of the two
- Voice has to do with how you express yourself and tell the story of your research, and is something you are likely to develop further as you write and research
- Another key factor to be borne in mind during your writing up is that you are in the process of fashioning and presenting a representation of reality. You

should also avoid a strong reaction against, or rejection of, your thesis purely on the basis of the way in which it has been written up and presented. So don't take the risk unless you really have the freedom and know what you are doing.

- Beyond any formal regulations, there is also a general expectation that all writing will strive to be non-discriminatory. To do otherwise would make you likely to offend your readers, at the very least. Another question you may face in writing up your research is also whether to include a bibliography or just a set or references.
- Being consistent- Above all, whatever audience you are writing for, it is important to be consistent in terms of style and organization. Switching between styles is usually confusing for all concerned, and hence inadvisable, except in exceptional and/or carefully handled circumstances.

D. Grammar, punctuation and spelling- many researchers, even experienced ones, have problems with language (grammar), punctuation and spelling when they are writing up. Many of us may not have had a particularly good initial language education, or were more interested in other matters at the time.

If you are writing up your research on a word processor or computer, you might want to make use of the facilities which software has for checking your spelling and grammar and for suggesting alternative words to use. These can be very useful for checking drafts, but remember that they will not recognize many specialist words or names, and, perhaps most importantly, that they will often use American English spelling.

(i). Language- The key to successful cross communication is using the right language. In all writings, the challenge is to find the words, phrases, clauses, sentences and paragraphs that express your thoughts and ideas precisely and that make them interesting to others. There is still another aspect of language to consider. In recent years writers have become increasingly concerned about its social connotations. The careful writer avoids words or phrases that are discriminatory in sex, age, economic class, race, religious groups, etc. For example, conscientious writers no longer use he to refer to some one of unspecified sex.

(ii). Spelling

a. Consistency:- Spelling should be consistent throughout the research paper except quotation, which must retain the spelling of the original material. To ensure accuracy and consistency always adopt the spelling that your dictionary givse first in an entry.

b. Word division:- avoid dividing words at the end of a line. If the word you are about to type will not fit on the line, you may leave the line short and begin the word on the next line. If you choose to divide a word, consult your dictionary about where the break should occur.

(iii). Quotations: While quotations are common and often effective in research papers, use them selectively. Quote only words, phrases, lines and passages that are particularly interesting, vivid, usual, or apt and keep all quotations as brief as possible. Over quotation can bore your readers and might lead them to conclude that you are neither an original thinker nor a skillful writer. In general, a quotation whether a word, phrase sentence or more-should correspond exactly to its source in spelling, capitalization and punctuation. If you change it in any way, make the alteration clear to the reader.

(iv). Punctuation

a. Consistency:- The main purpose of punctuation is to ensure the clarity and readability of your writing. While certain practices in punctuation are optional, consistency is mandatory. Be sure to use the same punctuation in parallel situations.

b. Hyphens:- Hyphens connect number indicating a range (1-10) and also form some types of compound words, particularly compound words that precede the words they modify (a well-established policy, a first-rate study). Hyphens also join prefixes to capitalized words (Pre-Renaissance, post-Renaissance) and link pairs of coequal nouns (singer-Song Writer, Scholar-Athlete). It is advisable, to consult a standard dictionary or writing manual for guidance in the hyphenation of a specific term.

c. Parenthesis:- Parenthesis (opening parenthesis to the left, closing parenthesis to the right) enclose parenthesis remarks that break sharply with the surrounding text, around explanatory comments following quotations, and around publication information in notes.

d. Periods: - Periods end declarative sentences, notes, and complete blocks of information in bibliographic citations. Periods between numbers indicate related parts of a work. The period follows a parenthesis that falls at the end of a sentence. It goes within a parenthesis when the enclosed element is independent. For example (see not this sentence but the text), (For the use of periods X, see 1.2)

e. Square **brackets**:- Use square brackets around a parenthesis within a parenthesis (to avoid two pairs of parenthesis), around an interpolation in a quotation, and around missing or unverified data in documentation.

E. What an academic thesis or work report looks like - If you want your research thesis to be interesting as well as academically convincing, you should follow possible forms of organization. For example, the 'classic' dissertation structure is:

- Contents
- Abstract
- Introduction (10% of words or space)
- Review of the background literature (20%)
- Design and methodology of the research (10%)
- Implementation of the research (10 %)
- Presentation and analysis of data (15%)
- Comment and critique of the outcomes or findings (20%)
- Summary and conclusion (10%)
- References
- Bibliography
- Appendices

Another alternative similar structure looks like

1. **Introduction:** an outline of the area, problem or issue studied, its scope and aims (10% of words or space)
2. **Literature review:** a critical account of existing studies in the area (20%)
3. **Methodology:** an account of how you went about the study, and why you adopted this approach (15%)
4. **Results:** a report on what you found (20%)
5. **Discussion:** a critical analysis of your findings in the light of other work (20%)

6. **Conclusion:** a brief summary of your conclusions (5%)
7. **References:** a complete list of all the works referred to in a standard format (10%)

10.1.2.3 Conclusion and recommendations

Toward the end of the main text, the researcher should again put down the results of his research clearly and precisely, in summary form. He should state the implications that fllow from the results of the study, for the general reader who is interested in the implications for understanding the human behavior. Such implications may have the three aspects as stated below:

(i) A statement of the inferences drawn from the present study which may be expected to apply in similar circumstances.

(ii) The conditions of the present study which may limit the extent of legitimate generalizations of the inferences drawn from the study.

(iii) The relevant questions that still remain unanswered or new questions raised by the study along with suggestions for the kind of research that would provide answers for them.

It is considered a good practice to finish the report with a short conclusion which summarizes and recapitulates the main points of the study. The conclusion drawn from the study should be clearly related to the hypotheses that were stated in the introductory section. At the same time, a forecast of the probable future of the subject and an indication of the kind of research which needs to be done in that particular area is useful and desirable. Such indication will be presented in the form of recommendation.

In short, it has become customary to conclude the research report with a brief summary, restating in brief the research problem, the methodology, the major findings and the major conclusions drawn from the research results.

Illustration: As a form of model conclusion read the following passage extracted from an article, (whose introduction is used as an example in the first part of this section,

written on the title:``**PROTECTION OF CHILDREN UNDER THE NEW ETHIOPIAN FAMILY LAW**``

CONCLUSION

A society that neglects the interest of its children, has decided to turn a blind eye to its own future. Thus any society that aspires to prosper and develop in the future must begin by giving adequate care and attention to its children today. This care and attention would be as varied as the needs of children. Thus, every part of society must join hands to improve the situation of its own sons and daughters. The eventual aim of all these efforts must be a full development of the personality of the child, in all its dimensions.

Law, as an instrument that regulates social behavior would definitely play an important role in shaping the personality of the child and in shaping the attitude of the adults towards children. It is through the law that society expresses its future aspirations, its disapproval and sanction against behaviors that harm the interests of children.

The Ethiopian constitution has consolidated our aspirations for the future. It has laid down the minimum standards in the protection of the child. The new family law has followed suit and cemented the rights by detailed rules. The new family law has introduced new ways of thinking, eliminated backward ideas and has institutionalized protection of the child. It has put the rights of the child in their proper perspective. By repealing rules that were inconsistent with the principles laid down in the constitution, it has made family life more child-friendly. By introducing equality between husband and wife, it has made the parents equally responsible in the development of the child. It is to be hoped that the regional laws would-like wise be amended in the near future.

Needless to say that the improvement of the family law is not the end of the road. The protection of children needs to be reflected in all other branches of the law as well. Thus the effort must continue in other branches, so that comprehensive protection of child rights could be attained.

10.1.2.4. Footnotes (or Endnotes)

10.1. 2.4.1 Content and Form of citations

Citations should contain enough information to indicate clearly to readers in Ethiopia and elsewhere what work is referred to, and where it can be obtained. The information required to satisfy this goal may be more detailed in Ethiopia than in other countries; reference will often be made to foreign materials and many of our readers may lack technical training or may have been educated in countries with different scholarly traditions. The rules of citations for our sources of research are provided as follows

A. Books

The first reference to a book should contain the following information in the following order:

1. Author's name;
2. Title (underlined or in italics);
3. Edition number, if there has been more than one edition (in parentheses);
4. Year of publication of that edition (in parentheses);
5. Number of the volume referred to, if the work has more than one volume;
6. Section, article, number, page, etc. referred to, as appropriate

Example:

A. Rhyne, Municipal Law (1975), P.153

B. Basu, Commentary on the Constitution of India (4^{th} ed. 1963), vol. 4,p 499.

1. Author's Name

The first initial or first name of European names should precede the family name. Ethiopian names should be spelled out in full. If the book contains contributions by several authors the name of the editor should be given in place of an author, and the fact that he/she is the editor indicated in parentheses. If reference is made to a specific contribution in such work, the footnote should begin with the author of that specific contribution, and the title of the contribution in quotation marks, followed by the information specified above for books in general concerning the collection.

If the book has more than one author or editor, the names of all should be given. If the name of the author or editor is unknown, the footnote should begin with the title of the book.

Examples:

A. Davis**, Administrative Law Treatise** (1958), vol 2, p. 299

Gizaw Haiie Mairam, **Dagmawi Menelik, Ketarikatchewna Kemuvachew** (1963). p. 58

D.Currie (ed), **Federalism and the New Nations of Africa** (1964),p.13

I Dilliard, "Mr. Justice Balck: A personal Appreciation, "in I Dilliard (ed), **One Man's Stand for Freedom** (1963), p.3

A. Burn and H. Galland, **Droit travail** (1958), p. 141

A Manual of Style (11th ed, 1949), p.140

It may be that a book had one author for the first edition and another author for a later edition, but the original author's name is retained by the publisher for later editions because he has built up a reputation which adds to the authoritative value of the book. In such a case, if the edition cited involves a considerable revision from the carlier edition, and if the name of the author of the later edition is given, cite the author of the edition as the author of the book. (See the first example below.) If the edition cited did not invoive much of revision, cite the authors of the original and omit any mention of the author of the particular edition cited. (See the second example below.) (Usually, the preface or introduction to the particular edition will give a clue as to how much of revision has been made; the greater the number of editions, the greater the likelihood that substantial revision has been made.) If the book is classified in our library under the name of one or the other author, use the name of that author. Sometimes the book itself will indicate in the title page how the original author and the author of that edition should be mentioned; in such case, use the method specified.

Examples:

R. Jones **Smith's Company Law of Andorra** (10^{th} ed. 1962) p 103

A. Smith, **The Company Law of Andorra** (2d ed. 1903), p. 2

G. Ripert, **Traite elementaire de droit commercial** (5^{th} ed. by R. Roblot, 1963), vo.l 1, p.82

2. Title

The full title should be given, without abbreviation, however, if the title is given in a bibliography and can be shortened conveniently without creating ambiguity, a short from may be used. A short form may also be used when there is no bibliography, if on a page at the beginning of the paper a list is made in regular footnote form of the books that will be cited in the short form, and a statement made to that effect. Short forms are only used, if at all, for major works cited many times in a paper.

It is not necessary to give sub-titles; however, if a sub-title is used, it should be made part of the underlined title, but separated from it by a dash.

In English titles, the first letter of the first word and every important word there after (including all nouns, adjectives, adverbs and names) must be capitalized. In French titles, only the first letter of the first word and of proper names is capitalized (but not the names of months, days of the week or adjectives modifying proper names). Italian and Spanish titles are capitalized as the French; in German titles, capitalize the first word, all nouns and proper names, and all other words which would be capitalized in ordinary German text. In Amharic titles and titles of other languages translated into English, follow the same principles of capitalization as in English titles.

Examples:

R. Heuston, **Salmond on the Law of Torts** (12th. 1957),p 290.

A. Brun and H. Galland**, Droit du travail (1958), p.141**

Gizaw Haile mariam**, Dagmawi Menelik, Ketarikachewna Kemuyatchew (1963),**

p.58

R. Sohm**, Institutional- Geschichte and System des romischen Privatrechts (17th ed.**

1949), p. 85

E Chapado Garcia**, Historia general del derecho espanol** (1990), pp. 86-89

F. Messineo, **Manuale di diritto civile ecommericiale** (9th ed. revised 1959), vol. 3, pp.

238-39.

3. Edition Number

If there has been only one edition, do not state an edition number. If there have been several editions, identify the edition referred to by the identification used by the publisher; this will usually be a number.

Note that an edition is different from a "reprint" "imprint" or "printing". A new edition usually involves revisions of, or additions to, the text-Reprints, imprints, and printings do not involve revisions or additions; the original text is merely printed again. Reprints, imprints and printings are irrelevant and should not be mentioned.

Examples:

A Manual of style (11th ed., 1949), p. 140

G. Fowler, **Modern English Usage** (1937 ed.) p. 82.

G.Williston and G. Thompson, **Selections from Williston's**

Treaties on the Law of Contracts (revised ed. 1935), p.177

F. Messineo, **manuale DI diritto civile e commericale** (9th ed. revised 1959), vol 3, pp. 238- 39

4. Date of Publication; Other Facts of Publication

If there has been more than one edition, the data of publication to be given is only that of the edition cited. As with the edition number, dates of reprints, imprints or printings are not to be given. The date of publication appears in parentheses; if an edition number is cited, it appears after the edition number within the same parentheses. In some sets of more than one volume, different volumes are published in different years. In this case, the date of publication should be the date of publication of the volume referred to.

Example: **Halsbury's Laws of England** (3d ed. 1958), vol. 22, Insurance, sec.12.

5. Number of Volumes

Volume numbers should be given in Arabic numerals (that is, 1,2, 3, etc .) whether or not they are given in Roman numerals (that is, I, II, III, etc.) in the book referred to . The abbreviation of "volume" (vol: vols) should be used.

Example: M Planiol and G. Riport, **Treatise on the Civil Law** (11th ed. 1938) (translation, Lousiana State L. Inst., 1959), vol 3, pt. 1. no. 820

6. Section, Article, etc.

When reference is made to a section, article, number, chapter, or page, the same numbering or lettering should be used as in the book referred to. Usually, it is only necessary to refer to a particular page or pages. Sometimes, however, it is more helpful to the reader to refer to a particular article, section, number, or chapter or, it may be helpful to refer to more than one of these. The matter is within the writer's discretion. The appropriate abbreviations should be used.

Supplements and Pocket Parts

Legal encyclopedias and many other law books are kept up to date through the use of periodic supplements. These supplements may be bound in separate volumes (for example the continuation volumes to **Halsbury's Laws of England** and the **Mise a jour** to Dalloz Encyclopedia juridique); or, they may appear as "pocket parts" to the individual volumes supplemented (for example, in American Jurisprudence).

If your reference is only to the original work do not mention the supplement.

Example: **American Jurisprudence** (2d ed. 1965), vol. 18, Corporations, sec. 127)

If your reference is only to material stated in the supplement or to material stated in both the original work and the supplement, specify the year of the supplement within the same parentheses as the year of publication of the original work.

Examples:

American Jurisprudence (2d ed. 1962, Supp 1965), vol. 1, Actions, sec. 12

Dalloz Encyclopedi

Halsbury's laws of England (3d. ed. 1958. Supp. 1963), vol 19, Husband and Wife sec 1259

A. Campbell and D Thompson, **Common Market Law** (1962), First Supp. 1963), para.311.

Note that the **Fiches juridiques suisses** does not take supplements instead. When a particular point is amended, the **Fiches** card is replaced by a new one. This means **any** reference to the **Fiches** must specify the date of the card to which reference is made. Also, since each card has a specified author, the author's name must be given.

Example : **Fiches juridiques susses** (Mico au point, Mar. 15, 1959), no. 288 (by W. Stocker), Femme mariee, p.2.

In some books, a separate supplement is published not for periodic amendments to the original, but merely to provide the reader with related material. In this case, cite the supplement as a separate book.

Example: J. Honnoid, **Sales and Sales Financing. Suppiement** (2d ed. 1962). p.269

Citing to Footnotes

If your reference is to a footnote in a book, rather than to the text, the citation form should be the same as for text, with the word "note" and the footnote number at the end.

Example: R. Huebner. **A History of Germanic** Private Law (1918)
(Translation, F. Philbrick), p. 494, note 2.

B. Articles in scholarly Magazines and Journals

The first reference to an article in a scholarly magazine or journal should contain, in the following order:

1. name of article's author;
2. title of article (in quotation marks) ;
3. name of the magazine or journal (underlined or in italics);
4. volume number;
5. number of the part or issue, if the pages in each part or issue are numbered separately or if a reference to the number is necessary or convenient to a proper identification of the location of the article;
6. date of publication (in parentheses);
7. page or pages where the specific reference may be found.

Example: J.Graven" The Penal Code of the Empire of Ethiopia" **J. Eth. L.** vol. 1(1964), p. 275

(1), (2) , and (4) **Author, Title and Volume Number**

Rules for the author's name, the title of the article and the volume umber are the same as those given for books except that the title appears in quotation marks and is not underlined or in italics. Words such as book Review, Address, Note, etc., descriptive of the type of article rather than part of a title, are not put in quotation marks.

Examples:

S.Glueck" The Nuernberg Trial and Aggressive War "**Harvard L Rev**., vol. 59 (1945-46), p. 396.

G. Stuart, Book Review, **American J.Intl. L**., vol. 25(1931),p 413.

3. Name of Magazine or Journal.

Abbreviations should be used in giving the name of the magazine or journal. However, only abbreviations appearing in the list or permissible abbreviations may be used. (Consult a standard dictionary)

4. Number of Part or issue

Usually, the pages of scholarly magazines and journals are numbered consecutively throughout the volume. In such a case, it is not necessary to refer to a particular part or issue. This is true even if the individual parts or issues are not bound. However, occasionally it will be necessary or convenient to refer to a particular part or issue. This is in particular true if the pages of each part or issue are not numbered consecutively throughout the volume

Examples:

G. Stuart, Book Review, **American J. Int'l.L.**, vol.25 (1931).p. 413

S. Chojnackl, "Short introduction to Ethiopian Painting," **J.Eth. studies**, vol.2, no.2 (1964).p.7

5. Date of Publication

For the date of publication, it is usually sufficient to give the year of the volume referred to. This is true even if the issues are not bound, and are dated by months or days in addition to the year. However, if it is necessary or convenient to refer to a particular month or date in order to facilitate location of the source such reference should be made. (This rarely will be the case).

6. Pages of Reference

Articles in scholarly magazines and journal rarely are divided into divisions shorter than the page. For this reason only the page number of the reference is usually given.

If reference is made to an entire article without reference to facts or ideas stated in a specific place in the article, it is only necessary to give the page on which the article begins.

Examples:

J.Graven. "The Penal Code of the Empire of Ethiopia." **J.Eth.L.,** vol 1 (1964), p. 275

Tayeo Membratu, "Coffee in the Ethiopian Economy," **J. Eth. Studies**, vol. 1, no. 1(1963), pp. 47-49.

C. Newspapers and news Magazines

Reference to an article in a newspaper or news magazine should contain, in the following order.

a. name of the newspaper or magazine (underlined);

b. date of the newspaper or magazine referred to;

c. Page where the specific reference may be found;

d. column where the specific reference may be found, if more than one column on the page.

Example: **The Ethiopian Herald,** May 20, 1965, p.3.col.2.

(1). Name

The name of a newspaper or magazine may be silent or ambiguous as to the place where it comes to or is published. In this case, put the name of the city or country in parentheses after the name of the newspaper or magazine, but before the date

Example; **The Times** (London), April 15, 1965, p.10, col.5.

Abbreviations may not be used in giving the proper name of the newspaper or news magazine, although they may be used in giving the information specified in the preceding paragraph. Some newspapers and magazines have different editions either for deferent times of the day when they come out or for different parts of the world; in this case, put the edition in parentheses after the name of the newspaper or magazine and also after the name of the city or country, if used.

Example: **Time** (Atlantic ed.) , May 5,. 1965,p. 32, col.1.

(2). Date

The full date of a newspaper or magazine must always be given, and in the Gregorian calendar.

(3). and (4) Pages and Columns

The pages of most newspapers and news magazines are divided into columns. For this reason, it is helpful to cite the specific column where the reference may be found. If the material used as a source covers the entire page or more than one page only the appropriate page numbers are necessary.

Example: **The Times** (London), April 15, 1965, p. 10, col.5.

Signed Articles

For an ordinary news article do **not** give the headline or title of the article; also, even though the article may have a by-line or be signed by the writer of the article or the report, do **not** give the name.

On the other hand, reference may be made to a signed article of an editorial nature. In this case, give the name of the writer or the article and the title of the article, using the same rules as are provided for giving the name of the author and the title of the article in a scholarly magazine or journal. The rules pertaining to newspapers and news magazines continue to apply to the rest of the footnote, of course.

Examples:

W.Lippmann, "A Critique of Congress", **Newsweek** (Atlantic ed.), Jan. 20, 1964, p.12 cols. 2-3

H.I.M. Haile Seiassie I, Address to the Ethiopian Parliament, Nov, 2, 1958,

Ethiopia Observer, Apr. 1959 p.66

A. Smith, Letter to the Editor, **The Ethiopian Heraild**, March 3, 1963, p.2. col.3.

D. Judicial Decisions

The form specified below should also be used for administrative decisions of a judicial nature. The first reference to a judicial decisions should contain the following information, in the following order

1 Case Name ;
2 Case number;
(in parenthesis) i.e number if the case is not published (in parenthesis)
3 Court (in parentheses)
4 jurisdiction of the court, if other than Ethiopia (in parentheses)
5 date of decision (in parentheses),
6 name of reporter or journal where found (underlined or in italics)
7 volume of reporter or journal where found:
8 page where specific reference may be found

Example: Gorfe G/Hiwot v. Aberash Dubarge and Getachew Nega (Federal Supreme Court Cassation Division, 2007), Mizan Law Review, vol. 1 No.1.p.182

(1). Case Name

The case name usually consists of the parties to the case, although it may appear as the name of a ship, some kind of property, etc. It usually appears at the beginning of the case report, although in some continental reports it may appear after the initial information given in the case report but before the actual decree or opinion of the court. The name should be given exactly as it is given in the case report, without abbreviation (unless the abbreviation is used in the name give in the case report). This rule is subject to the following exceptions. First, when European names of physical persons appear in the case name, only the surname of such person as need is given. Second, omit military titles such as" Col" and such words as Ato, Woz., Mr., and Mrs. Third, if there is more than one party on one side of a case, give only the name of the first party named; also, do not use words indicating multiple parties, such as "et al". It may happen that the case has no name. In this case, put the words "Decision of" first and then give the date of the decision, outside the parentheses, do not put the date of the decision inside the parentheses. Also, do not underline the date of the decision.

Examples:

Belete Belaineh v. Public Prosecutor (Su.imp. C t., 1962), **J. Eth.L**., vol 1, p.162

Lawless case (European Ct. Human Rights, Nov 14,1960), **American J.nt'l.L.**. vol.56, p.173.

Hagerty v. City Oakland (District Ct. Appl., Calfornia, U.S., 1958), **American L.Rep**. (2nd Series), vol.66, p. 718.

(2) Case Number or File Number

This number is usually given at the beginning of a decision. It is not necessary to give it if reference is made to a published decision. When it is given, it is put inside the same parentheses as the date, court, etc.

Example: Zenash Bekele v. Haregewoin Bekele (Federal Supreme Court, 2007, Civil Cassation Case No.18394) (unpublished).

(3) Date of Decision

The date is always given in English and in Gregorian calendar. The month abbreviations specified in the list of permissible abbreviations should be used. If no date is given in the judgment, specify "on date' where the date would be. For Ethiopian, American and British Common wealth decisions, the year is sufficient, unless the case has no name. For decisions of all other countries and for all decisions

cited without names, the full date should be given. See examples of cases cited under part (1) of this section, on the page above.

(4). Court

Give the name of the court in the language, in which it is given in the case report, it is not necessary to give the name of the particular division or chamber, if any, which sat in the case. Use only the abbreviations specified in the list of permissible abbreviations.

Examples:

Belete Belayneh v. Public Prosecutor (Su.Imp.Ct., 1962) **J.Eth..L.** vol.1, p 162.

Armand c,. Cooper (Cour de cassation, Fra., May 25, 1964), **Dalloz** 1964, Jurisp p626.

(5). Jurisdiction of Court

The jurisdiction of the court is usually the country where the court sits. Sometimes, the jurisdiction of the court is only over a particular state, province or district of the country. Certain country abbreviations should be used. It is not necessary to specify Ethiopia as the country in an Ethiopian case, although specification of limited jurisdiction.(can be given)?

Examples:

In the Matter of the Adoption of Linda Tsehay (High ct., Addis Ababa, 1965, Civil Case No. 144/57) (unpublished).

Hagerty v.City of Oakiand (District Ct. App., California, U.S.,1958), **American L.Rep**. (2nd Series) vol.66, p.718.

Caillaud c. Vayssiere (Cour dapp., Limoges, Fra., Mar. 24, 1896),

Dalloz, 1901, pt. 2, p. 464.

(6), (7) and (8) **Name of Reporter or Journal, Volume and Page**

The same rules apply as are provided for citing the name, volume and page of scholarly magazines and articles.

Examples:

Greenwood V. United States (Sup. Ct., U.S., 1956) U.S. Sub. Ct. **Rep**. (Lawyers ed.). vol. 100. pp. 417-20.

Charbonnages Nord- Africans c. Moussi ben Ahmed (Cour sup.,

Morocco, Oct, 21, 1958), Rev. **marocaine de droit**, 1959,p.107.

Agboyibo Agbankor V. Kpodo Kwaku Mensah (West Afr. Ct. App., Gold Coast, 1949), **Selected Judgments of the West Afr. Ct. App**., vol.12, p. 412

Ebbs v. James Whitson and Co.,Ltd. (Ct.App., Eng., 1952), **All Eng.L Rep**., 1952, vol. 2, p.192.

Casebooks

Judicial decisions should always be cited to the official reporter or, if that is not known or not available, an unofficial reporter. It may, however, be that the decision is only available to you in a book of cases and materials used primarily for teaching purposes, either because the case reporter is not in the library or not otherwise available, or because you are referring to a transition of the case. In this situation, cite the case exactly as you would if you were referring to the reporter, but add after the citation the word "in" (or the words translated in," if a translation), followed by a regular citation to the casebook. Note that you must cite one of the reporters (official or unofficial) in the citation of the decision even though it is not the book which you used as the source of the decision. The casebook will mutually specify the name of one or more reporters where the case may be found after the name of the decision. Such reference will usually be in abbreviated from; to decipher the abbreviations, see C. Sziadits, **Guide to** Foreign Legal Materials. French-German-Swiss (1959), for decisions form the countries stated in the title of that book, **and the end of Black's Law Dictionary** (4th ed. 1959) for Anglo-American reports. You should not use the abbreviated form except in accordance with the regular rules on abbreviating case reporters, specified above, or unless it is impossible to discover what the abbreviation means.

Examples:

Decision of Feb. 12 1952 (Fed. Sup.Ct., Ger.Fed. Republic)

Entscheidungen des Bundesgerichtshofes in Strafsachen, vol.2, p. 150 translated in G, Mueller, Materials on **Comparative Criminal Law** (1960), p.75.

Globe Woolen Co. v. Utica Gas and Electric Co.(Ct. App., New York, U.S., 1918), **New York Rep**., Vol. 224, p. 438, in

R. Baker and W, Cary, **Cases and materials on Corporations** (3d e.d. unabridged, 1959), p. 452.

Specific judges; Dissenting Opinions

It may be desirable to cite the name of the judge who wrote the court's opinion; or, the writer may want to refer to a dissenting opinion. If either of these is the case, and if the name of the judge or the fact that the source is a dissenting opinion is not made clear in the text, it may be shown in the footnote by putting the name of the judge or the words" dissenting opinion" in parentheses after the citation.

Examples:

Hyde v. United States (Sup. Ct,U.S., 1912), U.S. Sup. Ct Rep. (Lawyers ed.) , vol.56, p. 347 (Mekenna, J.).

Marine Engineers Beneficial association V. Interlake Steamship Company (Sup. Ct., U.S., 1962**), U.S. Sup. Ct. Rep**. (Lawyers ed., 2d Series), vol. 8, p. 427 (Douglas, J., dissenting).

Decisions Appealed

As far as possible, you should always check to see if a decision you wish to cite has been appealed. If it has, and if you still find it useful to cite that decision, state after the case what has happened to it.

Example: In the Matter of the Estate of Sctrak Avakian (High Ct., Addis Ababa, 1963). **J. Eth. L.,** vol. 1, p.32, affirmed, (Sup. Imp. Ct., 1963), **J. Eth. L**., vol. 1, p. 26.

8.1.5 Legislation

Legislation, within the meaning of this section, includes all delegated legislation such as ministerial regulations, etc., and also treatises.

a Ethiopia

The first reference to Ethiopian legislation should contain, in the following order:

1. name or title of the law;
2. date of promulgation;
3. article, chapter, etc.. of the law, as appropriate;
4. type and number of the law;
5. the words "**Neg Gaz**",
6. year and number of the **Negarit Gazeta** where the law may be found.

Example:

Constitution of the Federal Democratic Republic of Ethiopia, 1995, proclamation No.1, Federal Neg.Gaz. year 1 no.1

Revised Federal Ethics and Anti-Corruption Commission Establishment Proclamation, 2005, art 7, proclamation No.433, **Federal**. **Neg. Gaz**. year 11, no.18

Federal Civil Servants Proclamation, 2007, Art. 18, Proclamation No. 515, **Federal. Neg.Gaz**.. year 13, no.15

Council of Ministers Regulation to provide for the Functioning of Ethics Laison Units, 2008, Regulation No. 144, **Federal Neg.Gaz**., year 14, no.12

Income Tax Proclamation, 1961, Proc. No. 173, **Neg.Gaz**., year 20, no.13.

Technical Agency Order, 1963 Art. 4(b), Order No. 29 **Neg. Gaz** year 22, no 15.

Investment /Amendment/ Proclamation, 2003, Proc.No. 373, **Fed.Neg.Gaz.**, year 10, no.8.

(1). Name or Title

The name to be used for any law cited is its "short title," if it has one. This is usually given near the beginning or near the end of the law. Abbreviations may not be used, unless in the title as stated in the law; except that the codes and the Constitution should be abbreviated in conformity with the list of permissible abbreviation. If the law cited does not have a "short title," give the name by which it is popularly called, if it has one or the full title given at the beginning of its publication in the **Negarit Gazeta.**

If the law cited has no title at all, cite first the type and number of the legislation, and then the year, that is, item (4) and then item (2)

(2). Date of Promulgation

The date of promulgation should be in the Gregorian calendar. Note that the date of promulgation is usually the date it was adopted or published, and not necessarily the date it went into effect. Usually the law itself will specify the appropriate date, either in the title or in the text of the law. The year of promulgation is sufficient unless the law has not title or is no published; in these latter cases, the full date is necessary.

(3). Type and Number

The existing Ethiopian law will usually appear as one of the following types: proclamation, regulation, or directive. Each type is usually numbered. Since these numbers are consecutive from the first of each type and do not begin with number one each year, and since the year of promulgation of the law is given right after the title of

the law, it is not necessary to give the year after giving the type and number of a law which has a title.

Codes

A reference to a code should give only the material specified in items (1) and (3) of this section on legislation

Examples: Crim. C., Art. 539

Legislation not in Negarit Gazeta

Legislation which does not appear in the **Negarit Gazeta,** either because it was promulgated before 1942 or because it was not published in the **Negarit Gazeta** even though promulgated after that year, should be cited in a from as close as possible to that specified above. If the law was published in any book, article, or other material you should cite where the law may be found. The word "in" should separate the citation of the law from the citation of the book, article, etc. If the law is not published, the part of the citation relating to the **Negarit Gazeta** should be replaced by the words "unpublished" and the place where the law may be found, all in parentheses. But laws if not published in Negarit Gazeta will be drafts, not proper binding laws.

Example: Law of Companies of 1933, Art. 10 (unpublished, Archives, Faculty of Law, Addis Ababa University).

Amendments

If a law has been amended, and the amendment is relevant in any way to the part of the law cited, the words "as amended" should be place after the regular citation. This should be followed by a full citation to the law (s) which amend (s) the original law cited. However, the word "**Neg, Gaz**" may be replaced by the word **'id"** in the citation to the amending law, if the law amended also appeared in the Negarit Gazeta.

Example: Courts Proclamation, 1962, Art. 1, Proc.No .195, **Neg, Gaz**., year 22, no. 7, as amended, Courts (Amendment) Proclamation, 1962, Art, 2, Proc. No. 203, Id., year 22, no. 16

Consolidated laws of Ethiopia

It is a canon of legal citation that reference should always be made to the official reporter. An unofficial reporter is not cited, except as a supplementary source or unless the official reporter is unavailable.

In its present mimeographed stage, the consolidation should not be cited at all. If its is published, it may be cited in place of the **Negarit Gazeta** only if it is promulgated as law pursuant to the Constitution, that is, only if the appropriate authorities make it official. If it is published but not made official, it should be cited as a supplementary source after the appropriate citation to the **Negarit Gazeta.** For the correct form of citation, follow the rules pertaining to compilations in the part of foreign legislation, below.

b. Foreign

Reporters of legislation fall into three basic groups:

i. those that are periodic and report legislation passed in the previous period;

ii. compilations divided into chapters (or titles), in which the sections or articles are numbered consecutively from the beginning to the end of each chapter;

iii. compilations divided into chapters (or titles), in which the sections or articles are numbered only within each law, and not from the beginning to the end of the chapter.

In addition, legislation may appear in:

iv. books, journals, etc., which are not of the nature of a reporter.

No matter what type of reporter or other publication the law cited appears in, the first reference thereto should contain at the beginning, in the following order.

1. name or title of the law;
2. date of promulgation;
3. country or jurisdiction, if not clear from the name of the law or from the name of the reporter (in parentheses);
4. particular article, section, chapter, etc., of the law, as appropriate

Items (1), (2) and (4) should follow the same rules specified for Ethiopian legislation .The name or title should be given in the language in which the law appears. Everything else should be given in English. Note that in cases where the law has no title, items (1) and (2) should be replaced by the type, number, and full date of promulgation of the law cited. For item (3) the appropriate abbreviations should be used. In some compilations, the law will contain no title and no type and date; in this case, item (1) (4) should be omitted, (See example below.)

What comes next depends entirely upon the type of reporter or publication in which the law may be found. Remember however, if we have more than one reporter or publication with the same law in the library, and if one is official and the other is not, the official one must be cited; the unofficial version may or may not be cited, within the discretion of the author. Also, if a law appears both in a regular law reporter and in a publication which is not of the nature of a reporter, and if the publication is not an official version, the reporter should be cited; citation of the other publication is optional.

i. <u>Periodic Reporters</u>

(5). name of the reporter (underlined or in italics);

(6). volume of the reporter;

(7). page of the volume where the reference is found.

For all these items, follow the same rules as specified for the same items under books (Section 1, item (2), (5) and (6) above)

Example: Decree No. 56-1183 of Nov. 15, 1956 (Fra.), Art. 2, **<u>Dalloz,</u>** 1956, Legis, p. 490.

ii. <u>Compilations Consecutively Numbered within Chapters</u>

(5). name of the compilation (underlined or in italics);

(6). edition or year of the compilation, if not part of the title (in parentheses);

(7). number of the chapter or title in the compilation, if any;

(8). name of the chapter or title, if the full citation begins with the name of the compilation or if there is no number for the chapter or titles;

(9). particular articles, section, etc., of the law, as appropriate, if the citation begins with the name of the compilation.

For item (5), follow the same rules provided for the names of books. However, if a compilation is of the laws of a jurisdiction within a country, and if the name of the jurisdiction but not of the country appears in the name of the compilation, the name of the country may be inserted in parentheses after the name of the smaller jurisdiction; appropriate abbreviations should be used.

Item (6) does not apply to compilations in which the chapters or titles may be revised individually from time to time. This may happen in the case of lose- leaf compilations such as the **Law of Kenya** or with works such as the **United States Code Annotated** in which the volume are separate titles. In these cases, put the date of the chapter or title, in parentheses after the number of the chapter or title, if the name of the chapter title is used, after the name. Note that the word "title" here means the division of the compilation and not the name of the law, if a compilation or a volume of a complication has supplements to books in general (Section 1, Supplements and Pocket pats, above). Also note that it often is unnecessary, and sometimes even impossible, to include the date (item (2) of a law which appears in compilation.

Note that items (8) (9) apply only when the citation begins with the name of the compilation or if the chapter or title has no number.

Examples:

Law No. 156 of Sept. 13, 1950 , Art. 1 (6) **Repertoire permanent de legislation egyptienne,** Assurances p.21

Insurance Companies Ordinance, Sec, 20 , **Law of Kenya**, chap, 487 (revised ed, 1962)

Liberian Code of Laws of 1956, Title 4, Associations Law, Sec. 5

Louisiana (U.S) Revised Statutes of 1950, Title 12, Corporations and Associations, Sec. 2.

New York (U.S) Consolidated Laws Service, Public Buildings Law, (1951, Supp, 1962), Sec. 2.

Workmen's compensation Act, Art. 2, **Revised Statues of the Province of qubec (Canada), 1941**, chapt 160

Penal Code, Sec. 2. **Laws of Tanganyika, 1947,** chap. 16.

United states Code (1953 ed.) , Title 42, Public Health and Welfare, Sec, 411(a).

United States Code (1958 e.. Supp. IV, 1963) Title 7, Agriculture, Sec 644.

United States Code Annotated, Title 7, Agriculture (1952, Supp, 1961), Sec, 644.

iii. Compilations Not Consecutively Numbered within Chapters

(5). name of the compilation (underlined or in italics);

(6) edition or year of the compilation, if not part of the title (in parentheses);

(7). number of the volume where the law cited may be found;

(8). page where the specific reference may be found.

For items (5) and (6) follow the same rules as are prescribed for compilations conclusively numbered by chapters (part (ii) above . For items (7) and (8), either the volume number or the page number, or both may be replaced by another classification, if the volumes are not numbered or if the pages of the volume are not numbered consecutively throughout the volume.

Examples:

Tanganyika independence Act, 1961, Sec. 2, **Halsbury's Statutes of England** (2d ed.) , vol, 41 p. 176

Income Tax Act, 1952, Sec. 18 **Halsbury's Statutes of England** (2s ad.) vol. 31, p.207 , as amended, finance Act, 1953, Sec. 14(3),

Id.. vol 36, p. 114 and Finance Act, 1960, Sec 18 **Id**.. vol 40, p. 428

Definition of "Sudanese" Ordinance, Art. 2 **Laws of the Sudan** (1956), vol. 1, p. 149.

Decree of July 24, 1928 (Switz.), Art. 1, **Recueil systematique desiois et ordonnances**, 1848- 1947, vol 1. p. 311

Code des obligations (Switz.) , Art. 176 . **Lol federal completant is Code civil suisse**. book 5 p. 35.

iv. Other Publications

References to legislation appearing in publications other than reports or compilations of the laws of a particular country of jurisdiction should be completed by following the appropriate rules prescribed for the particular kind of publication involved.

If the law is in a book or document which has the same name as the law, the citation should be completed by following the rules prescribed under items (3)-(6) in the section on books. Note that in this case the name of the book or document which is the same as the name of the law, is not underlined.

If the law is in a book or document with a title other than the name of the law, or if the law is in a scholarly journal or in a newspaper or news magazine the citation should

be completed by the word "in" followed by a complete citation to the particular publication involved. If the law cited is a translation, the word "translated" should precede the word "in".

Remember that, if available, reference should always be made to an official rather than an unofficial source.

Examples:

Code de commerce (Fra). Art 46 (Petits code Dalloz. 57th ed 1961).

Law of April 19, 1951 (Fra.), Art. 1, in **Code de commerce** (Petits code Dalloz, 57th ed., 1961). 856

Treaty of Friendship, Commerce and Navigation between the Federal Republic of Germany and the United States of America (1954), Art 1, In E. steefel, **German Commercial law** (1955), p. 192.

Constitution of Belgium (1831), Art, 5, translated in A. Peasiee, (ed(, **Constitutions of Nations** (2d ed. 1956). vol. 1. p.153

Amendments

Treat amendments in general the same way as amendments of Ethiopian legislation. That is, relevant amendments must be specified in a full citation after the citation of the basic law. The citation of the reporter, compilation, publication, etc. where the amending law is found may be replaced by the word "id" if the same as the reporter, etc., in which the amended law is found.

Special rules apply to laws appearing in certain compilations and other publications. If a law appears in a compilation or publication already amended, it is not necessary to list the word "as amended" or any of the amendments included in the law. This is because the reader who looks up the law will find the law already amended as it appears in the compilation. If amendments are made after the compilation or publication is published and if the amendments are specified in a supplement to the compilation in such form that the reader still automatically sees the amendment if he/she checks the appropriate chapter or section number, etc... in the supplement, the amendment may be treated as material appearing in a supplement to a book. In all other cases the regular method of citing amendments must be followed.

Examples:

Income Tax Act, 1952, **Halsbury's Statutes England** (2d ed), vol. 31, p.207, as amended, Finance Act, 1953, Sec. 14(3), Id, vol. 33, p. 114, and Finance Act, 1960, Sec. 18 Id., vol. 40 p.428.

United states Code 1956 ed., Supp. IV, 1963), Title 7, Agriculture, Sec. 1924

F. Unpublished Reports and Manuscripts, etc

For references to unpublished judicial decisions and unpublished legislation see Sections 4 and 5. The first reference to other unpublished material should contain, in the following order:

1. author's name;
2. title (underlined or italics);
3. date the work was completed (in parentheses);
4. the word :unpublished" (in parentheses);
5. place where the work may be found (in parentheses);
6. section, article, number, page, etc., referred to, as appropriate.

Example: L Church, **Cases and Materials on Agency and Business Organizations** (1964- 65, unpublished, Library, Faculty of law, Addis Ababa University , p. 572.

Filipos Aynalem, Techniques of Judgment writing and Decision Making in Ethiopia (March 2007, unpublished, Library, Faculty of Law, St. Mary University College)

For items (1), (2) and (6) follow the rules prescribed for books in general, For item (5), if the work is not available, put the word "not available" in parentheses where the location of the work would otherwise be.

G. Interviews

References to material obtained in an interview should contain, in the following order:

1. the words "interview with"
2. full name of person interviewed
3. position of the person interviewed;
4. date of the interview.

Example: interview with H.E. Zewde Gebre Hiwot, Kantiba of the city of Addis Ababa, May 26, 1965.

If the name of the person interviewed cannot be given because the interview was confidential, items (2) and (3) should be omitted and the word "confidential" put in parentheses after the word "interview" in this case, if possible and if consistent with the confidence imposed by the interviewer. Some measure of identification should be given after the parentheses and before the date.

H. Speeches

References to speeches should contain, in the following order:

1. full name of the speaker;
2. place or occasion of the address;
3. date of the address;
4. facts relating to the place where the address may be found, if it is recorded or reported in written form.

Examples:

H.I.M Haile Selassie I, Address to the Ethiopian Parliament. Nov. 2. 1958, in **Ethiopian Observer**, Apr. 1959, p. 66.

Hubert H. Humphrey, Address to the Democratic National Convention, June 25, 1964, as reported in The New Youk Times (int'1. ed.), June 26, 1964, p 1, col. 2.

Teshome Haile Mariam, Address on Law Day,. Haile Sellassie I University, May 29, 1965.

In the first example above, the speech was reprinted in full. In the second example, the speech was reported in a news article. In the third example, the speech was not recorded in written form; or reference is not being made to any written form, but rather to the speech as heard by the author. If the speech was recorded in written form, but the written form was not published, and if you refer to such written form, follow for item (4) the general rules for unpublished materials (Section 7. above).

I. Letters

References to letters should contain, in the following order;

1. the word "Letter from" ;
2. name of the sender of the letter;
3. addresses of the letter;
4. date of the letter;

5. facts relating to publication, if published;
6. treatment as unpublished material, if not published.

Examples:

Letter from John F. Kennedy to Samuel Jones, Mar 20. 1961, in H. Green (ed**),** **Letters of the Presidents** (1964), vol. 3 p. 42.

Letter from George Washington to John Adams, June 8, 1793 (unpublished, Library, Princeton University).

Letter from Mortimer Kaplan to John Smith, June 6, 1962 (unpublished, Bureau of Internal Revenue).

L. Shortened forms

When a reference has once been made in the full form prescribed in the preceding pages of this booklet, later references to the same book, article, report, judicial decision, etc., may be in an abbreviated form. The abbreviated form must contain all the information necessary to achieve the purpose of citations.

The name of an author, if a European name, may be given without first initials, the title and facts of publication of a book or the title of an article and the name and volume number of the journal or magazine in which it is found may be replaced by putting, after the author's name, the words "cited above at note" (giving the number of the footnote where the work is first cited). Volume numbers (for books) and page numbers, etc., must still be given in regular form.

Example: Jones cited above at note 5, vol. 2, p. 86

Letter references to the name judicial decision should contain the name, followed by the words cited above at note___" (giving the number of the footnote where the decision is first cited). Page numbers must still be given.

Example: Caillaud C. Vayssiere, cited above at note 32, p. 465

Later references to the same law should contain the name and year of the law (or, if no name, the type of legislation and the date), followed by the words 'cited above at note___" (giving the number of the footnote where the law is first cited). Numbers of sections, articles, etc., must still be given.

Example: Revised Federal Ethics and Anti-Corruption Commission Establishment Proclamation, cited above at note 18, Art. 8.

Later references to all authorities other than judicial decisions and laws are treated the same as books. If references are to be made to the same book, judicial decision, law, etc., follow each other without an intervening reference, the abbreviations "Ibid." or "Id." are used. "Ibid" is used when the second reference would be exactly the same as the previous reference, i.e. same volume, page, article, section, etc. If the second reference is to a different page, etc., or if any addition whatsoever is being made to the preceding reference. "id" is used. When "id" is used, page numbers, etc., must still be given.

Examples:

5. J.Graven, "The penal Code of the Empire of Ethiopia," **J. Eth. L.** vol 1 (1964), p 275

6. Ibid.

7. Tilahun Teshome, **Basic Principles of Ethiopian Contract Law** (2nd ed, 2002), p.77.

8. **id**., p. 98.

When citations are not given in footnotes, but in text (for example, in judicial decisions and legal memoranda), later references only use the words "cited above" and the appropriate page, section, etc., in the authority cited. Footnotes may also contain additional information on side points not considered in detail in the text because such points are not important to the main argument. Source material for statements made in such footnotes is given in the footnote itself in a regular citation form.

10.1.2.4.2 Using Footnotes or Endnotes

The footnotes or endnotes serve two purposes namely, the identification of materials used in quotations in the report and the notice of materials not immediately necessary to the body of the research text but still of supplemental value. In other words, footnotes or endnotes are meant for cross references, citation of authorities and sources, and elucidation or explanation of a point of view. Footnotes or endnotes are also used primarily to avoid plagiarism and to acknowledge the source of your information -- not only direct quotations, but also specific facts and opinions. An other usage is to make incidental comments upon your source or to amplify textual

discussions, i.e., to provide a place for material which you consider essential, but which would disrupt the normal flow of the text. The rule is that all statements of particular opinion which are not original with you, and all facts which are not common knowledge, must be noted. Notes may either be placed at the bottom of the page (footnotes) or gathered together on a page or pages at the end of the text (endnotes). For the reader, it is more convenient to use footnotes.

A. How to Footnote or Document Research

To avoid a long series of references to the same work, especially in reports on a single book, page numbers may be given in parentheses immediately after quoted material. The edition used must be described fully in an initial footnote, however. Similarly, if a source is clearly indicated in the text, and fully cited in an initial footnote, it may be redundant to footnote a succession of subsequent quotes.

B. Footnote Numbers

Footnotes should be numbered in one series or consecutively through an entire paper or report, except in a thesis, where each chapter contains its own series of footnotes. At the footnote of the page, again, the footnote number should be indented. Indicate the place in your text by an Arabic numeral, placed immediately after the passage or quotation to which it refers, and raised slightly above the line. Footnotes/endnotes should always be single-spaced, though they are divided from one another by double space. If more than one source is cited, each citation should be separated by a semicolon.

C. Difference between Footnote and Bibliographic Form

It is important to note that bibliographic form differs from footnote form in several respects. Whereas in a footnote the author's name is given in its normal order (first name first), in a bibliography the authors' names are listed alphabetically by surname. Also, both punctuation and indentation in a bibliography differ from what is found in footnotes. Note the following examples of bibliographical entries in 10.1.3 below.

10.1.3. The References

101.3.1 Bibliography

References or bibliography-contains details of all the books, articles, reports and other relevant works you have directly referred or consulted during your research in your thesis or report.
Bibliographies should contain three sections; table of Cases, Table of laws, and other Bibliographic Materials.

The Table of cases should contain judicial decisions listed according to country (or international jurisdiction). The countries should appear in alphabetical order. Within each country, the judicial decisions should be listed in alphabetical order according to the name. If a decision has no name, but is cited as Decision, the word "decision" should be treated as the title for purposes of the bibliography; if there is more than one such case they should be listed according to date. The form in which a judicial decision is listed should be exactly the same as that of a full citation, except that it is not necessary to state the name of the country in parenthesis since the cases are already classified by country. Also, where the decision appears in a publication containing more than that decision, refer only to the page on which the decision begins.

The Table of laws should be organized in the same manner as the table of Cases; that is by country or international jurisdiction and in alphabetical order, and in the same form as a full citation. Particular articles or sections, etc... should not be cited. Where the law appears in a publication containing more than that law, refer only to the page on which the law begins.

The section containing other bibliographic material should be organized alphabetically according to the name of the author or editor, according to the title. Interviews should be listed according to the word "interview." The form in which the material is listed is the same as for a full citation (including, for books and government documents and reports, the name of the publisher and the place of publication), with the following exceptions. The first initial of a European author should follow the surname, separated from it by a comma. If there is more than one volume in the set, specify the total number of volumes and not the particular volume

or volumes of which use was made. Specify the years of publication, inclusive, of all volumes of the set. (This exception, of course, does not apply to magazines and journals.)

When listing books, documents, etc., do not give a reference to a particular page, article, chapter etc; refer only to the book as a whole. However, when listing articles in journals, magazines, books or newspapers, refer to the page on which the article begins.

If more than one work by the same author is cited, a long dash is used in place of the author's name when the second and later entries to that author's work are cited.

Examples of Bibliography:

A. **Table of Laws**

Foreign

Income Tax Act, 1952, **Halsbury's Statutes of England** (2d ed.) Vol. 31,as amended, Finance Act, 1953 vol. 33, p. 114 and, Finance Act,1960, vol. 40 p. 423.

Tanganyik independence Act. 1961. **Halsbury's Statutes of England** (2d ed.) , vol. 41, p. 176.

Ethiopia

Law of companies of 1933 (unpublished, Archives, Faculty of Law, Addis Ababa University)

Income Tax proclamation, 1961, proc. No. 173, **Neg. Gaz**., year 20, no. 13.

Federal Civil Servants Proclamation, 2007, Art. 18, Proclamation No. 515, **Federal. Neg.Gaz**.. year 13, no.15

Council of Ministers Regulation to provide for the Functioning of Ethics Laison Units, 2008, Regulation No. 144, **Federal Neg.Gaz**., year 14, no.12 ostage Rates Regulations, 1961, Leg. Not . No. 245, **Neg, Gaz**., Year 21,no.2.

France

Decree No. 56-83 of Nov. 15, 1950 Dalloz, 1956, legis.,p. 490

B. Table of Cases

Ethiopia

Belete Belaineh V. Public Prosecutor (Sup. Imp. Ct., 1962**), J.Eth.L.,** vol.1,p.162

H.V.A. Ethiopia V. The Inland Revenue Department (High ct., Addis Ababa, 1962), **J.th.L.,** vol.2, p.66.

Zenash Bekele v. Haregewoin Bekele (Federal Supreme Court, 2007, Civil Cassation Case No.18394) (unpublished).

Teffera Gizaw v. Menna Bekelech (High Ct., Addis Ababa, 1965), **J.Eth.L**., vol.2, p.81.

France

Brionnet (conseil d'Etat Dec 21, 1960) Dalloz, 1961, Jurisp., p. 391.

Schauer c.Chom de fer du Midi et Riviere (Cour de cassation Feb 6 1924), Da loz Heb., 1924, p.161.

Germany, Federal Republic

Decision of Reb. 12, 1952 (Fed. Sup. Ct.) **Entscheidungen des Bundesgerichtsrofes in Strafsachen**, vol. 2, p. 150, translated in G. ueller, **Materials on comparative criminal Law** (New Your, New York University School of Law, 1960), p.75.

Nigeria

Akinwande Thomas v. oba Alalyeiuwa Ademoia it (Su. Ct., 1945), N**eria L. Rep** Vol 18, p12

Mallam Musama Labaran v.B. Shnoibare (Div. Ct., 1937), **Nigeria L. Rep., vol** l.13, p. 122.

C. Other bibliographic Materials

Sample Bibliography

1. Books

a) A book with one author

Jones, W.T. A History of Western Philosophy. New York: Harcourt, Brace & Co., 1952. [Because a bibliographic reference identifies the whole book, rather than a specific part, page numbers are unnecessary.]

b) A book with two or more authors

Bushnell, David, and Neill Macaulay. *The Emergence of Latin America in the Nineteenth Century*. Second edition. Oxford: Oxford University Press, 1994. [Only the first author's name is listed surname first, the rest are listed in normal fashion.]

c) No author and/or no publisher given

The Men's League Handbook on Women's Suffrage. London, 1912. [Listed alphabetically in the 'm's, of course.]

d) An edited work with an author

Weems, Mason L. *Life of Washington*. Edited by Marcus Cunliffe. Cambridge: Harvard University Press, 1962.

e) An edited or compiled work

Anderson, J.N.D., ed. *The World's Religions*. London: Inter-Varsity Fellowship, 1950.

f) A translated work

Khrushchev, Sergei. *Khrushchev on Khrushchev! An Inside Account of the Man and His Era*. Edited and translated by William Taubman. Boston: Little, Brown &Co., 1990.

g) A multivolume work

Foote, Shelby. *The Civil War: A Narrative*. 3 vols. New York: Vintage Books, 1986.

The Civil War: A Narrative. Vol. I, Fort Sumter to Perryville. New York: Vintage Books, 1986.

The New Cambridge Modern History. Vol. I. Cambridge: Cambridge University Press, 1957.

2. Journals in a Bibliography

LaFeber, Walter. "The World and the United States." *American Historical Review*. Vol. 100, No. 4 (October 1995), pp. 1015-1033. [Note that a bibliographic entry must indicate the page numbers on which the whole article appears.]

Jordan, Robert Paul. "Gettysburg and Vicksburg: The Battle Towns Today." *National Geographic*, July 1963, pp. 4-57.

Green, Alan S. "Subway Crime on the Increase." *The New York Times*. May 3, 1978, p. 16.

Wilson, P.J. "Baseball." *Encyclopedia Britannica*. Eleventh edition, Vol. 11. p. 418.

3. Additional examples on Different Materials

Tilahun Teshome, **Basic Principles of Ethiopian Contract Law** (2nd ed, Ethiopia, Addis Ababa, Addis Ababa University Book Center, 2002).

_____, **Muncipal Corporation La**w (San Francisco, Matthew Bander and Co., 1965), 3 vols.

Dalloz Nouveau repertoire de droit (Paris, Dalloz, 1947-1950), 4 vols.

Dillard, I. (ed), **One Man's Stand for Freedom** (New York, Alfred A, Knopf, 1963)

Gizaw Haile Mariam, **Dagmawi Menilk, Ketarikatchewna Kemuyatchew** (Addis Ababa, Menlik II Memorial Fund, 1963).

Graven, J., "The Penal Code of the Empire of Ethiopia", **J. Eth. L** vol. 1 (1964). p.267

Halsbury's Laws of England (3d ed., London, Butteworth and co., 1952-1964), 43 vols.

Interviews with three Federal High Court Judges, Nov. 6-8, 2007.

De Laubadere, **Traite elementaire de droit administrative** (3ed. Paris, Librairie Generla de Droit et Jurisprudence, 1963).

10.1.3.2. Appendix

At the end of the research report, appendices should be enlisted in respect of all technical data such as questionnaires, sample information, mathematical derivations, laws, court decisions, office letters, elaboration on particular technique of analysis and the like.

10.1.3.3. Index

Similar, to bibliography and appendix, index, if any, should also invariably be given at the end of research report. Index refers to an alphabetical listing of names, places, and topics along with the numbers of the pages in a book or report on which they are mentioned or discussed.

UNIT SUMMARY

You should know and understand the following:

- ❖ What do you understand by citation?
- ❖ What is the importance of studying rules of citation?
- ❖ What type of relationship exists between source of data collection and rule of citation?

- On the basis of given information, cite the following research source materials properly: Books, Journals, Magazines, News papers, Different types of laws, court cases, unpublished materials, letters and speeches.
- Discuss the difference between footnote and endnote
- What is bibliography? And its difference from footnote /endnote?
- What is the purpose of writing bibliography?

REFERENCE MATERIALS

1. Kothari, C R, *Research Methodology: Methods and Techniques* (Wishwa Prakashan, New Delhi, 1990)
2. Harvard Law Association, *A Uniform System of Citation (the Bluebook)*, (Latest Edition)
3. Faculty of Law, Addis Ababa University, *Book of Citation* (Unpublished, 1965)
4. Various national as well as foreign laws and court cases used as examples.
5. Various books, journals….. Used as examples to show citation rules.