Legal Research Methodology (Laws-M1040)
Anecdote

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Course Objectives:

After a successful completion of the course, students are expected to achieve basic knowledge and competence specifically, it is expected that students will be able to:

- explain the concept, purpose and problems of scientific legal research;
- discuss fundamental elements and rules of legal research methods, their scope and application;
- explain the different categories and types of legal research;
- converse on the significance of legal research for identification and solving legal and socio-legal problems;
- itemize the basic techniques of selection, collection and interpretation of primary and secondary data in legal and socio-legal research;
- identify legal issues emerging from application or non-application of law;
- explain the significance and role of legal research in the reform and development of law and in the socio-economic development of the country;

Chapter I: Introduction

Contents:

1.1. Law and society: mutual relationship and interaction;

1.2. Legal system: A System of norms and social system;

1.3. Role of law in a planned socio-economic development

General Overview:

- 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.***

- Research is a systematic investigation towards increasing the sum of human knowledge.
- It is 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.
- An approach becomes systematic when a researcher follows certain scientific methods.
- Legal research can be defined as a systematic finding of 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.
- 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.

1.1. Law and Society: Mutual Relationship and 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 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.
- All collective human life is directly or indirectly shaped by law-Luhman.
- 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 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 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.

1.2. Legal System: A System of Norms and Social

System:

- A system of law can be conceptualized in three principal ways:
  1. Legal system conceived as an aggregate of legal norms;
  2. It 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;
  3. 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:

1. Legal system as a normative system,
2. Legal system as a social system, and
3. Legal system as a combination of formal and non-formal norms of social control.

1.3. 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 reveals laws' role in accomplishing them.
- See, arts 89- 90 & 92, FDRE Constitution.

UNIT 2

LEGAL RESEARCH: AN INTRODUCTION

CONTENTS:

- What is research?
  - Meaning of research
  - Objectives of research
  - Motivation in research
  - Research and scientific method
- Types of research:
  1. Descriptive *vs.* Analytical Research
  2. Applied *vs.* Fundamental Research
  3. Quantitative *vs.* Qualitative Research
  4. Conceptual *vs.* Empirical Research

- ♠ Research Methods and Research Methodology
- ♠ What is legal research?
- ♠ Scope and relevance of legal research
  - Nature and Scope of Legal Research
  - Scope of Legal Research in the Common Law System and the Civil Law System
- ♠ Importance (Purpose) of legal research:
  - Ascertainment of law
  - Highlighting inbuilt ‘gaps’ and ‘ambiguities’
  - Determining consistency, coherence and stability of law
  - Social auditing of law
  - Suggesting reforms in law

- Legal research by whom?
  - ✓ By a Legislator
  - ✓ By a Judge
  - ✓ By a Lawyer
  - ✓ By a Law Teacher and Student of Law
- Legal research and methodology
- Sources of information

1. Primary sources
2. Secondary sources
3. Tertiary sources

♠ Major stages in legal research

1. Identification and formulation of a research problem
2. Review of literature
3. Formulation of a hypothesis
4. Research design
5. Collection of data
6. Analysis of data
7. Interpretation of data
8. Research report

♠ Legal Research in Ethiopia: Perspectives and Problems

2.1. WHAT IS 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’.
- Redman and Mory, in a similar tone, define research as a ‘systematized effort to gain new knowledge’.
- 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 theory or in the practice of an art'.
- 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.***

- ‘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.

- 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.

2.1.1. Objectives of Research

- The purpose of research is to acquire knowledge or to know about ‘something’ in a scientific and systematic way.
- Its purpose may 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)’.

♥ ‘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.
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.

2.1.2. 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 therefore, 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

2.1.4 Research and Scientific Method

- Research 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 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.
- 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'.
- 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’.
- 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.

- 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.